

Chapter 48

Code Of Professional Conduct For Judicial Branch Interpreters

PREAMBLE

Many persons are partially or completely excluded from participation in court proceedings due to the person's limited proficiency in the English language, being deaf, blind, or hard-of-hearing, or having a speech disability. These communication barriers must be removed as much as is reasonably possible so that all persons may enjoy equal access to justice. A trained and certified interpreter is a highly skilled professional who helps judges conduct hearings justly and efficiently when communication barriers exist.

APPLICABILITY

The Code of Professional Conduct for Judicial Branch Interpreters (hereafter the "Code of Conduct") governs the delivery of services by foreign language and sign language interpreters working in the courts and other offices of the Iowa judicial branch. Its purpose is to define the duties of an interpreter and thereby enhance the administration of justice and promote public confidence in the courts. This Code of Conduct also applies to real-time reporters when functioning in the capacity of providing access to court users.

COMMENTS

The word "shall" is used to define principles to which adherence is required. The Comments describe basic principles of the Code of Conduct. If a court policy or routine practice appears to conflict with any provision of the Code of Conduct, including the Comments, the policy or practice should be reviewed for modification.

CANON 1

ACCURACY AND COMPLETENESS

An interpreter shall render a complete and accurate interpretation or sight translation by reproducing in the target language the closest natural equivalent of the source language message, without altering, omitting, or adding anything to the meaning of what is stated or written, and without explanation.

Comment to Canon 1.

An interpreter has a twofold role:

1) to ensure that court proceedings reflect, in English, precisely what was said by persons who are deaf, blind, or hard-of-hearing, or who have a speech disability, or who have no or limited proficiency in the English language.

2) to place persons who are deaf, blind, or hard-of-hearing, or who have a speech disability, or who have no or limited proficiency in the English language on an equal footing with persons who understand English.

To fulfill these roles, a court interpreter must apply the interpreter's best skills and judgment to preserve the meaning of what is said, as faithfully as possible and without editing. The interpreter should express the style or register of speech, the ambiguities and nuances of the speaker, and the level of language that best conveys the original meaning of the source language. Verbatim, "word for word," or literal oral interpretations are *inappropriate* when they distort the meaning of what was said in the source language. However, all spoken statements, including misstatements, should be interpreted, even if they appear non-responsive, obscene, rambling, or incoherent.

An interpreter must never interject the interpreter's own statement or elaboration. If the need arises to explain 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.

An oral language interpreter should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions, or dramatic gestures. A sign language interpreter, however, must employ all of the visual cues that the language being interpreted requires, including facial expressions, body language, and hand gestures. Judges should ensure that court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct. Any challenge to the interpreter's conduct should be directed to the judge.

The obligation to preserve accuracy includes the interpreter's duty to correct any errors of interpretation discovered during the proceeding. An interpreter should demonstrate professionalism by objectively analyzing any challenge to the interpreter's performance.

The ethical responsibility to interpret accurately and completely includes the responsibility of being properly prepared for interpreting assignments. An interpreter is encouraged to obtain documents and other information necessary to become familiar with the nature and purpose of a proceeding. Prior preparation is generally described below and is especially important when testimony or documents include highly specialized terminology and subject matter.

In order to avoid any impropriety, or even the appearance of impropriety, an interpreter should seek permission of the court before conducting any preparation other than the review of public documents in the court file. Courts should freely grant such permission when appropriate to assist an interpreter in discharging the interpreter's professional responsibilities.

Preparation might include but is not limited to:

- 1) review of public documents in the court file, such as motions and supporting affidavits, witness lists and jury instructions; the criminal complaint, information, and preliminary hearing transcript in a criminal case; and the summons, complaint and answer in a civil case;

- 2) review of documents in the possession of counsel, such as police reports, witness summaries, deposition transcripts and presentence investigation reports, and obtaining a written copy of witness lists from the court;
- 3) contacting any previous interpreter involved in the case for information on language use or style;
- 4) contacting attorneys involved in the case for additional information on anticipated testimony or exhibits; or
- 5) anticipating and discussing interpreting issues related to the case with the judge, but only in the presence of counsel unless the court directs otherwise.

CANON 2

REPRESENTATION OF QUALIFICATIONS

An interpreter shall accurately and completely represent the interpreter's certification, training, and experience. An interpreter shall promptly report to the director of the office of professional regulation any disciplinary action taken against the interpreter in any other jurisdiction.

Comment to Canon 2.

By accepting a court case, an interpreter asserts linguistic competency in legal settings. Withdrawing, or being asked to withdraw, after a court proceeding has begun is disruptive and wasteful of scarce public resources. It is essential an 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.

CANON 3

IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

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

Comment to Canon 3.

An interpreter serves as an officer of the court. The interpreter's duties in a court proceeding are to serve the court and the public regardless of whether the interpreter is publicly or privately retained.

An interpreter of record should avoid any conduct or behavior that presents the appearance of favoritism toward anyone during the course of the proceedings. An interpreter should maintain a professional relationship with the interpreter's client, discourage the client's personal dependence on the interpreter, and avoid participation in the proceedings other than as an interpreter.

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

An interpreter shall not solicit or accept any payment, gift, or gratuities in addition to the interpreter's compensation.

Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest and must be disclosed to the judge. An interpreter should only divulge necessary information when disclosing the conflict of interest. The disclosure shall not include privileged or confidential information. The following circumstances create potential conflicts of interest that must be disclosed:

- 1) the interpreter is a friend, associate, or relative of a party, counsel for a party, a witness, or a victim (in a criminal case) involved in the proceedings;
- 2) the interpreter or the interpreter's friend, associate, or relative has a financial interest in the subject matter in controversy, a shared financial interest with a party to the proceeding, or any other interest that might be affected by the outcome of the case;
- 3) the interpreter has served in an investigative capacity for any party involved in the case;
- 4) the interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
- 5) the interpreter is an attorney or witness in the case at issue;
- 6) the interpreter has previously been retained for employment by one of the parties; or
- 7) for any other reason, the interpreter's independence of judgment would be compromised in the course of providing services.

The court should carefully evaluate any potential conflict, but the existence of only one of the above circumstances will not disqualify an interpreter if the interpreter is able to render services objectively. The interpreter should disclose to the court any indication that the recipient of interpreting services views the interpreter as being biased. If an actual or apparent conflict of interest exists, the court should decide whether removal is appropriate based upon the totality of the circumstances.

CANON 4

PROFESSIONAL Demeanor

An interpreter shall act in a manner consistent with the dignity of the court.

Comment to Canon 4.

An interpreter should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, an interpreter should speak at a rate and volume that is audible and understandable throughout the courtroom. An interpreter should be as unobtrusive as possible and should not seek to attract inappropriate attention while performing the interpreter's professional duties. This includes any time the interpreter is present, even though not actively interpreting.

An interpreter should avoid obstructing the view of anyone involved in the proceedings, but should be appropriately positioned to facilitate communication. An interpreter who uses sign language or other visual modes of communication must be positioned so that signs, facial expressions, and whole body movements are visible to the person for whom the interpreter is interpreting. When necessary, the interpreter should be repositioned to accommodate visual access to exhibits.

An interpreter should avoid personal or professional conduct that could dishonor the court.

An interpreter should support other interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

CANON 5

CONFIDENTIALITY

An interpreter shall protect the confidentiality of all privileged and other confidential information.

Comment to Canon 5.

An interpreter must uphold the confidentiality of any communications between attorney and client. An interpreter must also refrain from repeating or disclosing information obtained in the course of the interpreter's employment.

The interpreter shall accompany a juror into the jury room and interpret for jury deliberations. The interpreter should be neutral and should not participate in jury deliberations. The interpreter shall not disclose or comment upon jury deliberations.

In the event an interpreter is providing services to a party and becomes aware of an intention to inflict harm or commit a crime, the interpreter should immediately disclose the information to the party's attorney. If the interpreter is interpreting for someone other than a party, the interpreter should

immediately disclose the information to the presiding judge. In an emergency, the interpreter should disclose the information to an appropriate authority.

An interpreter shall never take advantage of knowledge obtained in the performance of duties, or through access to court records, facilities, or privileges, for the interpreter's own or another's personal gain.

CANON 6

RESTRICTION OF PUBLIC COMMENT

An 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, except to facilitate training and education.

Comment to Canon 6.

Generally, an interpreter should not discuss interpreter assignments with anyone other than persons who have a formal duty associated with the case. However, an interpreter may share information for training and educational purposes, divulging only so much information as is required to accomplish this purpose. Unless so ordered by a court, an interpreter must never reveal privileged or confidential information for any purpose, including training and education.

CANON 7

SCOPE OF PRACTICE

While serving as an interpreter, an interpreter shall limit the interpreter's conduct to interpreting or translating and shall not give legal advice, express personal opinions to individuals for whom interpreting services are being provided, or engage in other activities which may be construed to constitute a service other than interpreting or translating.

Comment to Canon 7.

Since an interpreter is responsible only for enabling others to communicate, the interpreter should limit the interpreter's conduct to the activity of interpreting or translating only, including official functions as described in the comment to Canon 3. An interpreter, however, may be required to initiate communications during a proceeding when the interpreter finds it necessary to seek direction from the court in performing the interpreter's duties. Examples of such circumstances include: seeking direction from the court when unable to understand or express a word or thought; requesting speakers to adjust their rate of speech or to repeat or rephrase something; correcting the interpreter's errors; or notifying the court of concerns about the interpreter's ability to fulfill an assignment competently. In such instances, the interpreter must make it clear the interpreter is speaking on his or her own behalf.

While serving as an interpreter, the interpreter shall limit the interpreter's conduct to interpreting or translating and shall not give legal advice, express personal opinions to the individual for whom the interpreter is interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating.

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 or contents of forms or services, or otherwise act as a counselor or an advisor, unless the interpreter is interpreting for someone who is acting in that official capacity. An interpreter may translate language on a form for a person who is filling out the form but should not explain the form or its purpose to such person. An interpreter should not perform functions that are the responsibility of other court officials.

CANON 8

ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

An interpreter shall assess at all times the interpreter's ability to deliver interpreting services. When an interpreter has any reservation about the interpreter's ability to satisfy an assignment competently, the interpreter shall immediately convey that reservation to the appropriate judicial authority.

Comment to Canon 8.

If the communication mode or language variety of the deaf, blind, or hard-of-hearing, or non-English speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority, such as a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters.

An interpreter should notify the appropriate judicial authority of any circumstances (e.g., environmental or physical limitations) that impede the ability to deliver interpreting services adequately. These circumstances may include that the courtroom is not quiet enough for the interpreter to hear or be heard by the non-English speaker; more than one person is speaking at the same time; or a person is speaking too quickly for the interpreter to adequately interpret. A sign language interpreter must ensure that the interpreter can both see and convey the full range of visual language elements that are necessary for communication, including facial expressions and body movements, as well as hand gestures.

An interpreter should notify the judge of the need to take periodic breaks in order to maintain mental and physical alertness and prevent interpreter fatigue. An interpreter should inform the court when the use of team interpreting is necessary.

Even a competent and experienced interpreter may encounter situations where routine proceedings suddenly involve slang, idiomatic expressions or

regional dialect, or technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). When such situations occur, the interpreter should request a brief recess in order to become familiar with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, the interpreter should inform the judge.

An interpreter should refrain from accepting a case which has language or subject matter that is likely to exceed the interpreter's capabilities. An interpreter should also notify the judge if the interpreter is unable to perform adequately for any reason.

CANON 9

DUTY TO REPORT ETHICAL VIOLATIONS

An interpreter shall report to the proper judicial authority any effort to impede the interpreter's compliance with any law, any provision of this Code of Conduct, or any other official policy governing court interpreting and translating.

Comment to Canon 9.

Because the users of interpreting services frequently misunderstand the proper role of an interpreter, they may ask or expect the interpreter to perform duties or engage in activities that are contrary to the provisions of the Code of Conduct or other law, rules, regulations, or policies governing court interpreters. An interpreter should explain the interpreter's professional obligations to the user. If, having been informed of these obligations, the person continues to demand that the interpreter violate an obligation under the Code of Conduct, the interpreter should ask for assistance from a supervisory interpreter, a judge, or another official with jurisdiction over interpreter matters to resolve the situation.

CANON 10

PROFESSIONAL DEVELOPMENT

An interpreter shall strive to become more skillful and knowledgeable and advance the profession through activities such as professional training and education and interaction with colleagues and specialists in related fields.

Comment to Canon 10.

An interpreter should improve the interpreter's interpreting skills and knowledge of the languages in which the interpreter works professionally, including past and current trends in slang, idiomatic expression, changes in dialect, technical terminology, and social and regional dialects, as well as their applicability within court proceedings.

An interpreter should keep informed of all statutes, rules of court, and policies of the judiciary that govern the performance of an interpreter's 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.