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# VERMONT JUDICARY

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## Language Access Operations Manual

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**Language Access Operations Manual  
Table of Contents**

**I. INTRODUCTION**

**II. GENERAL CONCEPTS FOR ALL JUDICIARY STAFF**

- A. Definitions of Terms
- B. Importance of Using an Interpreter
- C. Identifying When an Interpreter is Needed
- D. The Role of the Court Interpreter
- E. Modes of Interpretation
  - 1. Simultaneous
  - 2. Consecutive
  - 3. Sight Translation
  - 4. Unauthorized Interpreter Functions
- F. Need for Multiple Interpreters/Team Interpreting

**III. EXPECTATIONS FOR THE COURT ADMINISTRATOR'S OFFICE**

- A. General Responsibilities
- B. Implementation of Broader Programmatic Improvements
- C. Training of Judiciary Staff
- D. Complaints and Feedback About Interpreted Proceedings
  - 1. Operations Oversight
  - 2. Complaint Processing
  - 3. Review of and Follow Up on Complaints
- E. Translation of Vital Documents
  - 1. General Requirements
  - 2. Vital Documents
  - 3. Priority Groups
  - 4. Determination of Priority Status for Translation
  - 5. Translation Database
  - 6. Identification and Prioritization of Languages for Translation
  - 7. Translation Process
  - 8. Annual Review
- F. Interpreter and Translator Invoices
  - 1. Compensation
  - 2. Cancellation
  - 3. Invoices
- G. Maintenance of Databases

**IV. EXPECTATIONS FOR OPERATIONS STAFF**

- A. Locating a Credentialed Interpreter
- B. Options for Interpreter Appearances
  - 1. General
  - 2. Use of Video Remote Interpreting
  - 3. Use of Telephonic Interpreter Services

- 4. Court Interpreter Roster
- C. Role of the Proceedings Interpreter
- D. Payment of Interpreters
  - 1. Compensation
  - 2. Cancellation - Complaint and Feedback Process
- E. Complaints and Feedback About Interpreted Proceedings

**V. BEST PRACTICES FOR JUDICIAL OFFICERS**

- A. *Voir Dire* for Interpreters
- B. Waiver of Interpreter
- C. Interpreter Oaths
- D. Role and Responsibilities of the Proceedings Interpreter
  - 1. General
  - 2. Parties and Witnesses
  - 3. Jury Trials and Jurors
- E. Maximizing Communication During Interpreter Proceedings
  - 1. General Responsibility
  - 2. Video Remote Interpreting or Telephonic Interpretation
  - 3. Use of Languages Other than English by Judges, Attorneys or Other Persons
- F. Record of Interpreted Proceedings
- G. Errors During Interpretation
- H. Translation of Vital Case-Related Documents
  - 1. Process for Analysis and Prioritizing Vital Documents
  - 2. Other Considerations
  - 3. Judiciary Responsibility

**VI. RESOURCES/SUGGESTIONS FOR FURTHER READING**

**VII. APPENDICES**

- A. Interpreter Oaths
- B. Interim Protocol for Obtaining a Credentialed Interpreter for Court Proceedings
- C. Protocol for Use of Video Remote Interpreting
- D. Initial Determination of Interpreter Qualifications for Court Staff When No Testing or Prior Screening Standards Exist
- E. *Voir dire* for Judicial Officers to Establish Interpreter Qualifications When No Testing or Prior Screening Standards Exist
- F. Judicial Officer's Suggested Text for Judge's Statement Clarifying the Role of the Court Interpreter
- G. Judicial Officer's Suggested Text for Clarifying the Interpreter's Role to the Witness
- H. Judicial Officer's Suggested Texts for Clarifying the Interpreter's Role to the Jury
- I. Code of Professional Responsibility for Interpreters in the Vermont Judiciary
- J. Language Access Program Contacts

## **I. INTRODUCTION**

The Vermont Judiciary (hereafter “Judiciary”) is committed to ensuring that legal proceedings and court-managed functions provided in Vermont’s courts are equally accessible by all persons regardless of an individual’s ability to communicate effectively in the spoken English language. Court interpreters serve a fundamental role in the administration of justice by ensuring access to the courts for limited English proficient (LEP) and deaf or hard of hearing persons.

This Judiciary Language Access Plan provides the Judiciary’s policies, principles, next steps and timeline for improving language access. This Language Access Operations Manual (hereinafter “Manual”) provides information for the day-to-day implementation of those principles for staff in the Court Administrator’s Office, Court Operations staff and Judicial Officers. All Judiciary employees are expected to be familiar with the content of these documents to the extent necessary to perform their duties. Responsibility for ensuring that this Manual and related Language Access Program governance documents and resource materials are kept up to date is a shared one, though the Judiciary employs a Programs Manager who has primary responsibility for the management of the program.

According to Vermont Supreme Court rule:

The court must provide competent interpreter services when such services are necessary to ensure meaningful access to all court proceedings and court-managed functions in or related to civil, for a party, witness, or other person whose presence or participation is necessary or appropriate and who is a person with limited English proficiency, hearing impairment, or other disability which results in the need for interpreter services. The court must determine the reasonable compensation for the interpreter services for court proceedings and court-managed functions. The compensation must be paid by the State of Vermont.<sup>1</sup>

This Manual will be updated periodically, as technology advances and based on feedback from local court staff, court users and others advising the Judiciary on language access matters.

## **II. GENERAL CONCEPTS FOR ALL JUDICIARY STAFF**

The provisions of this section are applicable to all Judiciary employees, regardless of their role or position, as they provide conceptual background information necessary for understanding the specific obligations of staff to LEP and deaf or hard of hearing court users outlined in later sections.

Section III contains expectations specific to the Court Administrator’s Office; Section IV contains expectations specific to court operations staff; and Section V contains best practice for Judicial Officers.

### **A. DEFINITION OF TERMS**

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<sup>1</sup> See V.R.C.P. 43(f). The same rule applies to criminal, V.R.Cr.P. 28, and probate cases, V.R.P.P. 43(e).

Technical terms used throughout this Manual are defined and explained below. Terms are not presented alphabetically, rather they are presented in an order that may aid readers in learning the fundamentals of interpreting concepts, terminology, and procedure.

- **Court Proceedings**

Proceedings include, but are not limited to, case management conferences, judicially ordered mediations, motion hearings, arraignments, commitment hearings, competency hearings, jury selection, trials, sentencing, appellate arguments, and any other court events or proceedings ordered by the judge up to the point of final adjudication and closure of the case.

- **Court-Managed Functions**

Any program, service or activity that is provided by, paid for, or subject to the control of the Judiciary constitutes a court-managed function, since the courts are required to provide language assistance when needed. This includes, but is not limited to, general court services and operations, on-line services, and all court-sponsored programs such as alternative dispute resolution programs, jury duty, self-represented litigant clinics, Relief from Abuse (RFA) education, Coping with Separation and Divorce (COPE) classes, and any other court-sponsored education programs, whether mandatory or optional. Any services or programs offered post-adjudication of the criminal, family, or juvenile courts are the responsibility of the receiving agency (e.g., the Department of Corrections, Department for Children and Families, Office of Child Support, Department of Motor Vehicles, etc.).

- **Limited English Proficient (LEP)**

Individuals who do not speak English as their primary language, who have a limited ability to read, write, speak, or understand English, including, but not limited to, parties, witnesses, victims, and those with a substantial legal interest in the case (such as parents or guardians of minors or incapacitated witnesses or victims), as well as individuals having contact with court-managed functions. The phrase applies to individuals whose ability to speak English is not at the level of comprehension and expression needed to have meaningful access to court transactions and proceedings without language assistance.

- **Meaningful Access**

Language assistance that results in accurate, timely, and effective communication at no cost to the LEP individual. For LEP individuals, meaningful access means access that is not significantly restricted, delayed, or inferior, as compared to programs or activities provided to English proficient individuals.

- **Language Assistance Services**

Spoken and written language services provided by the Judiciary and needed to assist LEP individuals to communicate effectively with staff, and to provide LEP individuals with meaningful access to, and an equal opportunity to participate fully in, the services, activities, or other programs administered by the Judiciary.

- **Effective Communication**

Communication sufficient to provide deaf or hard of hearing individuals with substantially the same level of access to services received by individuals who are not deaf or hard of hearing individuals. For example, staff must take reasonable steps to ensure communication with such individuals is as effective as communications with others when providing similar programs and services. The type of auxiliary aid or service necessary to ensure effective communication will vary in accordance with the method of communication used by the individual; the nature, length, and complexity of the communication involved; and the context in which the communication is taking place.

- **Bilingual or Multilingual Staff**

An employee of the Judiciary, who has demonstrated fluency in English and a second language (or an additional language) and who is authorized to provide direct in-language communication to LEP court users.

- **Direct In-Language Communication**

Effective spoken communication between bilingual or multilingual staff and LEP court users in a non-English language provided for access to court-managed functions, such as counter services, walk-up, or walk-in service centers, etc. In-language services do not involve interpreting.

- **Interpretation**

Interpretation means the act of listening to a communication in one language and orally converting it to another language without changing the meaning. Interpretation is distinguished from “translation,” which relates to written language. Two modes of interpretation are commonly used in court by credentialed interpreters— “consecutive” and “simultaneous.” A third mode, less frequently used in court, is "sight translation" of documents.

In the context of interpretation for people who are deaf or hard of hearing, this term refers to communicating the real meaning between spoken English and American Sign Language or another specific method of communication. In some cases, it may be necessary to employ two interpreters to provide effective communication or to provide access through technology, such as Communication Real Time Access (CART) Transliteration, also referred to as real-time captioning.

- **Credentialed Foreign Language Interpreter<sup>2</sup>**

An interpreter who has passed the National Center for the State Courts’ (NCSC), or its predecessor, the National Association of Judiciary Interpreters and Translators,<sup>3</sup> written

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<sup>2</sup> The Language Access Plan and this Manual use the term “credentialed” as the basis for being a “qualified” interpreter in order to avoid the confusion surrounding the term “certified” and to capture the differences in labeling among states with differing standards.

<sup>3</sup> The NAJIT certification program was discontinued in 2012 when NCSC stepped in through the Council of Language Coordinators (CLAC) which is housed in NCSC’s Language Access Services Section (LASS). Currently

and oral testing (if available) at acceptable scores and been placed on the NCSC's registry or has been credentialed by member states, according to sufficient standards, certified by the federal district court. A credentialed interpreter should be used in all court proceedings in accordance with the standards set forth in Appendix B.

- **Source Language**

The language of the original speaker. "Source language" is thus always a relative term, depending on who has spoken last.

- **Target Language**

The language of the listener, the language into which the interpreter is communicating the meaning of the words spoken in the source language.

- **Vital Document**

Paper or electronic written material that contains information that is critical for enabling meaningful access to Judiciary programs or activities, or which involves decisions regarding liberty, safety, property, due process, or relationships that have significant consequence.

Vital documents include those that: 1) contain or solicit information critical for obtaining access to court and court services; 2) advise of rights or responsibilities, including the consequences of violating a court order; or 3) are required by law.

- **Translation**

Converting a written text from one language into written text in another language. The source of the message being converted is always a written language. Translation requires different skills than those used by an interpreter. If the person needing translation is illiterate or speaks a language with no written literacy (e.g., Maay Maay), other means of providing access, such as an audio-recorded interpretation of the document should be used.

- **Sight Translation**

A hybrid mode of interpreting or translating whereby the interpreter reads a document written in one language while converting it orally into another language. In this mode of interpreting, a written text is rendered orally without advance notice and on sight, generally in the context of a court proceeding (e.g., an exhibit).

- **Consecutive Interpreting**

Rendering statements made in a source language into statements in the target language intermittently after a pause between each completed statement. In other words, the interpreter renders an interpretation after the speaker has stopped speaking. In proceedings, this mode is used for examination of LEP witnesses, colloquy of an LEP party, and whenever a telephone interpreter is used. Generally, interpretation in a court office or program would be in consecutive mode.

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there are NCSC oral certification exams in 18 languages. The federal courts also offer certification for Spanish and in the past they offered certification in Navajo and Haitian Creole.

- **Simultaneous Interpreting**  
 Rendering an interpretation continuously at the same time someone is speaking. Simultaneous interpreting is intended to be heard only by the person receiving the interpretation and is usually accomplished by speaking in whispered tones or using equipment specially designed for the purpose (e.g., headphones) in order to be as unobtrusive as possible. In court proceedings, this mode is used to interpret for an LEP party everything said by those present, except for the parts requiring consecutive mode.
- **Summary Interpreting**  
 Paraphrasing and condensing the speaker’s statement. Unlike simultaneous and consecutive interpreting, this method does not provide a precise rendering of everything that is said into the target language. It is not a legitimate mode of interpreting and should never be used in court proceedings. An “interpreter” who can do only summary interpreting is *per se* not a qualified interpreter for any court proceeding.
- **Language of Lesser Diffusion**  
 A language infrequently encountered, or for which interpreters or translators are not readily available. The term may also refer to a small population that speaks the language in a particular place, or worldwide.
- **Register**  
 The degree of formality attributed to a word or phrase regarding its usage. For example, the term “dope,” meaning “drugs,” is informal or of a low register, and should have an equivalent term in the other language that is different from the higher register “controlled substance.” Interpreters are required to preserve the speaker’s register.
- **Team Interpreting**  
 The use of two or more interpreters for a given proceeding. The interpreters switch roles every 30 minutes to combat fatigue. In any proceeding that is expected to last more than an hour, or if simultaneous interpreting is expected to last longer than 30 minutes, team interpreters should be assigned. If possible, all trials should employ more than one interpreter. This allows the “resting” interpreter to monitor the interpretation for errors or misunderstandings.
- **Video Remote Interpretation**  
 A video telecommunication system that uses devices such as tablets, computers, web cameras or videophones to allow for spoken or sign language through remote, off-site interpreters.<sup>4</sup>
- **American Sign Language (ASL)**  
 A visual-gestural language created by deaf people and used by approximately one-half million deaf Americans and Canadians of all ages. Not all people who are deaf use ASL,

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<sup>4</sup> This definition does not purport to address the specific VRI obligations under the Americans with Disabilities Act. See 28 CFR 35.105 and 35.160(d).



therefore it may be necessary to provide a different accommodation.

- **Transliteration**

The act of representing the English language in a visually accessible form of communication (close captioning). This method closely follows the grammar and structure of spoken English through the use of manual coding. Manually coded English (also known as “signed English”) is not a true language. Use of this system necessitates having a viewer who knows English well and is often used with people who became deaf or hard of hearing later in life.

- **Registry of Interpreters for the Deaf**

The National Registry of Interpreters for the Deaf (NRID)<sup>5</sup> is a professional organization of American Sign Language/English interpreters and transliterators. The organization is dedicated to the professional development, training, and certification of its members.

- **Qualified Interpreter for Deaf or Hard of Hearing**

An NRID credentialed interpreter, or an interpreter who, via a video remote interpreting service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators and cued-language transliterators. A credentialed or qualified interpreter should be used in all court proceedings in accordance with the standards set forth in Appendix B.

## B. IMPORTANCE OF USING AN INTERPRETER

Many individuals have enough proficiency in a second language to communicate at a very basic level, but participation in court proceedings requires far more than a very basic level of communicative capability. Consider that for limited English proficient parties to testify they must be able to:

- Accurately and completely describe persons, places, situations, events;
- Tell "what happened" over time;
- Request clarification when questions are vague or misleading; and
- During cross-examination:
  - recognize attempts to discredit their testimony;
  - refuse to confirm contradictory interpretations of facts; and
  - defend their position.

Moreover, for parties to evaluate and respond to adverse testimony of witnesses and assist in their case, they must comprehend the details and the subtle nuances of both questions and answers of adverse witnesses spoken in English during the testimony, and, at appropriate times, secure the attention of counsel to draw attention to relevant details of testimony.

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<sup>5</sup> The Registry has temporarily discontinued its Legal Certification Program, but the credential held by interpreters is still valid.

In non-evidentiary proceedings that involve determination of custodial status, advisement of rights, consideration of sentences, and articulation of obligations and responsibilities established in orders of the court, LEP people and people who are deaf or hard of hearing must receive the same consideration as fluent speakers of English.

The same considerations apply for parties in civil matters. Substantial rights are determined in family matters (e.g., divorce, custody, relief from abuse), landlord/tenant and other property cases, malpractice claims, probate court, and even in small claims.

### C. IDENTIFYING WHEN AN INTERPRETER IS NEEDED

Court rules require the Judiciary to provide a credentialed interpreter for any proceeding involving an LEP party or witness. Staff and judges must provide an interpreter upon request, whenever the need is observed, or when it is apparent from the case record.

Staff can determine what language an individual speaks in several ways:

- Inquiring as to the primary language/means of communication of the individual if the person asks for language assistance services;
- Using an "I Speak" language identification card or poster;<sup>6</sup>
- Asking an authorized bilingual or multilingual staff member or an interpreter to verify an individual's primary language.

If an interpreter is offered and refused, staff may attempt to ascertain the person's fluency and ability to understand the level of language necessary for participation in a court proceeding or court-managed function by asking the LEP person questions that do not have yes or no answers and require some explanation: "wh-questions" (what, where, when, who) or questions that call for describing people, places or events or a narration (tell what happened). Because asking questions of people who may be undocumented or who come from cultures where court processes are corrupt or dangerous, these types of inquiries may be viewed with suspicion and thus should ordinarily not be utilized. If asking questions is necessary, however, questions that are likely to be non-threatening should be used. In a proceeding, questions should be framed so that they do not elicit an admission, whenever possible.

Each courthouse shall display the INTERPRETER SERVICES/ I SPEAK poster in a visible place. The poster is designed to communicate to LEP individuals in multiple languages, including ASL, that those individuals have the right to an interpreter free of cost and staff will contact an interpreter who speaks the language they indicate on the poster. Court staff should contact the Program Manager for extra copies of the poster. Each court clerk's office has its own dedicated language line account code and directions for accessing the service at the counter or in the courtroom.

A party's failure to request or refusal to accept an interpreter should be treated with great caution by the court. See Section V. B. for more information on this topic.

If a Judiciary representative has any doubt about the ability of a person to comprehend

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<sup>6</sup> See [I Speak Cards | LEP \(https://www.lep.gov/i-speak-card\)](https://www.lep.gov/i-speak-card).

proceedings fully or about the ability of court staff to understand a person, an interpreter shall be retained or appointed.

#### D. THE ROLE OF THE COURT INTERPRETER

The duty of the court interpreter is to serve as a conduit between the LEP or deaf or hard of hearing person, and English-speaking individuals 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 person who is using an interpreter as they would to a party or witness who speaks English or is not deaf or hard of hearing. In addition, a litigant using an interpreter should be able to understand everything that an individual who speaks English, or who is not deaf or hard of hearing, can understand. The proper role of the interpreter is to place the individual, using an interpreter, in the same situation as an English speaker as closely as is linguistically possible. In doing so the interpreter does not give any advantage or disadvantage to the LEP or the deaf or hard of hearing witness or party.

The court interpreter immediately produces, as a legal equivalent, a linguistically true, accurate and legally appropriate interpretation of what the source speaker has said. Court interpretation is a highly specialized form of interpreting that cannot be effectively performed without specialized training and skills. Interpreters must be able to interpret with exactness while accurately reflecting a speaker's nuance and register. 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. This constitutes the "legal equivalent" of the source message. Additional information in this topic is in Section V.D.

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

- Listening
- Comprehending
- Abstracting the message from the words and word order
- Storing ideas
- Searching for conceptual and semantic matches
- Reconstructing the message in the other language...

While speaking and listening for the next portion or block of language to process and monitoring their own output.

Ideally, court interpreters should be able to use these skills in three modes: simultaneous interpreting, consecutive interpreting, and sight translation of documents.

Being bilingual, even fluently so, is not a sufficient qualification for court interpreting or translation of vital documents. The vast majority of individuals who consider themselves bilingual are unable to pass standardized oral court interpreting exams because of the specialized skills involved in interpretation.

## E. MODES OF INTERPRETATION

The mode of interpreting to be used at any given time (consecutive, simultaneous or sight translation) depends on the type of communication to be interpreted within a proceeding and not on the type of proceeding. In fact, both the simultaneous and consecutive modes will often be appropriate within a proceeding. For example, interpreting would be *simultaneous* when a judge is making a party aware of their rights, and *consecutive* when the judge or an attorney begins to question the party. The following guidelines for modes of interpreting are suggested.

### 1. Simultaneous

The simultaneous mode of interpreting should be used for a person who is listening only. This is the normal mode for proceedings interpreting. Accordingly, an interpreter should interpret in the simultaneous mode in situations such as the following:

- For a party when testimony is being given by another English-speaking witness;
- For a party or witness when the judge is in dialogue with an officer of the court or any person other than the party or witness;
- For a party when the court is addressing the jury, gallery, or any other persons present in the courtroom; or
- For any non-English speaking party when the judge is speaking directly to the person without interruption or regular call for responses (e.g., lengthy advisements of rights; judge's remarks to a defendant at sentencing, jury instructions).

### 2. Consecutive

The consecutive mode of interpreting should be used when a person is giving testimony or when the judge or an officer of the court is communicating directly with such a person and is expecting responses (e.g., taking a plea). This should be the normal mode for party/witness interpreting.

### 3. Sight Translation

Sight translation is used when an interpreter reads a written text in a source language, such as an exhibit, and converts it to an oral rendering in the target language.

### 4. Unauthorized Interpreter Functions

Interpreters should not:

- Summarize
- Translate non-English documents or exhibits during a proceeding;
  - this should be done by the party using a translator pre-trial
- Transcribe a non-English audio source (such as a wiretap) during a proceeding;
  - this should be done pre-trial by a transcriptionist/translator

Summarizing testimony is not a recognized mode of interpretation in a judicial setting and should *never* be used since it undermines the LEP person's presence in the proceeding. It is most

often resorted to by unqualified interpreters who are unable to keep up in the consecutive or simultaneous modes. In some limited circumstances, a credentialed interpreter may report the need to use summary interpreting if they are called upon to interpret highly technical testimony of expert witnesses which they do not understand or have the vocabulary to interpret but this is an exception that should be approved by the trial judge.

#### F. NEED FOR MULTIPLE INTERPRETERS/TEAM INTERPRETING

There are three basic functions an interpreter serves during court proceedings.

- Proceedings interpreting
  - The most common function an interpreter performs is to enable an LEP person who is the subject of litigation to understand the proceedings and communicate with the court when necessary. In short, "proceedings interpreting" makes the party or other litigant effectively present during the proceedings. It is conducted in the simultaneous mode.
- Witness interpreting and colloquies by the judge
  - This function of the interpreter is to secure evidence from LEP witnesses, including testifying parties, and remarks made by the judge that are preserved for the record. It is sometimes called "record" interpreting, and it is conducted in the consecutive mode.
- Interview interpreting
  - This function of the interpreter is to facilitate communication between an LEP person and their attorney to ensure the effective assistance of counsel, or to perform similar duties in any other interview setting associated with a court proceeding. (When an interpreter is used to assist in attorney-client consultations, the term "defense" interpreting is sometimes used.) Interview interpreting may involve both simultaneous and consecutive interpreting, depending on the circumstances. This interpreter in such proceedings, except in very limited circumstances described in Section IV. C., retained and provided by the attorney.

In some circumstances, it is physically impossible for one interpreter to fulfill more than one of the functions at the same time. Accordingly, there are some circumstances when the court will need to use more than one interpreter for a proceeding.

- One Interpreter
  - When there is only one LEP party or witness, and if the proceeding is less than 30 minutes in expected duration, one interpreter is all that is needed. When there are multiple LEP parties who speak the same language and dialect, a proceedings interpreter (making the parties present), may be sufficient. One interpreter using headset equipment can interpret at the same time for all of the parties.
- More than one interpreter
  - In cases in which there is an LEP and an LEP witness who speaks a different language or dialect;
  - During the witness testimony. In this setting a proceedings interpreter, who is interpreting the English questions for the party is needed, as is a witness

interpreter.

- Team Interpreting
  - If the hearing is lengthy an interpreting team will be required. This is because studies have found that interpreter fatigue results in increasing interpreter errors as the duration of a proceeding increases, with error rates becoming unacceptable, for example, after 30 minutes of simultaneous interpreting. For this reason, judges should take a break after every 30 minutes of a proceeding. Team interpreting is required for any proceeding expected to last more than an hour or if simultaneous interpreting is expected to last longer than 30 minutes. If possible, all trials should employ more than one interpreter.

If video remote interpreting is being used for the hearing and more than one interpreter is needed, the planning for and coordination of team members will be necessary. See Appendix C for more specific information on steps to take.

### **III. EXPECTATIONS FOR THE COURT ADMINISTRATOR'S OFFICE**

#### **A. GENERAL RESPONSIBILITIES**

The Planning and Court Services Division (PCS), through the position of the Language Access Program Manager (Program Manager), has primary responsibility, in coordination with the Trial Court Operations Division (TCO), for overall supervision of the Judiciary's language access program. This includes:

- Implementation of the broader programmatic improvements;
- Oversight and execution of the tasks identified in the Language Access Plan;
- Training of operations staff and judicial officers;
- Management of the complaint and translation processes;
- Processing of interpreter invoices;
- Management of databases including the Interpreter Roster or Register, complaints about interpreters, interpreter invoicing, and translation.

#### **B. IMPLEMENTATION OF BROADER PROGRAMMATIC IMPROVEMENTS**

PCS, through the Program Manager, shall have primary responsibility for identifying and carrying out a plan of continuous improvement of the program, including regular updating of the Judiciary's Language Access Plan and this Manual.

The Language Access Plan includes the Judiciary's policies, principles, next steps, and timeline for improving language access. PCS, through a Programs Manager dedicated to the Language Access Program, shall ensure that:

- Tasks identified in the Language Access Plan are completed in a timely manner, or that new timeframes are established);
- The LAP and Manual are regularly reviewed and, updated as needed;
- The demand for language services is regularly reviewed and, program operations are updated as needed;

- The resources necessary to provide language access services in accordance with the Language Access Plan are identified and advocated for, as possible and appropriate.

### C. TRAINING OF JUDICIARY STAFF

In coordination with the Trial Court Operations Division (TCO), the Program Manager shall ensure that training curricula are developed and regularly updated and that all existing and new staff receive regular training on the provisions of the LAP and this Manual.

The Program Manager shall also consult with the Chief Superior Judge concerning regular training for all new and existing judicial officers and provide input on training curriculum and the delivery of training.

### D. COMPLAINTS AND FEEDBACK ABOUT INTERPRETED PROCEEDINGS

#### 1. Operations Oversight

Trial Court Operations staff have primary responsibility for ensuring that operations staff provide complaint/feedback information to court users.

#### 2. Complaint Processing

Complaint processing is the responsibility of the Program Manager. Copies of all complaints shall be sent by the Program Manager, for informational purposes, to the following individuals:

- State Court Administrator
- Chief Superior Court Judge
- Chief of Planning and Court Services
- Chief of Trial Court Operations

#### 3. Review of and Follow Up on Complaints

The Program Manager shall have primary responsibility for initially reviewing all feedback/complaints and, in the case of a complaint shall:

- a) Send the complainant acknowledgement of receipt of the complaint;
- b) Investigate the complaint and conduct any follow-up needed with the complainant, court staff, the interpreter, and others as may be needed. and advise all individuals that retaliation against a complainant, their counsel or anyone aiding or participating in the investigation or its resolution is prohibited;
- c) Log all complaints received into a database that includes the following information: date of the complaint; nature of complaint; whether the complaint involves a particular interpreter or court employee (and if so, who); the response and the date of the response; the reason(s) for any delay in responding within the specified timeframe in paragraph (v) below; and any corrective action taken in response. This may include notifying the entity from which the interpreter was obtained of any issues related to the interpreter so appropriate action can be taken.
- d) Brief the Chief of Planning and Court Services on the proposed resolution of the

- complaint.
- e) Unless good cause exists for an extension, complete the review and take appropriate action within 10 business days of receipt, including notification to other entities that may have provided the interpreter's services, and/or referral to the Language Access Advisory Board (once the Vermont Interpreter Registry is established and the Board established).
  - f) Notify the individuals listed in subsection 2 above of the result of the complaint and any systems-level issues that may need to be addressed.
  - g) Follow up with the complainant with regard to the result.

As appropriate, the Program Manager shall follow up on any systems-level issues identified, either in feedback or through specific complaints, with the Language Access Program Internal Advisory Committee and appropriate Judiciary personnel, including, if appropriate, any staff or judge who was the subject of the complaint.

## E. TRANSLATION OF VITAL DOCUMENTS

### 1. General Requirements

PCS, through the Program Manager has primary responsibility for ensuring vital documents, are translated in accordance with the procedures below and for maintenance of the database that tracks the information. The Program Manager, in consultation with members of the Language Access Program External Advisory and the Language Access Program Internal Advisory Committee, will identify and prioritize documents for translation. A review of the list of documents will occur at regular intervals, but at least annually, in order to identify new documents, variations in usage patterns, and changes to documents that require revisions to existing translations.

Judicial officers have primary responsibility for determining what case-specific documents are vital documents. The Program Manager shall ensure that vital case-specific documents ordered to be translated by judicial officers are translated as expeditiously as possible. See Section V. H. for more information on translation of case-related documents.

### 2. Vital Documents

In order to make an initial determination of the type of documents that constitute vital materials, the following information should be analyzed and updated periodically:

- A comprehensive inventory of all court documents to consider for translation;
- Data on LEP users in the state; and
- Data on filings per case type.

To determine if a document qualifies for priority status, the following questions should be considered:

- a) Is the content of this document necessary for a litigant (particularly a self-represented litigant) to understand what they need to do to protect their rights (i.e., summons, waiver of service, subpoena); or explain what they must do in order to



protect themselves or a child (relief from abuse, protection orders); or explain what they must do in order to comply with a court order (conditions of release, waiver of arraignment, protection order, etc.)?

- b) Does the document contain or solicit information critical for obtaining access to the court, court services, and/or court benefits (i.e., Instructions for Answers and Counterclaims, etc.)?
- c) Is the document one of high use, and/or critical need, in the local LEP community (i.e. complaint forms used by self-represented litigants in relief from abuse, divorce/parentage, small claims, etc.)?
- d) Is the document required by rule or statute?

If the answer is “yes” to at least one of these questions, the document is a vital document that should be considered for translation in accordance with available resources. If the answer to all of the above questions is “no” then the document is probably not a vital document.

In addition to translation of documents, the Program Manager, in consultation with TCO shall identify signage, brochures, and web content that may need to be translated in order to provide access to court services.

### 3. Priority Groups

#### Group A: Safety Concerns, Loss of Liberty, General Court Access

- Safety Concerns
  - These documents address an area of law or legal process that implicates safety concerns.
  - *Examples include* protection order forms, such as instructions, petitions, and orders.
- Loss of Liberty
  - These documents relate to legal processes that may result in a loss of liberty.
  - *Examples include* explanations of processes that may result in incarceration or loss of privileges or rights, conditions of release, requests for a public defender, bail conditions, and involuntary guardianship.
- General Court Access
  - These documents are related to access to the court or a court proceeding and do not necessarily relate to a single substantive area of law.
  - *Examples include* summons, waiver of summons, subpoenas, and forms to request an interpreter, requests to proceed in forma pauperis, request for a waiver of court fees and costs.
- Emergency Juvenile and Dependency-Related Documents
  - These documents relate to emergency orders involving children.
  - *Examples include* Juvenile Petitions, Juvenile Probation Certificate, emergency placement orders, protective custody orders, CHINS petitions, and termination of parental rights.
- Family Law
  - These documents relate to an area of law or legal process that affects the

- family unit.
  - *Examples include* non-emergency dependency matters, parental rights and responsibilities, financial affidavits, dissolution of marriage, and child support forms.
- Housing Status and Property Rights
  - These documents are used in processes pertaining to a loss of housing.
  - *Examples include* eviction-related documents such as rent escrow hearing notices, rent escrow orders, orders of possession, as well as documents related to residential mortgage foreclosures.

#### Group B: Other Areas of Law and Other Written Materials

These documents relate to other areas of law, such as truancy, expungement, and adoption.

#### 4. Determination of Priority Status for Translation

The definition of a vital document is very broad. While it would be ideal to be able to translate all vital documents in all needed languages, limited resources (which are a legitimate legal consideration)<sup>7</sup> require prioritization of the order in which they will be translated. Therefore:

- Not every document that affects safety concerns, loss of liberty, or general court access needs to be translated immediately. Documents should be prioritized based on:
  - the prevalence of use;
  - whether the document is necessary for a self-represented party to understand and protect their rights; or
  - comply with court orders.
- Forms used primarily by attorneys (discovery stipulations, civil complaints etc.) should not be prioritized for translation.
- Resource availability is a factor.
  - When prioritizing documents for translation, the length of the document (and therefore the expense of translating) is a legitimate consideration.
- Resource availability is also a factor in determining how many documents and languages can be translated.

Using the above criteria, and the resources available, the Program Manager, in consultation with the Language Access Program External Advisory Committee and Language Access Program Internal Advisory Committee, shall identify the order in which documents will be translated and the languages into which documents should be translated.

Court operations staff and judicial officers may, at any time, request that the Program Manager prioritize additional documents for translation based on usage, or other relevant factors. The Program Manager shall review such requests in consultation with the Language Access Program Internal Advisory Committee.

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<sup>7</sup> See 2002 DOJ Guidance, 67 Fed. Reg. at 41,464.

## 5. Translation Database

An inventory of all documents deemed to be vital documents shall be collected in a spreadsheet which contains the following information:

- Number and name of document;
- Court division and case type applicable to form usage;
- Date of current published English version;
- Existing translations (languages);
- Date of current published version of each translation;
- URL(s) where document is published;
- Author/origin of each translation (if known);
- Word count, case type, and whether litigants are often self-represented for the case type;
- Whether the document is required by rule or statute.

A system for capturing the prioritization identified above should be used to determine the sequence in which documents will be translated within each court division and case type as resources become available. The number and language into which documents are translated may also vary by type of document or proceeding. Informational materials may be appropriate for translation into more than the top five languages. The top five languages in civil and criminal cases may also be different.

## 6. Identification and Prioritization of Languages for Translation

A variety of sources should be consulted to get a complete picture of the number of potential court users in Vermont who speak English less than very well, as well as the languages they speak. The Program Manager shall identify the top six languages in the state utilizing the following:

- U.S. Census Bureau, American Community Surveys of Vermont;
- Vermont data from local school districts with high populations of English learners;
- Judiciary data collected regarding interpreter usage in by language and by docket and, if possible by type of proceeding;

The Program Manager shall be mindful that there are some languages speakers have limited or no written literacy (e.g., Maay Maay). The Program Manager shall re-evaluate the data every five years, at a minimum, as part of the LAP review process and to ensure that new languages are added to the list of languages spoken.

## 7. Translation Process

Machine translations, such as Google Translate shall not be used to translate vital documents as these translations are not reliable for complex translations.

Once the documents have been prioritized and the five or more languages into which they will be translated have been identified, the Program Manager shall arrange for the actual translation of the documents, by priority category, as resources permit.

Documents should be submitted to a translator certified by the American Translators Association (ATA). Information related to the translation shall be entered into the database in Section 5. above so that the same translator can be used for future revisions to the document. The telephonic service contracted with by the state has ATA certified translators available for translation.

The Program Manager will ensure that the translated documents are formatted and posted for staff access and public use. All translated documents shall be posted on the Judiciary's public website to the same extent that English versions are published.

## 8. Annual Review

The Program Manager shall conduct a review at least annually of documents in order to identify any that are new or that have been modified due to changes by the oversight committees or the Legislature.

The annual review process will include the following steps:

- The identification of revisions to vital documents that have already been translated. These should be flagged for re-translation or revision of the translated language, to ensure that translated versions are consistent with the English source versions of the document.
- The identification and review of any new court documents developed by the Judiciary since the last review.
- The identification of revisions to documents that are not yet considered vital but that may affect the substantive content or the procedural use of the document, thereby making the document a vital document. Examples of these types of revisions include new content that addresses important rights, or a change in the court rules that makes an existing form or document mandatory for a particular process.

## F. INTERPRETER AND TRANSLATOR INVOICES

### 1. Compensation

Until such time as the Judiciary adopts a payment schedule, freelance interpreters and translators, or those supplied by agencies shall be paid according to their established rates, including travel, per diem and mileage costs.

### 2. Cancellation

If an interpreter has been scheduled and the hearing will not be going forward, payment shall be in accordance with the policy of the agency, or in the case of an individual, by agreement between the parties.

### 3. Invoices

Invoices shall be entered into a database that allows for tracking of the following information: Name of interpreter; language(s); docket ; unit; type of proceeding (status, arraignment, change of plea, bail, relief from abuse, trial, etc.); whether the interpretation was in-person, video remote, or telephonic; wait time (if any); duration of job; solo or team; interpreter's credential; any travel costs and/or time; total cost; reasonable efforts to locate an in-person interpreter (if applicable). See Appendix B.

#### G. MAINTENANCE OF DATABASES

The Program Manager shall have primary responsibility for maintenance of the databases specified in this section.

### IV. EXPECTATIONS FOR OPERATIONS STAFF

This section contains information necessary for Court Operations staff to locate and retain credentialed interpreters for court proceedings and court-managed functions.

#### A. LOCATING A CREDENTIALLED INTERPRETER

Courts are responsible for protecting individual rights and dispensing equal justice to all who access them, whether voluntarily or involuntarily, thus interpretation services must be precise, complete and accurate. Interpreters who are used in court proceedings must be able to demonstrate proficiency in and ability to communicate information in both the source and the target languages, identify and use effectively the appropriate mode of interpreting (simultaneous, consecutive, or sight translation), understand legal terminology, and understand and agree to follow the Interpreter Code of Professional Responsibility. See Appendix I for additional information.

Interpreters who are used for some court-managed functions and services, such as counter interactions, education classes, and programming do not need the same level of skill as those interpreting for court proceedings, jury duty, or alternate dispute resolution. Level 3 interpreters may be sufficient for this task, if properly screened. See Appendix B and Appendix D for additional information.

All interpreters appointed by the court shall be as highly qualified as possible. Until such time as the Judiciary has its own credentialing process for interpreters, preference for court proceedings, jury duty and alternate dispute resolution should be given to interpreters who have credentials from another state or federal court. To the extent possible, these credentialed interpreters should be sought from the federal court list, the National Center for the State Courts' database (in-person or through video remote interpreting) or adjoining states. See the next section on Logistics and Appendix B for the Protocol and Resources for Retaining a Credentialed Interpreter for more detail and Appendix C for information on video remote interpreting.

It is important to look at both the nature, duration, and complexity of the proceeding in making the determination as to the necessary qualifications of an interpreter and whether a single

interpreter can handle the matter or a team of interpreters is needed. See Section II. F for additional information.

## B. OPTIONS FOR INTERPRETER APPEARANCES

### 1. General

Court interpreters can participate in a proceeding in-person or by different remote options. The options for interpreter appearances relate to the quality and number of interpreters available. It should be noted that the manner of appearance may impact an interpreter's effectiveness. Staff should therefore consider the skill of available interpreters, the means of appearance, the nature, duration, and complexity of the proceeding, and policy standards in selecting an interpreter. The interpreter with the highest qualifications shall be retained, even if this requires more travel time or use of video remote interpreting. Appendix B contains a chart that outlines acceptable options and interpreter levels and should be used for decision-making. Appendix C contain Protocols and Specific Resources that can be utilized for video remote interpreting.

Interpreters shall be appointed in accordance with the standards below:

- In-person credentialed interpreters should be the first choice for any in-person trial or hearing at which evidence and/or testimony will be presented through parties or witnesses, if a well credentialed in-person interpreter is available. See Appendix B for chart.
- Video remote interpreting should be the second choice for obtaining a credentialed interpreter, unless that method will allow use of a more qualified interpreter than in-person. Video remote interpreting may also be used as a first choice when the proceeding itself will be conducted remotely. See Appendix B for chart and Section IV., B (b) and Appendix C for more information on video remote interpreting.
- Telephonic or other resources referenced in Level 3 in Appendix B may be used as the least preferred method and only for some court-managed functions and short, non-evidentiary proceedings such as calendar calls, status conferences, or arraignments.

Appendix B contains descriptions of the manner in which interpreter qualifications are rated by NCSC and neighboring states. Staff must consider the credentialing authority and verified classification of available interpreters, including those supplied by interpreter agencies, in order to select the best one available. An interpreter's self-representation that they are "credentialed" or "certified" is generally not sufficient without verification. Court staff shall ask for any such credentials to be sent for review and verification by agency supplying the interpreters or freelancers, not identified from a roster of a neighboring state or the NCSC national interpreter database. If staff are uncertain, the Program Manager shall be consulted for assistance.

In addition to the interpreters available through NCSC database, courts may have to resort to other interpreter resources for credentialed in-person interpreting sessions. See Section A above on Locating a Credentialed Interpreter. See also Appendix B, which includes a list of both technological resources (such as video and telephone access to interpreters in other locations)

and interpreter resources from the federal courts, surrounding state courts, including Maine, New Hampshire and New York. Credentialed interpreters from adjacent state courts, within a reasonable travel distance, or NCSC or interpreters from other state courts via video remote, should be utilized if no credentialed local interpreter is available.

## 2. Use of Video Remote Interpreting

Video remote interpreting offers the opportunity to access over 500 credentialed and qualified interpreters in over 80 spoken languages, through the NCSC database. The Project Manager has access to the database and should be consulted regarding its use. With the current trend towards greater use of video remote hearings, video remote interpreters shall be considered as the second option, if an on-site credentialed interpreter is not available from an adjoining state or the federal courts, for any in-person court proceeding before any court in the state if the following criteria are able to be met:

- The remote technology allows the judge, parties, witnesses, and attorneys to hear and see each other and the interpreter clearly and continuously;
- A complete audio or video recording is being made of the proceeding.

VRI should primarily be used in the following circumstances:

- When the proceeding is conducted remotely;
- When no in-person credentialed interpreter is available (after reasonable attempts to secure one);
- For short, non-evidentiary proceedings such as initial pleas, arraignments, status conferences, scheduling conferences, etc.;
- When there will be limited testimony by two or fewer witnesses; and
- When there are not multiple parties who need an interpreter.

Other considerations include conflicts between a party or witness and an interpreter, weather-related challenges, and cost (e.g., the closest interpreter is in a distant jurisdiction that will require air travel, per diem, over- night accommodations, etc.).

Appendix C contains more detailed information on the logistics of using video remote interpreting.

## 3. Use of Telephonic Interpreter Services

The State of Vermont contracts with a telephonic interpreting service that is available to all state agencies, including the Judiciary. Use of telephonic interpreter services should be primarily for counter transactions or phone inquiries. The court may choose to use this system in place of an in-person or video remote interpreter in court proceedings, however it shall only be used for short and simple proceedings, such as arraignments, status conferences, and calendar calls. It shall not be used for longer or more complicated proceedings that involve substantive rights or that involve testimony and/or production of evidence. See Appendix B for additional information.

The qualifications of the telephonic interpreter to interpret in legal proceedings should not be assumed. Most interpreters offered through the telephonic service, currently contracted by the State of Vermont, lack formal *legal* credentials. Staff shall request a credentialed court interpreter from the service.

#### 4. Court Interpreter Roster

The Judiciary's intranet, JustUsNet, contains a list of interpreter resources consisting of agencies and individual interpreters, operating as freelance, independent providers, from Vermont and surrounding states, who provide interpretation in a variety of settings, including medical practices/hospitals, social service agencies and courts. The in-person interpreters offered on the Judiciary's current roster of interpreters, and through organizations, almost without exception, lack the credentialing necessary to provide legal interpreting in court proceedings. Credentialed interpreters should be contacted first. See Appendix B for additional information.

### C. ROLE OF THE PROCEEDINGS INTERPRETER

The proceedings interpreter is the court's official interpreter and generally should not be used by the parties and their attorneys except in limited circumstances such as where the LEP person speaks a language of lesser diffusion, attorney/client conversations related to ministerial tasks like scheduling, brief attorney/client consultations during the proceeding, or immediately incidental to it, where requiring a separate interpreter may result in unnecessary delay, etc. Otherwise, it is the obligation of the attorney representing the deaf, hard of hearing, or LEP client to retain an interpreter for attorney/client consultations outside the courtroom and at counsel table for attorney/client communications.

### D. PAYMENT FOR INTERPRETER SERVICES

#### 1. Compensation

Interpreter invoices shall be sent to the court in which the session occurred. Local court staff shall review and approve the invoice and forward it to the Program Manager using the dedicated email address established for this purpose: [jud.interpreters@vermont.gov](mailto:jud.interpreters@vermont.gov). The Program Manager will approve the invoice for payment.

An interpreter can be engaged by the operations staff without prior approval. Though cost is not a reason to deny an interpreter, every effort should be made to keep costs down by using a credentialed interpreter closest in proximity to the court. A credentialed freelance interpreter or an interpreter from an organization will be paid his or her usual market rate. The Judiciary also pays for mileage, per diem, and travel time when required by the interpreter or the agency supplying them.

In extraordinary circumstances it may be necessary to pay for an interpreter's air travel, per diem and overnight accommodations. These circumstances should be discussed with the Program Manager prior to retaining the interpreter unless the need is emergent.



## 2. Cancellation

If an interpreter has been scheduled and the hearing will not be going forward, operations staff should give as much notice as possible to the interpreter or the agency from whom they were hired. Payment in such cases, unless or until the Judiciary adopts its own policy, will be in accordance with the policy of the agency or in the case of an individual, by agreement of the parties. Court managers should inquire of the agency or individual as to the cancellation policy and the amount of notice required to avoid payment at the time of hiring.

### E. COMPLAINTS AND FEEDBACK ABOUT INTERPRETED PROCEEDINGS

The Judiciary, as part of its effort to improve language access, provides for a written complaint/feedback process, specific to interpreter/translation issues.

Feedback/Complaint forms are available both on-line at <https://www.vermontjudiciary.org/programs-and-services/language-access-interpreters-and-translators> and in written form. The forms are currently available in 10 languages.

In addition to the on-line complaint/feedback forms, written forms, shall be available (or able to be printed on request) in all available languages at all counters. Notice of the complaint/feedback process and the person to whom complaints should be sent (in all languages in which it exists) shall be posted in the following locations in all courthouses: entrance/security; counter services; and courtrooms (in the same location as the posters advising of interpreter availability).

If a complaint is received by local court staff it shall be sent to the Program Manager for processing. See Section III. D., which explains how complaints will be processed.

Retaliation against a complainant, their counsel or anyone aiding or participating in the investigation or its resolution is prohibited.

In cases where an interpreter has been used or translation of documents requested or provided, a link to the complaint/feedback form shall be sent by the person closing the case to all counsel and litigants at the time the case is closed.

## V. BEST PRACTICES FOR JUDICIAL OFFICERS

This section contains suggestions for best practices, not legal standards, for judicial officers conducting proceedings using an interpreter. It is ultimately the responsibility of the judicial officer to ensure that the language access rights of court-involved LEP parties and people who are deaf or hard of hearing are protected and that these court users are able to communicate with the court and understand proceedings. The risk of and response to legal issues that may arise out of the failure to follow these guidelines are beyond the scope of this Manual.

### A. *VOIR DIRE* FOR INTERPRETERS

Court operations staff will arrange for a credentialed interpreter in most instances but the ultimate responsibility for determining the competence and qualifications of the interpreter (including telephonic interpreters) lies with the judicial officer for each court proceeding. In any situation where the judicial officer or a party, witness, or attorney raises an issue about a non-certified interpreter's qualifications, or the court is utilizing a telephonic interpreter, a *voir dire* should be conducted to establish the competence and qualifications of the interpreter on the record. A model *voir dire* is attached to this document as Appendix E.

When the court uses an uncertified interpreter, i.e., one whose skills are untested by a standardized oral interpreting exam, it is recommended that the judge establish on the record that the proposed interpreter:

- Communicates effectively with the officers of the court and the person(s) who receive(s) the interpreting services;
- Knows and understands the Code of Professional Responsibility for Interpreters;
- Will comply with the Code of Professional Responsibility, noting on the record any of its provisions that cannot be honored; and
- Takes the same oath that all interpreters must take in a court proceeding.

The judge should closely monitor the interpreter's performance thereafter. If at any point during a proceeding, whether on the court's initiative or in response to an objection by a party or their attorney, the judge determines that the interpreter is unable to meet the minimum qualifications necessary for an accurate interpretation or discovers a conflict of interest or ethical violation, the court should dismiss the interpreter, continue the proceeding, and note any concerns on the record. In such circumstances a complaint/feedback form should be completed and sent to the Program Manager. Parties should also be informed of the complaint/feedback process.

## B. WAIVER OF AN INTERPRETER

The interpreter benefits the court as well as the LEP individual. Great caution, therefore, should be exercised before permitting a person with limited English proficiency, or who is deaf or hard of hearing, to waive the right to an interpreter. The judge should never suggest a waiver. If a party requests one, the judge must clearly explain the right to an interpreter and that one will be provided at no cost to the individual. If the person persists, the best practice is to require that the party consult with an attorney before allowing such a waiver.

Any waiver of an interpreter by a party should be requested in writing *and* in the person's native language. The judge cannot waive an interpreter for a witness or testifying party if there is any difficulty in understanding the individual's spoken English or if the lack of an interpreter may otherwise undermine the accuracy of the testimony. At any stage of the case or proceeding a person who has waived an interpreter should be allowed to retract a waiver and receive the services of a court appointed interpreter for the remainder of the case or proceeding. Deliberations made on matters of waiver or retracting of waiver should be on the record.

## C. INTERPRETER OATH

Every interpreter used in the court should be required to swear an "oath of true interpretation." Vermont law, 12 V.S.A. §5811 requires that an interpreter be placed under oath. Vermont's current oath is attached to this document as Appendix A.

The interpreter should be sworn in at the beginning of each proceeding (in which instance the oath extends for the duration of that case) on the record.

#### D. ROLE AND RESPONSIBILITIES OF THE PROCEEDINGS INTERPRETER

1. General – The judge should explain the role and responsibilities of interpreters to all the courtroom participants in any court proceeding. The explanation should be given before the proceedings begin. For example, the judge may include these remarks at the beginning of a session of court, or at the beginning of each separate proceeding, if all or most of the participants change between proceedings. The clarification should include the following points:
  - The interpreter's only function is to help the court, the principal parties in interest, witnesses, and attorneys communicate effectively with one another;
  - Participants should speak directly to the LEP or deaf or hard of hearing person and not to the interpreter and use direct speech. For example: Counsel: "What did you see?" Not: "Ask her what she saw;"
  - Summary interpreting is not permitted. The judge should specifically instruct all interpreters to report if it is necessary to resort to summary interpreting. In circumstances when the problem does not involve unusual and highly technical language, the preferred course of action is to dismiss and replace the interpreter if there are other interpreters available, who do not need to use the summary mode. Any time the judge determines that the proceedings must continue even if summary interpreting is being used, the judge's consent should be part of the record of the proceedings;
  - The interpreter may not give legal advice, answer questions about the case, or help anyone in any other way except to facilitate communication;
  - If a person who is using the services of the interpreter has questions, those questions should be directed to the court or an attorney through the interpreter;
  - The interpreter is not permitted to answer questions, only to interpret them;
  - If someone cannot communicate effectively with or understand the interpreter, that person should tell the court or presiding officer.

Appendix F provides suggested text for this advisement.

2. Parties and Witnesses – The judge should advise every party and witness of the role of the interpreter immediately after the party or witness is sworn and before questioning begins. As the judge gives the advisement, the interpreter should simultaneously or consecutively interpret it for the individual. The clarification should cover the following points:
  - Everything the person says will be interpreted faithfully;

- The party or witness must speak to the person who asks the question, not to the interpreter. If the party witness needs a question to be clarified, the party or witness must ask for clarification from the person who asked the question;
- The party or witness should respond only after having heard the entire question interpreted into his or her own language;
- The party or witness should speak clearly and loudly so everyone in the court can hear; and
- If the party or witness cannot communicate effectively with the interpreter, they should tell the court or presiding officer.

Appendix G provides suggested text for this advisement.

3. Jury Trials and Jurors – Any time an interpreter is required for a jury trial, the judge should advise the jurors the role and responsibilities of interpreters and the nature of evidence taken through an interpreter. Several specific and different advisements may be called for at different stages of the proceeding, including the following:

- Impaneling
  - When a case involves an LEP party, the judge should instruct the panel of jurors before *voir dire* begins that an interpreter is sitting at counsel table to enable the party to understand the proceedings. It is also important to determine whether prospective jurors are affected by the presence of an interpreter: Do they hold prejudices against people who don't speak English?<sup>8</sup> Do they speak a foreign language that will be used during the proceeding, and if so will they be able to pay attention only to the interpretation?
- Before Trial Begins
  - After a jury is impaneled and before a trial begins, the judge should instruct jurors as part of the pre-trial instructions that they may not give any weight to the fact that a principal party in interest or witness has limited English proficiency or is deaf or hard of hearing and is receiving the assistance of an interpreter.
- Party or Witness Interpreting
  - When the trial involves party or witness interpreting, the judge should give instructions to jurors before the interpreting begins that include the following points:
    - Jurors must not evaluate a party or witness's credibility positively or negatively due to the fact that their testimony is being given through an interpreter;
    - Jurors who speak a witness's language must ignore what is said in that language and treat as evidence only what the interpreter renders in English. Such jurors must ignore all interpreting errors they think an interpreter may have made.

There are several reasons for this last instruction, which may seem preposterous to some

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<sup>8</sup> Ideally, issues of bias would be explored by the attorneys during *voir dire*.

jurors, and judges may wish to elaborate by explaining them. All of those reasons underscore the need for professional interpreters.

First, the primary record of the proceedings is only in English, and it is the recorded English testimony that constitutes evidence in the case.<sup>9</sup> Second, jurors may mishear what is said; the interpreter (like the court reporter) is a trained listener. Finally, ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression (i.e., idioms can vary substantially in different dialects of the same language), even if they hear the same words. Once again, interpreters are the court's experts in language, and their interpretation must be presumed reliable.

Appendix H provides suggested text for these advisements.

## E. MAXIMIZING COMMUNICATION DURING INTERPRETED PROCEEDINGS

### 1. General Responsibility

As in any proceeding, the judge should keep the room in which sessions are held as quiet as possible and allow only one person to speak at a time. These normal rules are especially important in interpreted proceedings. Interpreters should never use the pronoun "I" to refer to themselves when speaking. The reason for this is to avoid any possibility of confusion during the proceeding and in the record between interpreted utterances and statements that the interpreter may need to make to the court during the proceeding. For example, the interpreter should say: "Your honor, the interpreter was unable to hear the question and respectfully requests that it be restated," rather than "Your honor, I was unable to hear the question." The latter could be confused in the record with statement by the witness. Therefore, the judge should always:

- Remind participants to speak directly to the LEP or deaf or hard of hearing person and not to the interpreter and use direct speech. For example: Counsel: "What did you see?" Not: "Ask her what she saw;"
- Remind the interpreter and court participants that the interpreter, when addressing the court on her or his own initiative, should always speak in the third person and identify her or himself as "the interpreter" or "this interpreter."
- Direct any statement to the interpreter by beginning "Mr./Madame Interpreter" to alert the interpreter that they are being addressed by the court.

Other procedures the judge should observe during interpreted proceedings include the following:

- Before the proceeding begins, ensure that the interpreter has conversed briefly with the person to confirm the person's primary language, become familiar with his or her speech patterns and linguistic traits, and any other traits (e.g., mental, developmental, or speech impairments) that may bear upon assisting the person;
- Speak one at a time and assure that others speak at a volume and rate that can be

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<sup>9</sup> As explained in the section on Record of the Testimony, the non-English interpretation should be captured on the audio or video recording so that any potential interpreting errors that may affect the outcome can be reviewed on appeal.

- accommodated by the interpreter;
- Encourage participants to avoid idioms, double negatives, and technical language as much as possible when speaking to or examining an LEP or deaf or hard of hearing party or witness;
- Allow interpreters in consecutive mode to use appropriate signals to regulate speakers when the length of an utterance approaches the outer limit of the interpreters' capacity for recall;
- Advise speakers to pause after each sentence to allow for consecutive interpreting;
- Make certain that the interpreter can easily hear and see the proceedings;
- Take a 10-minute break after every 30 minutes of interpreting to reduce interpreter fatigue and the errors that may result;
- Manage the participants' speech so only one person speaks at a time, all speech is loud and clear, and is spoken one sentence at a time while consecutive interpreting is in use.

## 2. Video Remote Interpreting or Telephonic Interpreters

Remote interpreted hearings can take a variety of forms. A session may have all participants remote, some remote and some in the courtroom, or just a party remote, such as during an arraignment. Some may involve both telephonic and video. Different elements of the tips below may or may not be applicable depending on the configuration of the available technology.

The remote hearing should allow for all parties to see and hear each other clearly and record all audio, including the interpretation. An interpreter should be interpreting, in simultaneous mode, directly to the LEP individual, everything transpiring in the proceeding so that the LEP person is fully present. The system also should have the capability of allowing an attorney, the client and the interpreter move into another "room" to have attorney/client consultations. Software changes are being undertaken to ensure that the above capabilities are addressed. Further protocols will be forthcoming, and Appendix C will be updated as needed to reflect the most current practices.

Before a hearing that is utilizing a remote interpreter begins, the court should:

- Make sure that a connection test with the remote location has been completed;
- Inform attorneys and LEP parties and/or witnesses that video remote interpreting/telephone will be used in the hearing;
- Inform the attorneys and other participants that if at any point the remote connection is compromising the LEP person's language access, they should inform the court. If the language access cannot be mitigated the hearing should be rescheduled;
- Introduce the interpreter to the LEP court user to ensure they can understand, see, and hear each other;
- Instruct the interpreter that they will be bound by the same professional standards and ethics as if present in person;
- Explain the process by which the attorney and client can have confidential conversations;
- Instruct the parties that only one person should speak at a time;
- Instruct the LEP person to inform the court immediately if they cannot hear, see or

- understand the interpreter;
- Instruct the interpreter to notify the court immediately if connectivity issues arise or they are unable to see or hear the proceedings;
- Qualify and swear in the interpreter using the oaths in Appendix A;
- If audio only equipment is being used, provide additional instructions to the interpreter and participants if a non-verbal cue is not effectively communicated and the interpreter needs to verbally interrupt the proceeding; and
- Provide a back-up plan that is articulated in advance for any technology failure that may arise during the proceeding.

During the proceeding, the court should provide the advisements outlined in the preceding section, keeping in mind that the use of video may present additional complexities for the participants due to the limitations of technology.

Additional information on these issues is provided in Appendix C.

### 3. Use of Languages Other than English by Judges, Attorneys or Other Persons

Some judges and attorneys are bilingual and are able to communicate in the language of the LEP person. In these situations, it may be tempting for the judge to address the LEP person in their language, to act as interpreter, or to allow or require counsel to substitute for a credentialed interpreter. These practices should be avoided, and courts should observe the following guidelines regarding the use of languages other than English during court proceedings:

- Judges must not function as interpreters during a proceeding;
- Judges and other court participants should speak in English at all times during proceedings;
- Attorneys are not permitted to function as interpreters for parties they represent, nor may they interpret for other individuals unless qualified to do so and retained for that purpose by the court;
- Attorneys should use English during all proceedings at all times, except in confidential communications with a client; and
- Judges must not allow advocates, bystanders, relatives, or any other individual not authorized according to the procedures in this manual to interpret for the court.

Judges who speak the language of a limited English proficient person often (and admirably) wish to make the person feel more at ease in the courtroom through some form of direct communication in the person's native language. A very brief greeting, announced beforehand on the record, might be used in such situations (e.g., "Please note for the record that the court will greet the party in \_\_\_\_\_ language.") Such a greeting might then be followed by informing the person in English through the interpreter of the reasons why the judge will refrain from communicating in the shared language.

## F. RECORD OF INTERPRETED PROCEEDING

Judges should ensure that recordings are made of all interpreted proceedings. The record of the

case made by a court reporter in interpreted proceedings consists only of the English language spoken in court. (Obviously a court reporter cannot preserve any of the non-English language for review.) The judge should ensure that the recordings capture both the English and the non-English speaker (in the case of VRI or a deaf or hard of hearing party or witness) so that any language issues can be properly raised and reviewed on appeal. Proceedings interpreting in the simultaneous mode is done quietly at counsel table or with interpreting equipment and requires special arrangements for recording. This may require advance planning.

#### G. ERRORS DURING INTERPRETATION

As noted above, interpreting is an extraordinarily demanding activity and cannot be error-free. Appreciation of this reality should be extended to the interpreter during any allegations of inaccurate interpretation. Moreover, professional interpreters are trained to understand and act on their ethical obligation to correct any errors that they might make during a proceeding. The court should allow the following precautions to be taken.

- When an interpreter discovers his or her own error, the interpreter should correct the error at once, first identifying him/herself in the third person for the record (e.g., "Your honor, the interpreter requests permission to correct an error"). If the interpreter becomes aware of an error *after* the testimony has been completed, they should request a bench or side bar conference with the court and the lawyers to explain the problem. The court can then decide whether a correction on the record is required.
- When an error is suspected by the judge, an attorney, party, witness, or another officer of the court besides the interpreter, that person should bring the matter to the attention of the judge at the earliest convenient opportunity. If testimony is still being taken, the problem should be raised before the witness is released. In the case of a jury trial, the problem and its resolution should be handled at a side bar conference. In such cases the following steps are recommended to be taken by the judge:
  - The judge should determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial or potentially prejudicial and requires determination; if the judge agrees that the error is substantial or could be prejudicial, then the judge should refer the matter first to the interpreter for reconsideration. If this does not resolve the problem, evidence from other expert interpreters or any other linguistic expert the judge may select should be sought. In extreme circumstances it may be appropriate to permit attorneys from both sides to submit an expert; and
  - The judge should make a final determination as to the correct interpretation. If the determination is different from the original interpretation, then the court should correct the record accordingly and advise the jury. In the absence of an audio recording of the source and target languages, the judge must ensure that the dispute is clear on the record for purposes of review.

#### H. TRANSLATION OF VITAL CASE-RELATED DOCUMENTS

When a party or their attorney requests that case-specific documents be translated, the



judicial officer assigned to the case has primary responsibility for determining whether a document needs to be translated, in whole or in part, and by what means (written or audio<sup>10</sup>), in order to provide meaningful access to the information. Vital documents should be translated.

## 1. Process for Analyzing and Prioritizing Vital Documents

The Judiciary is responsible for translation of vital documents that are generated by the Judiciary. The Judiciary is not responsible for the translation of documents generated by other agencies/entities such as the public defender, prosecutor, Department of Corrections and the Department of Children and Families, even if the documents are part of the court's file. Each of these entities has its own responsibility under Title VI for translation of vital documents.

The definition of a vital document includes both substantive and procedural components. See Section III. E. for more in-depth information on this analysis. Vital documents are important because they involve decisions regarding liberty, safety, property, due process, or relationships that have significant consequences. Therefore, it is important to look at both the content of the document and how it is used to determine whether it is a vital document that requires translation.

### Content Analysis

- Question: Does the content of this document involve a decision regarding liberty, safety, property, due process, or relationships that have significant consequences?
  - *If the answer to this question is "yes," move on to the second part of the analysis. If the answer to this question is "no", the document is not a vital document.*

### Usage Analysis

- Question: Is the document a court order that requires or constrains a party's conduct (i.e., does the document advise of rights or responsibilities, including the consequences of violating a court order?)
- Question: Does the document contain or solicit information critical for obtaining access to the court, court services, and/or court benefits?
- Question: Is the document required by statute, regulation, or rule?
  - *If the answer is "yes" to at least one of these questions, the document is a vital document that should be translated. If the answer to all of the above questions is "no," the document is not a vital document.*

## 2. Other Considerations

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<sup>10</sup> In some instances, such as where an individual lacks sufficient literacy or the language at issue has no written form (e.g. Maay Maay), or where obtaining a written translation may take too much time (e.g. explaining conditions of release, etc.) providing a translation via an audio interpretation of the information may be more appropriate.

- Each judge must analyze the issues presented in each case to determine whether and what documents represent vital documents that must be translated to provide the LEP persons before it with due process.
- Costs are a legitimate consideration in identifying the reasonableness of particular language assistance measures.<sup>11</sup> If written translation of a certain document(s) would be so burdensome as to defeat the legitimate objectives of its program, the translation of the written materials is not necessary.
- There are ways other than the translation of documents of providing meaningful access to the courts, such as effective oral interpretation of certain vital documents. Such an approach might be acceptable under such circumstances.<sup>12</sup> This could include recording of a sight translation of an interpretation of certain vital documents.
- In some cases, only part of a vital document will need to be translated.
- Whether the person is self-represented or represented by an attorney.

### 3. Judiciary Responsibility

Orders for translation of vital documents should be conveyed to operations staff, who will coordinate the translation with the Program Manager.

## VI. RESOURCES/SUGGESTIONS FOR FURTHER READING

- **Standards for Language Access in All Courts.** American Bar Association (February 2012).
  - [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_standards\\_for\\_language\\_access\\_proposal.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_standards_for_language_access_proposal.pdf)
- **Remote Interpreting Guide for Courts, Court Staff and Justice Partners.** Council of Language Access Coordinators (October 2018).
  - [https://www.ncsc.org/\\_data/assets/pdf\\_file/0021/18705/remote\\_interpreting\\_guide.pdf](https://www.ncsc.org/_data/assets/pdf_file/0021/18705/remote_interpreting_guide.pdf)
- **United States Department of Justice, “Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.”** 67 Fed. Reg. 41,455, at 41,457 (June 18, 2002).
  - <https://www.govinfo.gov/content/pkg/FR-2002-06-18/pdf/FR-2002-06-18.pdf>
- **United States Department of Justice, Civil Rights Division, Language Access in**

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<sup>11</sup> See the general discussion of resources and costs in the Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (“2002 DOJ Guidance”), 67 Fed. Reg. at 41,460. (June 18, 2002).

<sup>12</sup> See 2002 DOJ Guidance, 67 Fed. Reg. at 41,464.

**State Courts.** (September 2016)

- <https://www.justice.gov/crt/file/892036/download>
- **National Center for the State Courts, Language Access Services Section.**
  - <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access>
- **National Center for State Courts VRI Resource Center**
  - <https://www.ncsc.org/services-and-experts/areas-of-expertise/language-access/vri>
- **Fundamentals of Court Interpretation: Theory, Policy and Practice,** Roseann D. Gonzalez, Victoria F. Vasquez, Holly Mikkelson (2012).
  - Contact the Language Access Program Manager to review.

## **VII. APPENDICES**

**APPENDIX A**  
**Interpreter Oaths**

(See Section V. C. of the Operations Manual for additional information.)

**INTERPRETER’S OATH**

The interpreter should be sworn in at the beginning of each case.

This oath should be administered to any or all interpreter(s) before the proceeding begins:

*Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by the code of ethics for interpreters and follow all official guidelines established by this court for legal interpreting or translating and the discharge of all of the solemn duties and obligations of legal interpretation and translation?*

Interpreters who will be interpreting for testifying parties or witnesses are required to swear to this oath:

*You solemnly swear [or affirm] that you will justly, truly, and impartially interpret to [name/party] the oath about to be administered to him or her and the testimony he or she shall give relative to the cause under consideration. [So help you God]. (12 VSA§ 5811).*

**INTERPRETER’S CODE OF ETHICS**

All court interpreters must abide by the Code of Professional Responsibility for Interpreters in the Vermont Judiciary. This code is included in the Language Access Operations Manual, Appendix I.

**APPENDIX B**  
**Interim Protocol for Obtaining**  
**a Credentialed Interpreter for Court Proceedings**

**LOCATING A CREDENTIALLED INTERPRETER**

All interpreters appointed by the court should be as highly qualified as possible. Until such time as the Judiciary has its own credentialing process for interpreters, preference for court proceedings should be given to interpreters who have credentials from another state or federal court. To the extent possible, these credentialed interpreters should be sought from adjoining states or through the national NCSC database for in-person or video remote interpreting.<sup>13</sup> If interpreters from jurisdictions other than those listed below are sought the method the state uses to qualify the interpreters shall be reviewed by the Program Manager. If, on the basis of that review, they are found to be sufficiently rigorous, they will be added to the approved list of providers.

**A. TYPES OF LANGUAGE ASSISTANCE**

Credentialed Interpreter – For purposes of this protocol, a credentialed interpreter is one who has a credential from another state court, the Administrative Office of the federal courts, or be in the NCSC’s national interpreter database.

As noted below, however, not every interpreter with a credential will be classified at a level sufficient for a given assignment. Staff must consider the credentialing authority and verified classification of available interpreters, including those supplied by interpreter agencies, in order to select the best one available. An interpreter’s self-representation that they are “credentialed” or “certified” is generally not sufficient without verification.

The interpreters on the national database of the NCSC have been screened by state courts<sup>14</sup> and categorized using national NCSC standards. Many states use NCSC’s written and oral testing but others have created their own standards. As is evident from the information provided below about neighboring court interpreter programs, the criteria used varies significantly. Court staff shall ask for any such credentials to be sent for review and verification by any agency supplying the interpreters or free-lancers who are not identified from a roster of a neighboring state or the NCSC database. If staff are uncertain, the Program Manager shall be consulted for assistance.

Interpreters listed below as Level 3 can be utilized for general court services and court-managed functions as listed in the chart below. Level 3 interpreters may also be used as a last resort for non-evidentiary hearings, but only if reasonable effort has been made to locate a Level 1 or 2 interpreter.

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<sup>13</sup> For more detail, see Sec. IV. B., options For Interpreter Appearances and Appendix B for the Protocol and Resources for Retaining a Credentialed Interpreter, and Appendix C for VRI Information of the Manual.

<sup>14</sup> The highest standards are those used by the for *federal* courts for certification. NCSC National Proficiency Designations are an attempt to uniformly categorize varying *state* standards.

## B. PREFERENCES FOR PROVIDING LANGUAGE ASSISTANCE

Methods: There are four methods of providing language assistance for services and activities. They are: 1) In-person; 2) Video Remote Interpreting (VRI); 3) Telephonic; and 4) Bilingual staff.

Qualifications: There are three acceptable levels for interpreters which are listed below in order of preference.

- Level 1- An interpreter who is listed on the NCSC roster in Tier 1, 2 or 3; a federally certified interpreter; a per diem (independent contractor) from New York.
- Level 2- An interpreter who is listed on the NCSC roster as Tier A; a Professionally Qualified federal interpreter; a Tier III or II interpreter from Maine.
- Level 3- A telephonic interpreter who has legal training and experience; an interpreter who is listed on the NCSC roster as “un-tiered;”<sup>15</sup> a Vermont Language Skilled/Ad Hoc federal interpreter; a non-credentialed interpreter from WORDS in New Hampshire; USCRI-VT, AALV or a known independent contractor from the Roster.

If interpreters from WORDS, USCRI-VT, AALV or other entities are used, they shall be screened using the Initial Determination of Interpreter Qualifications in Appendix D. If time permits, the form can be sent to the interpreter for completion and return. A copy of (or link to) the Code of Professional Responsibility for Interpreters in the Vermont Judiciary shall also be sent prior to the hearing. See Appendix I.

A telephonic interpreter, who has not been pre-screened by operations staff, should be screened through a *voir dire* by the trial court judge using the Questions in Appendix E.

### Method + Level = Appropriate Language Assistance

The method of providing an interpreter and the level of qualification of the interpreter vary depending on the service or activity.

The chart below illustrates the preferred and allowed methods and levels. When locating an interpreter, **for items in the chart marked in BOLD**, every reasonable effort shall be made to locate one starting with the preferred level listed for that service or activity and working down through the other levels only if staff are unable to get an interpreter in the higher level. **If the preferred or allowed method(s) and level(s) is not available, the matter should be rescheduled.** This chart does not represent all the possible services or activities for which interpretation may be needed. If the interaction does not appear on this chart, the Program Manager should be consulted for assistance in determining the appropriate method and level for that service.

For those items not in bold, while a higher skilled interpreter is always okay, time constraints, availability, cost and other circumstances may dictate use of a lesser qualified person and an A designation indicates that any one of the options is allowable.

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<sup>15</sup> If using an un-tiered interpreter, it is necessary to determine the criteria used by the certifying state and/or by checking their standards with the Program Manager.

C. PREFERRED METHOD AND OPTION BY TYPE OF SERVICE OR ACTIVITY

SERVICE OR ACTIVITY	METHOD*				LEVELS*		
	In Person	VRI	Telephone	Bilingual	1	2	3
<b>Court proceeding involving witnesses or presentation of evidence</b>	<b>P</b>	<b>A</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>A</b>	<b>X</b>
<b>Evidentiary hearing where all parties are appearing remotely and/or when there will be limited testimony by two or fewer witnesses; or when there are not multiple parties who need an interpreter; or weather-related concerns arise</b>	<b>A</b>	<b>P</b>	<b>A</b>	<b>X</b>	<b>P</b>	<b>A</b>	<b>X</b>
<b>Short, non-evidentiary hearing such as status conferences, arraignments, etc.</b>	<b>A</b>	<b>P</b>	<b>A</b>	<b>X</b>	<b>P</b>	<b>A</b>	<b>A</b>
<b>Jury Duty (this includes both <i>voir dire</i> and service as a juror)</b>	<b>P</b>	<b>A</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>A</b>	<b>X</b>
<b>ADR (where the session(s) are in the nature of a hearing, such as an arbitration)</b>	<b>P</b>	<b>A</b>	<b>X</b>	<b>X</b>	<b>P</b>	<b>A</b>	<b>X</b>
Counter Interactions	A	A	A	P	A	A	P
Programming/ education such as COPE, RFA, self-represented litigants, etc.	A	P	A	X	A	A	A
General assistance in the Access & Resource Center (ARC)	A	A	A	A	A	A	A
ADR (where session is in the nature of a mediation)	A	A	A	X	A	A	A
Mediation (the best method should be determined based on the nature of the session).	A	A	A	X	A	A	A

\*P = Preferred; A = Allowed; X = Do not use

**RESOURCES FOR LOCATING AN INTERPRETER**

**National Center for the State Courts**

Contact: <https://www.ncsc.org/services-and-experts/areas-of-expertise/language->



[access/vri/national-interpreter-database](https://vri.azurewebsites.net/Pdf/National_Proficiency_Designations_for_Court%20Interpreters.pdf)

The National Center for the State Courts has an interpreter database offering access to 500+ credentialed and qualified interpreters in 80+ spoken languages. The interpreters on the roster have been vetted by NCSC or are credentialed in another state. Based on their scores on NCSC written and oral testing, interpreters are placed into four tiers: 1, 2, 3 and A. (See [https://vri.azurewebsites.net/Pdf/National\\_Proficiency Designations for Court%20Interpreters.pdf](https://vri.azurewebsites.net/Pdf/National_Proficiency_Designations_for_Court%20Interpreters.pdf)).

Tiers 1, 2 and 3 are for interpreters in languages for which NCSC provides oral proficiency testing in simultaneous, consecutive and sight translation. To be listed as Tier 1, 2 or 3, an interpreter must have passed the oral exams at a certain percentage rate. These tests are only available in 16 languages. Tier A interpreters have completed a court-sponsored orientation, passed the NCSC written interpreter exam, and an Oral Proficiency Interview in the non-English language, when that language lacks an oral interpreting exam. “Untiered” interpreters either a) speak a language for which no oral exam is available and have not met Tier A requirements; or b) speak a language for which there is an oral exam but have not met the requirements for Tiers 1-3. Most in the latter group are likely to have better skills than those who don’t meet Tier A.

The NCSC database provides leads to interpreters who may be qualified to deliver needed language services. With the exception of interpreters in tiers 1 and 2, the interpreters in the database are not certified, nor are they necessarily qualified for every type of interpreting event. Before using an interpreter from the database, a user should contact the interpreter directly to describe the interpreting event and interview the interpreter about his or her qualifications and experience.

The Program Manager is available to assist staff with accessing and navigating the database and with making determinations of suitability for the event for which language assistance is needed.

### **Federally Certified Interpreters**

The federal courts have three categories of interpreters, Certified, Professionally Qualified, and Language Skilled. See <https://www.uscourts.gov/services-forms/federal-court-interpreters/interpreter-categories#a2>.

- **Certification:** The federal courts have a process for certifying interpreters. At present, they only have oral testing and certification in Spanish. In the past they also had it for Navajo and Haitian Creole so there are some interpreters on their list who obtained a credential earlier.
- **Professionally Qualified:** The category of professionally qualified interpreters applies to all languages, except those for which the U.S. Administrative Office of the Courts has certified interpreters (Spanish, Navajo, and Haitian Creole). Credentials for professionally qualified interpreters require sufficient documentation and authentication and must meet specific criteria.
- **Language Skilled/Ad Hoc Interpreter** An interpreter who does not qualify as a professionally qualified interpreter, but who can demonstrate to the satisfaction of the

court the ability to interpret court proceedings from English to a designated language and from that language into English, will be classified as a language skilled/*ad hoc* interpreter. Certified and professionally qualified interpreters are paid at a higher rate than language skilled/*ad hoc* interpreters.

A complete list of certified interpreters is posted on JustUsNet, along with a list of Vermont interpreters, who have been deemed “language skilled.”

## **New York**

Contact: [courtinterpreter@nycourts.gov](mailto:courtinterpreter@nycourts.gov)

New York accepts interpreters certified by National Association of Judiciary Interpreters and Translators (NAJIT). They also have their own certification process based on guidelines from the Consortium for State Court Interpreters. They have multiple staff interpreter positions and also per diem interpreters. There are some NCSC tiered interpreters from New York listed on the NCSC roster.

New York’s interpreters are independent contractors who are not court employees. To be eligible for assignment all interpreters must qualify for inclusion in the court system’s Interpreter Registry. Candidates are required to pass a written, multiple choice English proficiency exam. New York does not use the NCSC exams. Upon successful completion, candidates may be assessed on their oral language skills.

To be listed on the court system’s Interpreter Registry, an interpreter must undergo rigorous written and oral language testing and screening measures, first in English and then in one of 22 languages. When a foreign language oral test does not exist, the interpreter must provide academic and professional credentials to a support proficiency in that language. They must also undergo a background check and officially swear to discharge the duties of a court interpreter to the best of their ability. This entitles them to listing on the court system’s Interpreter Registry.

The Program Manager is available to assist staff with engaging the services of an interpreter from New York.

## **Maine**

Contact: [Kristina.famolare@courts.maine.gov](mailto:Kristina.famolare@courts.maine.gov)

Maine courts have language requests that are similar to Vermont’s, but the state has a more relaxed interpreter rostering procedure than most other states. They require 70% on the NCSC written exam and an Advanced score on the Oral Proficiency Interview for entry level rostered interpreters. See below. They have two interpreters (both Spanish) who have passed the NCSC oral exams and are qualified to provide simultaneous interpretation.

In addition to the above, interpreters must demonstrate a number of proficiencies, be at least 21, have a high school diploma or the equivalent and possess certain credentials (e.g., authorized to work in U.S., have prior legal experience – a preferred but not required credential). Interpreters must also agree to abide by professional conduct standards and submit to a background check.

There are no NCSC tiered interpreters from Maine listed on the NCSC roster.

Maine places their interpreters into tiers, as follows:

- **Tier I** – (\$35/hr.) File an application, Pass the NCSC written test with a score of 70% or higher; obtain a minimum Advanced—Low rating on the American Council on the Teaching of Foreign Languages (ACTFL)<sup>16</sup> Oral Proficiency Interview in the target language; complete a 2-day orientation program.
- **Tier II** – (\$45/hr.) Successful completion of Tier 1 AND two years of post-secondary education; Pass NCSC written test with a score of 80% or higher; Complete advanced Legal Training program (4 days) and have 50 hours of documented legal interpreter experience.
- **Tier III** – (\$50/hr.) Successful completion of Tier II requirements and obtain federal court certification or satisfactory completion of all three sections of the NCSC oral examination (consecutive, simultaneous, sight translation).

The Program Manager is available to assist staff with engaging the services of an interpreter from Maine.

## **Vermont and New Hampshire**

The in-person interpreters offered on the Judiciary’s current roster of independent interpreters, and those available through an organization (AALV, USCRI-VT, WORDS), almost without exception, lack the credentialing necessary to provide legal interpreting in court proceedings. Interpreters offered through the telephonic service, currently contracted by the State of Vermont, also lack formal *legal* credentials. Therefore, until such time as a formal Vermont credentialing system is up and running in Vermont, the Judiciary should utilize the most qualified interpreters available for the type of proceeding, or court-managed function according to the Options listed above.

The organizations below provide interpreting services in Vermont's courts. The training protocols of these organizations are described below (as of March 2021).

- **USCRI-VT (Vermont Refugee Resettlement Program (VRRP))**  
Contact: Kristen Rengo, Coordinator of Interpreter and Translation Services - [krengo@uscrtvt.org](mailto:krengo@uscrtvt.org), 802-654-1706

USCRI interpreters all meet minimum standards of 18 years of age and pass a criminal background check. They are employees of the VRRP. They require a minimum level of education (high school diploma or GED) but VRRP is flexible with this given that some refugees had interrupted education and may not have an actual diploma to show. VRRP is also flexible with regard to the use of interpreters in cases involving languages of lesser

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<sup>16</sup> ACTFL offers language assessments in 120 languages through Language Testing International (LTI). The assessment is designed to result in a valid and trustworthy language credential that is reflective of the examinees’ language abilities but does not test their interpreter skills in the various modes (simultaneous, consecutive, sight interpretation). It uses the Oral Proficiency Interview (OPI) or Oral Proficiency Interview by Computer (OPIC). The technical requirements are available at [languagetesting.com](http://languagetesting.com).

diffusion. Their interpreters receive 40-60 hours of training, using national medical interpreting standards. They test (using in house staff) for language proficiency and use language coaches primarily to provide feedback during role play exercises. The exit criteria include passing a written test (ethics, basic interpreting skills, terminology, vocabulary, etc.) and passage of an oral test based on a scenario/role play.<sup>17</sup> They use the basic interpreting skills, ethics, etc. from the medical training and then use the Judiciary's old 2009 Court Interpreter Manual as a guide to provide additional legal training. They have some glossaries (Spanish) that people are able to study and learn legal terminology but there is nothing like that for other language needs such as Nepali. USCRI's more experienced interpreters have put together glossaries for some of those languages. They do not do any after the fact assessment of interpreters for interpreting sessions in the courts or elsewhere, but they are interested in doing so. They do some pop-up refresher trainings based on issues that may come up during interpreting sessions in the courts.

- **Association of Africans Living in Vermont (AALV)**

Contact: Hina (pronounced like hen + a) Vignola, Interpreter Coordinator-  
[hvignola@aalv-vt.org](mailto:hvignola@aalv-vt.org)

- 802-503-5403
- Bouchra Lahmeur: [blahmeur@aalv-vt.org](mailto:blahmeur@aalv-vt.org), 802-503-5403
- Jenny Taylor: [jrtaylor@aalv-vt.org](mailto:jrtaylor@aalv-vt.org), 802-777-1682
- Kim Frampton: [kframpton@aalv-vt.org](mailto:kframpton@aalv-vt.org), 802-503-5401

AALV's online referral portal system link for the State of Vermont is <https://www.aalv-vt.org/interpret>. Local interpreters represent the diversity of the region. They provide interpretation in 21 languages and interpreter language skills have been formally assessed by a separate third-party national agency. Interpreters understand the code of professional responsibility and all AALV interpreters who agree to work with the courts go through court interpreter training through AALV of about 20 hours.

In addition to continuing to offer in-person interpreting services, the interpreters have the ability to participate in three-way calling, Zoom, Skype, and other video conferencing platforms in order to continue providing interpreting services, if a link or host the meeting is provided.

- **New Hampshire - WORDS**

Contact: Real Gilbert, Interpreter Coordinator and Owner- [words500usa@aol.com](mailto:words500usa@aol.com), 603-668-6804

WORDS does not have any "credentialed" interpreters on their roster, though their interpreters are "trained." A trained interpreter has completed 40 hours of course work, been screened by another interpreter who speaks that language, and observed in court and mentored by the owner. Ninety percent of WORDS' interpreters have advanced degrees. WORDS does not do a formal assessment (i.e. examination) of written or oral skills.

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<sup>17</sup> Because these in-house oral and written tests have not been validated to measure interpreting ability, they should not be given the same weight as those used by the federal courts or states using NCSC exams and standards.

## **APPENDIX C**

### **Protocol for Video Remote Interpreting (VRI)**

VRI cannot be fully implemented independent of changes currently being made to the Judiciary's technology platforms and policies, some of which have been brought about by the changes that were needed to sustain operations during the pandemic. The Judiciary's technology environment is dynamic and is undergoing significant change presently. The overview that follows may need to change as new technologies are deployed.

VRI provides opportunities for accessing qualified interpreters for court proceedings but it also has special challenges, both technological and procedural. This section references issues related to both video and audio-only remote interpreting. Video is always preferable as a proper set up allows all parties to see one another and may provide a better mechanism for simultaneous interpreting and a more accurate audio or video recording of the proceeding.

VRI may also present issues that need to be addressed in order for this option to provide meaningful access. For example, a party may not be able to connect due to lack of equipment, inadequate internet, or insufficient computer skills. If the proceeding is audio and video combined, the audio should not be on a speaker phone as it makes it very difficult for people to hear. The platform used must also be adapted to support interpreting. At this point, WebEx is not able to provide for all features needed for simultaneous interpreting, though Judiciary staff are exploring options to enable optimal functionality.

Technological improvements for remote hearings made during the pandemic continue to evolve and improvements addressing specific concerns continue to be planned, developed, and implemented. This means that VRI protocols will need to be revised periodically to reflect best practices.

#### **TECHNOLOGICAL**

##### **Video Remote Equipment**

- Telephone for audio connections
- Microphone and headset
- Computer or compatible tablet with a camera
- High speed internet and sufficient bandwidth (wi-fi should be avoided if possible; wired connections generally work better)

Minimum Requirements for ASL – Because ASL utilizes the entire body for communication, equipment needs may vary from those necessary for LEP interpretation. Thus, ideally, equipment should be purchased that meets the more stringent requirements for ASL. For example, monitors should have a screen size of 17 inches (measured diagonally from corner to corner) for providers and 19 inches (measured diagonally) for courtrooms and meet minimum device resolution capabilities. There are also specific requirements for the cameras, bandwidth, and the computers utilized, etc.

Video remote interpreted language hearings can take a variety of forms. A session may have all

participants remote, some remote and some in the courtroom, or just a party remote, such as during an arraignment. Different considerations are applicable, depending on the configuration of the participants. Courts should consider if situations will arise when the VRI system will need to bring together participants located in two or more separate locations (e.g., courthouse, jail, attorney offices, and/or off-site interpreter).

#### Audio Remote Equipment

- High quality speaker phone that is wired directly into the audio recording equipment.

#### Additional Considerations:

- Compatibility of equipment between the court and the interpreter(s);
- Ability of the interpreter to receive or view evidence electronically for sight translation;
- Ability of the interpreter to provide both simultaneous and consecutive interpreting, as appropriate;
- Logistical issues associated with team interpreting (see below);
- Need for a back-up plan that is articulated in advance for any technological failure during the proceeding;
- Need for a system to allow for attorney/client/interpreter conversations.

### REMOTE TEAM INTERPRETING

Team interpreting could take a number of configurations. One team member might be in-person and a second in a different location or there could be two remote interpreters in different locations. Because most team interpreting proceedings will be non-emergent, there should be adequate time for logistical arrangements. These would include:

- Scheduling a session with team members in advance to test the compatibility of equipment;
- Ensuring that all can maintain steady and clear visual and audio access to all participants;
- Practicing how to work or move from one mode to another;
- Agreeing on a protocol for technical assistance;
- Establishing a way of communicating errors, the need for more time to complete an interpretation and the need for a break (e.g., hand signals, texts, instant messaging);
- Determining the roles of each.

### MINIMUM SPECIFICATIONS FOR REMOTE INTERPRETING

The following table provides guidelines for various scenarios to provide consecutive and simultaneous interpretation to LEP court users in court sessions that allow for remote appearances that are either:

1. Invited in a physical courtroom with both in-person and remote participation, or
2. A virtual courtroom session, where all participants are remote.

All scenarios require a remote video solution that provides for following functionality:

- Breakout rooms for interpreters and LEP court participants to have confidential discussions with attorneys.

- Ability for the interpreter to toggle back and forth between a connection to speak with the LEP court user and the court in English and the required language (consecutive interpreting) and to listen to the proceedings and to speak with the LEP person only in their required language (simultaneous interpreting).

1. Physical Courtroom with In-person and Remote Participants

Scenario	LEP Connection	Interpreter Connection	Audio
Interpreter and LEP Remote	Remote Video*	Remote Video*	Internal (courtroom microphones) and external (remote session) audio connected to the courtroom public address (PA) system so all participants can be heard
Interpreter in Person, LEP Remote	Remote Video*	Tablet device and headset to join remote video session from the courtroom	
LEP in Person, Interpreter Remote	Tablet device and headset to join remote video session from the courtroom	Remote Video*	

2. Virtual Courtroom with Remote Participants

Scenario	LEP Connection	Interpreter Connection	Audio
Interpreter and LEP Remote	Remote Video*	Remote Video*	Provided via remote video solution

\*If the LEP can only connect via telephone (no video), then a telephone number will be provided to the LEP person by the court for participation. A remote video connection could be provided from a location within the courthouse for both the LEP person and the interpreter through the ARC when it is functional.

**APPENDIX D**  
**Initial Determination of Interpreter Qualifications by Court Staff**  
**When No Formal Testing or Other Prior Screening Standards Exist**

These questions are for use only with interpreters lacking documentation to confirm that they are certified by a state or federal court.

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_ (home) \_\_\_\_\_ (cell)

Payment Address: \_\_\_\_\_

Days/Hours you are available to interpret: \_\_\_\_\_

1. Are you at least 18 years of age?                      YES                      NO
2. Have you been convicted of a felony or any other crime of dishonesty, deceit, fraud or moral turpitude?                      YES                      NO
3. Have you ever been disqualified from interpreting in any court or administrative hearing other than for a conflict of interest?      YES                      NO                      If yes, please explain.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(attach additional pages if needed)

4. In what language(s) are you available to provide interpretation \_\_\_\_\_  
\_\_\_\_\_

5. What is/are your native languages? \_\_\_\_\_  
\_\_\_\_\_

6. If not a native English speaker, how did you learn English? \_\_\_\_\_  
\_\_\_\_\_

7. If not a native speaker, how did you learn the foreign language? \_\_\_\_\_  
\_\_\_\_\_



8. What is the highest grade you completed in school? Secondary Post-Secondary  
Masters/Doctorate (circle response)

(If these do not correspond to education levels in your country of origin, please provide a separate explanation of the most equivalent level achieved)(attach additional pages if needed)

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9. If you are not a native English speaker, did you formally study English in school?  
YES NO How many years of study? \_\_\_\_\_  
Where did this study occur? \_\_\_\_\_

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10. If you are not a native speaker of the foreign language, did you formally study it in school  
and/or abroad? YES NO  
How many years of study? \_\_\_\_\_  
Where did this study occur? \_\_\_\_\_

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11. How many times have you interpreted in court? None 1-5 6-10 11 or more

12. When was the last date, approximately, that you interpreted in court? \_\_\_\_\_

13. Do you have a credential(s) as a legal interpreter from another jurisdiction? YES  
NO

If yes, specify the credential and where and when (approximate date) the credential was received.

\_\_\_\_\_ (jurisdiction) \_\_\_\_\_ (year)  
\_\_\_\_\_ (jurisdiction) \_\_\_\_\_ (year)  
\_\_\_\_\_ (jurisdiction) \_\_\_\_\_ (year)

14. Have you taken any oral or written examinations in English or the foreign language to  
determine your general language proficiency? YES NO

15. Have you taken any oral or written examinations to determine your skill level to accurately  
interpreter consecutively or simultaneously? YES NO

16. Who provided the examination(s)? (circle all that apply)

- A. Vermont Judiciary
- B. Judiciary/entity in another jurisdiction(s)  
\_\_\_\_\_ (specify)
- C. USCRI-VT/VRRP
- D. AALV
- E. WORDS
- F. Other \_\_\_\_\_ (specify)

17. What was the result? PASS FAIL N/A If you did not pass, what was your score/percentage of correct responses? \_\_\_\_\_%  
Date(s) of testing? \_\_\_\_\_

18. Have you taken any courses/training on legal interpreting? (Circle all that apply)  
A. Basic civics  
B. Legal/Interpreter ethics,  
C. Legal terminology,  
D. Court processes  
E. Skills training in consecutive or simultaneous  
F. Other \_\_\_\_\_(list)

19. Who provided the courses/training that you received? (circle all that apply)  
A. Vermont Judiciary  
B. Judiciary/entity in another jurisdiction(s)  
\_\_\_\_\_ (specify)  
C. USCRI-VT/VRRP  
D. AALV  
E. WORDS  
F. Other \_\_\_\_\_ (specify)

20. Are you able to interpret simultaneously without leaving out, adding, or changing anything that is said? YES NO

21. Are you able to interpret consecutively? YES NO

22. Are you able to provide sight translation of documents? YES NO

23. Please provide any additional information that you believe would be helpful to us in evaluating your skills or abilities as an interpreter. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Please attach any documentation you may have supporting your participation in, completion of, or test results, received from any entity.**

*I hereby swear/or affirm* that the information provided on this questionnaire is true and accurate to the best of my knowledge and belief and that I have read the enclosed *Code of Professional Responsibility for Interpreters in the Vermont State Court System*, understand my responsibilities as set forth therein, and agree to abide by them during any court proceeding to which I am assigned.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Notary:

\_\_\_\_\_ (Print Name)

\_\_\_\_\_ (Signature)

My Commission Expires: \_\_\_\_\_

**APPENDIX E**  
***Voir Dire* for Judicial Officers to Establish Interpreter Qualifications**  
**When No Formal Testing or Other Prior Screening Standards Exist**

When no formal testing or other prior screening standards exist, at a minimum, the court should ask the following questions of a proposed interpreter. If the Court or any attorney or party is not satisfied with the responses to these questions, the interpreter should not be used and the matter should be rescheduled until a credentialed interpreter can be obtained.

1. Do you have any particular legal training or credentials as an interpreter?
2. What is your native language?
3. How did you learn English?
4. (If the person is a native English speaker) how did you learn [the non-English language]?
5. What was the highest grade you completed in school?
6. Have you spent any time in the foreign country?
7. Did you formally study the non-native language in school? Extent?
8. How many times have you interpreted in court?
9. Have you interpreted for this type of hearing or trial before? Extent?
10. Are you familiar with the code of professional responsibility for court interpreters? Please tell me some of the main points (e.g., interpret everything that is said).
11. Are you a potential witness in this case?
12. Do you know or work for any of the parties?
13. Do you have any other potential conflicts of interests?
14. Have you had an opportunity to speak with the LEP person informally? Were there any particular communication problems?
15. Are you familiar with the dialectal or idiomatic peculiarities of the witnesses?
16. Are you able to interpret simultaneously without leaving out or changing anything that is said?
17. Are you able to interpret consecutively?

## **APPENDIX F**

### **Judicial Officer's Suggested Text for Clarification of the Role of the Interpreter**

We are going to have an interpreter assist us through these proceedings, and you should know what [she] can do and what [she] cannot do. Basically, the interpreter is here only to help us communicate during the proceedings. [She] is not a party in this case, has no interest in this case, and will be completely neutral. Accordingly, [she] is not working for either party, but rather for the court. The interpreter's sole responsibility is to enable us to communicate with each other.

The interpreter is not an attorney and is prohibited from giving legal advice. [She] is also not a social worker. [Her] only job is to interpret, so please do not ask the interpreter for legal advice or any other advice or assistance.

Does anyone have any questions about the role or responsibilities of the interpreter?

If any of you do not understand the interpreter, please let me know. Is anyone having difficulty understanding the interpreter at this time?

If at any point during the proceeding, any party or witness has concerns about the interpretation, please bring that to my attention immediately.

**APPENDIX G**  
**Judicial Officer's Suggested Text for**  
**Clarifying the Interpreter's Role to the Party or Witness**

I want you to understand the role of the interpreter. The interpreter is here only to interpret the questions that you are asked and to interpret your answers. The interpreter will say only what we or you say and will not add, omit, or summarize anything.

The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

If you do not understand a question that was asked, request an explanation from the person who asked it. Do not ask the interpreter.

Remember that you are giving testimony to this court, not to the interpreter. Therefore, please speak directly to the attorney, the jury or me, not to the interpreter.

Do not ask the interpreter for advice.

Please speak in a loud, clear voice so that everyone and not just the interpreter can hear.

If you do not understand the interpreter, please tell me. If you need the interpreter to repeat something you missed, you may do so, but please make your request to the person speaking, not to the interpreter.

Finally, please wait until the entire question has been interpreted in your language before you answer.

Do you have any questions about the role of the interpreter? Do you understand the interpreter?\*

\*Note that the interpreter is simultaneously or consecutively interpreting this advisement while the judge is speaking, and therefore, the witness has an opportunity to recognize any problems with communication.

**APPENDIX H**  
**Judicial Officer's Suggested Text for**  
**Clarifying the Interpreter's Role to the Jury**

H-1: Before Impaneling and Before the Proceeding Begins

The interpreter is sitting at counsel table to enable the party to understand the proceedings. This court seeks a fair trial for all regardless of the language they speak and regardless of how well they may or may not speak English. Bias against or for persons who have little or no proficiency in English is not allowed.<sup>18</sup> Therefore, do not allow the fact that the party requires an interpreter to influence you in any way.

H-2: Party or Witness Interpreting

Treat the interpretation of the testimony as if the person had spoken English and no interpreter were present. Do not allow the fact that testimony is given in a language other than English to affect your view of [her] credibility.

If any of you understand the language of the party or witness, disregard completely what the person says in [her] language. Consider as evidence only what is provided by the interpreter in English. Even if you think an interpreter has made a mistake, you must ignore it completely and make your deliberations on the basis of the official interpretation.

Judges may wish to elaborate on the last point:

- The primary record of the proceedings is only in English, and it is the recorded English testimony that constitutes evidence in the case;
- Jurors may mishear what is said; the interpreter (like the court reporter) is a trained listener;
- Ordinary individuals and even trained interpreters may disagree about the correct interpretation of an expression (i.e., idioms can vary substantially in different dialects of the same language), even if they hear the same words;
- Interpreters are the court's experts in language, and their interpretation must be presumed reliable and correct.

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<sup>18</sup> The issue of bias should be explored by counsel during *voir dire*.

**APPENDIX I**  
**Code of Professional Responsibility for Interpreters in the Vermont Judiciary**

The Purposes of the Code are threefold:

1. To articulate a core set of principles to guide the use of interpreters in the Vermont Courts;
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.

**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.<sup>19</sup> 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 all persons, agencies and organizations who administer, supervise, use, or deliver interpreting services to the judiciary.

**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.

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<sup>19</sup> A non-English speaker should be able to understand just as much as an English speaker with the same level of education and intelligence.



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 using the language, "The interpreter wishes to explain...". 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 the entire 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, as in, “The interpreter needs the attorney to speak more slowly.”

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 skills-based testing and 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 skills-based written and oral testing from state or national entities, practice and knowledge-based workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

**APPENDIX J**  
**Language Access Program Contacts**

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