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Introduction

The contributions of each of these individuals, as well as the many other practitioners and stakeholders who will offer insight and feedback through survey and focus group are greatly

H. Best Practice for Interpreting Depositions

I. Best Practice for Interpreting Attorney-Client Interactions

J. Best Practices for Interpreting Law Enforcement Interactions

Each section includes a best practice topic statement, followed by individual numbered practices describing the elements essential to the delivery of high quality legal interpreting services. These elements include explanations and/or rationales designed to assist in determining the relevance and value of those practices to the experiences of legal interpreting practitioners. Existing research and scholarship supporting the practice is cited when available and appropriate.

Definitions:

Throughout this document the following terms will be used. The definitions are provided to establish the meaning of the terms as used within this document.

- 1. American Sign Language** – A visual-gestural language created by deaf people. It is not English. ASL has all of the elements of any spoken language. Its grammar and conversational rules are very different from spoken English, but like all languages, it comprises a set of abstract symbols agreed upon by those who “speak” it. (*Handbook for Ohio Judges*)
- 2. Best Practice** – A best practice is a technique or methodology that, through experience through application by practitioners and/or research, has proven to lead reliably to a desired result. A commitment to using the best practices in any field is a commitment to using all the knowledge and technology at one's disposal to ensure success. <http://www.bitpipe.com/tlist/Best-Practices.html>
- 3. Conflict of Interest** – Any condition that interferes with the objectivity of an interpreter constitutes a conflict of interest. Interpreters shall be impartial and unbiased and shall refrain from conduct that may give the appearance of bias. Interpreters shall disclose any real or perceived conflict of interest. (*National Center for State Courts Model Code, p. 202*).
- 4. Consecutive Interpreting** – The process whereby an interpreter waits until a complete thought or group of thoughts has been spoken or signed, in order to understand the entire segment before beginning the interpretation, resulting in a very high standard of accuracy in the interpretation. (*Russell, p. 52*)
- 5. Court Interpreter:** The generic term used to refer to the interpreter who performs the proceedings function.

7. Direct Speech – T

The Best Practices and Protocols

complex process requiring time, even from the most highly skilled, expert legal interpreters.

To achieve an accurate, meaningful, and effective interpretation, it is necessary for legal interpreters to put the fidelity of the interpretation above any pressure to produce a speedy, pseudo-efficient interpretation.

Best Practice A.2

When interpreting in court and legal settings, consecutive interpretation is the best practice for achieving an accurate, meaningful, and effective interpretation.

2.1 Evidence for the Increased Accuracy When Using Consecutive Interpretation Verses Simultaneous Interpretation

Spoken language interpreters have primarily interpreted consecutively, waiting for an utterance to come to a logical conclusion or stopping point before speaking the interpretation of that intact segment. They have done so for both pragmatic and technical reasons. Listening to a spoken interpretation at the same time a foreign speaker is speaking creates difficulty hearing the message, as well as monitoring the fidelity of the interpretation. Literature and research within the field of spoken language interpreting states that “consecutive interpreting is used whenever a high degree of accuracy is needed (Gonzalez, Vasquez and Mikkelson, 1991, p. 379) Research from the field of sign language interpreter reinforces that “consecutive interpretation allows for a greater degree of accuracy than simultaneous interpreting.” (Russell, p. 2) In its position paper titled, *Modes of Interpretation: Simultaneous, Consecutive and Sight Translation*, NAJIT states, “Consecutive interpreting is a true and accurate interpretation of one language to another...” (www.najit.org)

American Sign Language (ASL) is a distinct and separate language from spoken English. It is a highly visual language with its own grammar, syntax and cultural complexities that affect the way the language is used among Deaf people for whom ASL is a native or near native language. Interpretation between two languages requires an interpreter who is bi-lingual and bi-cultural in ASL and English in order for the interpretation to be effective. Because ASL/English interpreters are working between two distinct languages, experience and research demonstrate that consecutive interpreting substantially increases the accuracy, meaning, and effectiveness of ASL/English interpretation.

Dr. Debra Russell conducted a research study comparing the differences in the effectiveness of sign language interpretation using simultaneous and consecutive approaches. Russell found that when court interpreters used consecutive interpreting, a higher degree of interpreting accuracy was achieved (*Russell, 2002, p. 159*).

This

Best Practice A.3

When engaged in consecutive interpreting, note-taking is a best practice that significantly improves the interpreter's ability to recall details, organize ideas for deep processing and increase the accuracy, meaning, and effectiveness of an interpretation in court and legal settings.

3.1 Practice Shows Significant Benefits to Memory and Effective Interpreting When Note-taking During Consecutive Interpreting

Interpreting between two or more languages engages both short-term and long-term cognitive memory (Cokely, 1992). When interpreting consecutively, interpreters rely heavily on recalling details to ensure an accurate and effective interpretation. The high stakes nature of legal interpreting emphasizes the critical need for interpreters to take measures that will assist in the accurate recall of a message, particularly when interpreting witness testimony.

Both spoken language and sign language interpreting professions have identified significant benefits to the use of note-taking in consecutive interpreting. Note-taking is a skill that must be developed. According to Hanh (2006), note-taking helps improve the interpreter's concentration, relieves the pressure placed on an interpreter's working memory and helps to ensure that details are not lost in the interpretation (p. 13). This is critically important for consecutive interpretation within the court and legal proceedings where testimony becomes or has the potential to become evidence in a court case.

Best Practice A.4

Legal interpreters engage the use of simultaneous interpreting when it achieves accuracy, meaning, and effectiveness in the interpretation and meets the cultural and linguistic needs of the deaf party.

4.1 Evidence of the Limitation of Simultaneous Interpretation

Historically, simultaneous interpretation has become most prominent method of interpreting within the field of American Sign Language and English interpretation. This occurred, in part, because interpreting between a spoken language and a visual language does not create overlapping or competing sound between a message and the interpretation. Simultaneous interpretation has allowed for greater efficiency in the production of the interpretation because the interpreter is signing while listening to spoken English or listening to spoken English while producing the interpretation into ASL (Russell, p. 52).

parties in a given case or legal setting, as well as the complexity of the subject matter and situation. “The subject matter of court hearings varies, but may include legal arguments in a motion to suppress evidence; cross-examination of experts; syntactically dense jury instructions; nervous witness testimony; or a complex or under-articulated recitation of facts. There is a limit to the focused concentration needed to comprehend complex language at high speed and render it accurately in another language. Inattention, distraction or mental exhaustion on the part of the interpreter can have adverse consequences for defendants, litigants, witnesses, victims, and the judicial process in general” (www.najit.org).

As Vidal (1997) points out, “Fatigue for interpreters is not primarily physical, as in the case of athletes, whose muscles become strained after sustained exertion: it is

Best Practice C.7

7.1 Effectiveness of the Deaf Interpreter Requires Consistency

When deaf interpreters are working with a particular deaf party or individual, those deaf interpreters should always be used for any communication that occurs with that individual, no matter how insignificant the communication may seem. If the deaf interpreter is not present at any time, interpreting for that deaf party should be suspended until the deaf interpreter has returned or is available. To do otherwise can be detrimental to the accuracy, meaningfulness, and effectiveness of the interpretation. In addition, it can undermine the relationship between the deaf party and the deaf interpreter. It can also perpetuate the false impression that the deaf party can receive an accurate, meaningful, and effective interpretation in the absence of the deaf interpreter—an impression that is counter to the very reason the deaf interpreters were used.

Section D: Best Practice of Visually Recording a Statement or Interpretation in American Sign Language

Best Practice D.9

9.1

9.4 *Providing Effective Guidance to Court, Legal, and Law Enforcement Personnel*

It is still routine procedure for many court, legal, and law enforcement personnel to audiotape statements by individuals who can hear, particularly in small towns and rural areas. Since producing audiotapes of statements is, the most familiar recording protocol, court, legal and law enforcement personnel may assume that audio

demonstrated specialized knowledge of legal interpreting, and greater familiarity with procedure and protocol followed within the court and legal system. These interpreters have also demonstrated the necessary skills in being able to interpret complex legal discourse (www.rid.org). A full explanation of all generalist and specialist certification through RID is outlined in Appendix A of this document.

Best Practice E.11

It is best practice

11.1 Mentoring and Supervision of Legal Interpreters

Interpreters who have completed specialized training in legal interpreting need to gain supervised experience interpreting within court and legal settings prior to becoming eligible to sit for the SC:L exam. These intern practitioners require mentoring and supervision by highly qualified legal interpreters during this process. Being mentored and supervised are important parts of the specialized training process. Such oversight also provides a critical level of support and supervision for developing legal interpreters as they gain experience providing interpreting services in court and legal settings, while maintaining best practice for accuracy.

Section F: Best Practice for Staffing Legal Assignments

Best Practice F.12

12.1 Distinct and Specialized Functions of Legal Interpreters in Court

Court and legal personnel are generally under the assumption that one interpreter is sufficient to interpret any and all parts of a court or legal proceeding involving a deaf person (*Mathers, p. 82*). Yet, depending on the number of deaf people involved in the court case and the role of each deaf person in the case, one interpreter will most likely not be sufficient. Ethical, procedural, and legal conflicts can occur that will adversely affect the integrity of the interpreting process when interpreters do not maintain distinct roles for the various functions of court interpreting. When the

receive an accurate, meaningful, and effective interpretation, the Deaf Interpreter becomes a critical part of the staffing needs for a case or proceeding (March 2009, NCIEC Brief – *The Deaf Interpreter in Court*, p.102).

13.5 Identifying External Factors Affecting Successful Interpreting Interactions

Various factors can affect the success of an interpreting interaction. These factors include whether or not the deaf individual has a mental illness, is under the influence of drugs or alcohol, takes prescription medication that affects cognitive abilities or vision, or any other factor that may alter a deaf individual's ability to perceived and understand communication interactions.

13.6 Identifying Conflicts of Interest when Staffing Cases

The National Association of Judiciary Interpreters (NAJIT), the Registry of Interpreters for the Deaf (RID), and the National Center for State Courts ethically require interpreters to avoid and disclose conflicts of interest prior to accepting an interpreting assignment or case. Conflicts of interest can be subtle and difficult to identify at times. Conflicts affecting legal interpreters are generally of two types: *rehearsal conflicts*, which are implicated when an interpreter prepares a witness privately prior to interpreting the witness' testimony, and *appearance conflicts* in which the interpreter's relationship with the parties raises the specter of bias. Legal interpreters must be cautious when accepting the role of Proceedings Interpreter in

Maintaining consistent interpreters for lengthy court trials or proceedings plays a critical role in maintaining the accuracy, meaningfulness and effectiveness of the interpretation. Legal interpreters engage in extensive preparation prior to interpreting a trial, court or legal proceeding, or deposition. This preparation, along with the detailed knowledge of the case gained as the proceedings unfold has a positive effect on the interpreter's ability to interpret accurately and effectively for a deaf individual or party to a case. Legal interpreters appointed to lengthy cases should consider their availability to interpret the entirety of the trial or proceeding when accepting the appointment.

14.2 *Maintaining Consistent Interpreters for Deaf Jurors and Witness Testimony*

Assuming that the interpretation is accurate, meaningful, and effective from the start, maintaining interpreter consistency is an important consideration for all court and legal situations. Two specific situations, however, warrant additional guidance. Legal interpreters hired to interpret a trial for a deaf juror should remain the same interpreting team who interprets jury deliberations. After having interpreted trial evidence, arguments, and jury instructions, maintaining the continuity of the legal interpreters for jury deliberations is critical to maintaining the accuracy, meaningfulness, and effectiveness of the interpretation.

Likewise, when interpreting the testimony of a deaf witness, maintaining interpreter consistency is also critical to the accuracy, meaningfulness and effectiveness of the interpretation. Direct and cross examination discourse can often be linguistically complex.

voir dire process. In some instances, the court or attorneys may want to see copies of the documentation.

17.2 Preparing for the Qualifying Process

Even for legal interpreters who have experienced the qualifying process numerous times, preparing to be qualified in open court can help to ensure the qualifying process goes smoothly.

17.3 Taking the Oath Prior to the Qualifying Process

Courts will administer the typical witness oath to the court interpreter prior to the qualifying process. When a deaf interpreter is being qualified, the hearing interpreter will take the Interpreter's Oath prior to interpreting the witness oath to the deaf interpreter. This same process occurs during a deposition.

Section H: Best Practices for Interpreting Depositions

The purpose and final product of a deposition is to generate evidence from the person being deposed that may be used for future legal purposes. Testimony placed on the record during a deposition is used for the discovery of additional evidence. Depositions often become the basis for impeachment of witness testimony. Although depositions are not interactions that take place in a courtroom, they are, nonetheless, complex legal proceedings that function in similar ways to interactions that occur in a court of law.

Thus, all previous sections of this Best Practice Document also apply to interpreting depositions. Legal interpreters should consider all of these best practices prior to accepting this type of legal work.

Section A: Best Practices in Producing an Accurate, Meaningful, and Effective Interpretation in Court and Legal Settings

Section B: Best Practice in Team Interpreting for Court and Legal Settings

Section C: Best Practices in Collaborating With Deaf Interpreter Specialists in Court and Legal Settings

Section D: Best Practice of Visually Recording a Statement or Interpretation in American Sign Language

Section E: Best Practices for Obtaining Training, Experience, and Credentials for Highly Qualified Legal Interpreters

Section F: Best Practices for Staffing Legal Interpreters

Section G: Best Practices for Legal Interpreter Preparation in Court and Legal Matters

Best Practice I.19

19.1 *Maintaining the*

Best Practice J24

24.1 Video Recording Statements in American Sign Language

As is the case with video recording the interpretation of the advice of rights, it is also important to video record interactions between law enforcement personnel and deaf individuals when the deaf individual is communicating in ASL or other form of sign language. Without a video record of the deaf person's statement or answers in ASL, the recorded interpretation of the deaf person's responses is all that remains. Although legal interpreters take precautions to reduce the potential risk of error in an

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Appendices

Appendix A: National Certification System for Professional Interpreters

National Registry of Interpreters for the Deaf (RID) Certification

RID, Inc., is the national organization of professional sign language interpreters in the United States. Since 1975, RID has played

MCSC (Master Comprehensive Skills Certificate) - The MCSC examination was designed with the intent of testing for a higher standard of performance than the CSC. Holders of this certificate were required to hold the CSC prior to

ability in any given area. There are minimum flaws in their performance, and they have demonstrated interpreting skills necessary to serve in almost all situations.

C. RID Specialist Certifications

should be in the form of an official letter stating hours and time from the interpreting service coordinator, court official, or mentor.

SC:PA (Specialist Certificate: Performing Arts) - Holders of this certificate were required to hold RID generalist certifi

Appendix B: Citation of Important Cases

Appellate Cases

Sixth Amendment Rights to Confrontation and Effective Assistance of Counsel

Federal

Ake v. Oklahoma, 470 U.S. 68, 76 (1985).

United States v. Sanchez, 928 F.2d 1450, 1455 (6th Cir. 1991).

U.S. ex rel. Negron v. New York, 310 F. Supp. 1304 (E.D.N.Y. 1970).

United States v. Carrion, 488 F.2d 12 (1st Cir. 1974).

United States ex rel. Navarro v. Johnson, 365 F.Supp. 676 (E.D. Pa. 1973).

United States v. Desist, 384 F.2d 889 (2d Cir.), *aff'd*, 394 U.S. 244 (1969).

States

State v. Lopez, 114 Ohio St. 3d 1411 (Ohio 2007).

State v. Roldan, 855 A.2d 455, 448 (N.H. 2004).

State v. Razo, 157 Ohio App. 3d 578 (Ohio Ct. App. 2004).

People v. Rivera, 480 N.Y.S.2d 426 (1984).

Salazar v. State, 93 S.W.3d 339 (Tex App. Texarkana 2002).

People v. Resendes, 210 Cal. Rptr. 609 (Cal. App. 5 Dist. 1985).

Bednarski v. Bednarski, 366 N.W.2d 69 (Mich. App. 1985).

State v. Van Pham, 675 P.2d 848, 856 (Kan. 1984).

State v. Gonzalez-Gongora, 673 S.W.2d 811, 816 (Mo. App. 1984).

People v. Carreon, 198 Cal. Rptr. 843 (Cal. App. 5 Dist. 1984).

People v. Aguilar, 35 Cal. 3d 785, 787, 677 P.2d 1198 (Cal. 1984).

People v. Rioz, 161 Cal. App. 3d 905 (1984).

People v. Mata Aguilar, 35 Cal. 3d 785, 677 P.2d 1198 (Cal. 1984).

People v. Rivera, 390 N.E.2d 1259 (1st Dist. Ill. 1979)

Standard of Interpretation

Valladares v. United States, 871 F.2d 1564, 1566 (11th Cir. 1989).

United States v. Cirrincione, 780 F.2d 620, 633 (7th Cir. 1985).

State v. Negash, 170 Ohio App. 3d 86 (Ohio Ct. App. 2007).

State v. Lopez, 2007 Ohio 202 (Ohio Ct. App. 2007).

State v. Rodriguez, 2001 Ohio 2179 (Ohio Ct. App. 2001).

State v. Mendoza, 2001 Ohio 2178 (Ohio Ct. App. 2001).

Denton v. State, 945 S.W.2d 793 (Tenn. Crim. App. 1996).

State v. Her, 510 N.W.2d 218, 222 (Minn. 1994).

*Objections based on plea **not knowingly and voluntarily entered***

State v. Alvarez, 797 N.E.2d 1043, 1044-45 (Ohio 2003).

Tamayo-Reyes v. Keeney, 926 F.2d 1492, 1495 (9th Cir. 1991)

State v. Nieves, No. 90-L-14-003, 1990 WL 208821 (Ct. App. Ohio Dec. 14, 1990).

Interpreter's Oath/ Qualification as an Expert on the Record

State v. Newcomb, 2004 Ohio 4099, P17 (Ohio Ct. App. 2004).

State v. Alvarez, 797 N.E.2d 1043, 1046 (Ohio 2003).

Ledezma v. State, 626 N.W.2d 134, 149 (IA 2001).

State v. Gonzales-Morales, 979 P.2d 826 (Wash. 1999).

Choi v. State, 497 S.E.2d 563 (Ga. 1998).