

# CODE OF PROFESSIONAL RESPONSIBILITY COMMENTARY

## PREAMBLE

Many persons who come before the courts are partially or completely excluded from full participation in the proceeding because of limited English proficiency or a speech or hearing impairment. It is essential that the resulting communications 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. An interpreter is sworn as an officer of the court. As an officer of the court, an interpreter is a neutral and impartial participant who assists the court in ensuring court proceedings and court support services are accessible and function efficiently and effectively. Therefore, the court interpreter is a skilled professional, who fulfills an essential role in the administration of justice.

## APPLICABILITY

This code shall guide all persons, agencies, and organizations who administer, supervise use of, or deliver interpreting services to the courts. Ensuring equal access to the communication, however, may on occasion conflict with this Code. When unique situations necessitate an exception to the Code in order to ensure effective communication, the court may so allow. For clarification, the following definitions should be kept in mind. Interpretation is the oral or signed transfer of meaning from one language into another language. The interpretation should conserve the meaning, tone, style, and register of the original message without additions or omissions. Translation is rendering written material from one language into written form in another language.

Violations of this Code may result in the interpreter being deleted from a court's list of Nevada credentialed (i.e., certified, registered, and conditionally approved) interpreters.

## 1: ACCURACY AND COMPLETENESS

*The interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting anything from, or adding anything to what is stated or written, and without explanation.*

### Commentary:

A limited English proficiency speaker should be able to understand just as much as an English speaker with the same level of education and intelligence would understand.

The interpreter has a two-fold duty: (1) to ensure that the proceedings in English reflect precisely what was said by a limited English proficiency person, and (2) to place the limited English proficiency-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.

Therefore, the interpreter is obligated to apply their best skills and judgment to faithfully preserve the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral translations 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.

The interpreter should never interject his or her 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. The interpreter of an oral language should convey the emotional emphasis of the speaker, but it may be in a slightly diminished form. If the witness weeps during questioning, the interpreter should not weep. Imitating the weeping might appear to mock the witness. Sadness can be conveyed by tone of voice alone. The judge and jury can see a witness' emotions for themselves even if they do not understand the target language.

A sign language interpreter, however, must employ all of the visual cues that the language he or she is interpreting requires - including facial expressions and body language, in addition to sign language. A sign language interpreter, 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, in a timely fashion, any error of interpretation discovered by the interpreter during the proceeding. The interpreter should demonstrate professionalism by objectively analyzing any challenge to his or her performance.

## **2. REPRESENTATIONS OF QUALIFICATIONS**

*The interpreter shall accurately and completely represent his or her certifications, training, and pertinent experience. The court should reassess the interpreter's qualifications each time the interpreter is engaged to interpret in court for a non-English speaking party or witness.*

### **Commentary:**

Acceptance of a case by the interpreter implies the interpreter's 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. Therefore, it is essential that the interpreter present a complete and truthful account of their training, certification, and experience prior to appointment so the court can fairly evaluate the interpreter's qualifications.

## **3. IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST**

*An interpreter shall refrain from conduct that may give an appearance of personal bias or conflict of interest. The interpreter shall disclose to the court, or attorney, any real bias or interest in the parties or witnesses in a case, or any situation or relationship that may be perceived by the court, any of the parties, or any witnesses as a personal bias or interest in the parties or witnesses in a case. This disclosure shall not include privileged or confidential information. The court shall then determine if appointment of a different interpreter is necessary, thereby releasing the interpreter from the interpreter's obligation in the case. If the court and all parties agree that the interpreter may serve on the case, the interpreter may remain appointed to the case.*

### **Commentary:**

When appointed by the court, the interpreter's "clients" are all the parties and witnesses in the case. Because of this, it is important that the interpreter have no real or perceived interest in any of the parties or witnesses beyond the professional interest of interpreting for the limited English proficiency speaking parties and witnesses in the case.

Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Before providing services, the court interpreter must disclose to all parties and the court any prior involvement in the case or with the parties or witnesses, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure shall not include privileged or confidential information. If, after this disclosure on the record, the court and all parties acknowledge the situation and determine that it is in the best interest of justice for the interpreter to serve in the case, the interpreter may interpret in the case.

The following are circumstances that are presumed to create actual or perceived conflicts of interest for the interpreter where the interpreter needs to declare the conflict of interest before appointment on the record and let the court determine if the interpreter should serve in the case:

- The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
- The interpreter has served in an investigative capacity in the case at issue for any party involved in the case;
- The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
- 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 from which the interpreter may benefit, that would be affected by the outcome of the case;

- The interpreter has been involved in the choice of counsel or law firm for the case.

An interpreter who has performed services for one party in a case should not subsequently perform services for another party in the same case. Thus, it is unacceptable for the same person to interpret for both the defendant and prosecution witnesses. If an interpreter were to do so, it would seriously undermine the relationship of trust that must exist between interpreter and person for whom interpretive services are being provided.

Prior to serving in a proceeding, court interpreters and legal translators should disclose any of the foregoing relationships, interests or involvements to the presiding judge, to all counsel and any pro se party appearing in the case.

Prior to providing professional services in a matter, court interpreters and legal translators should disclose to the attorney or party who has requested their services the nature and extent of all professional services they have rendered to all parties and counsel for any party involved in the matter. Court interpreters and legal translators should disclose to the court and contending parties all instances in which they are acquainted with or related to any juror or witness and the extent of such acquaintance.

The fees and remuneration of a court interpreter and legal translator must never be contingent upon the success or failure of the cause in which she or he has been engaged.

Prior to providing professional services to any attorney or pro se party, court interpreters and legal translators should divulge to all participating counsel any and all professional services that they have previously provided in connection with that matter.

Prior to providing professional services in a court proceeding, court interpreters and legal translators should divulge to the presiding judge, all participating counsel and pro se parties any and all professional services that they previously provided in connection with the matter.

Prior to providing professional services in a court proceeding, court interpreters and legal translators should divulge to the presiding judge, all participating counsel and pro se parties anything else that might affect their ability to serve impartially or might constitute a conflict of interest.

An interpreter who is also an attorney should not serve as the court or proceeding interpreter, as well as the attorney in the same case. An interpreter who is also an attorney may prepare a case without the aid of an additional interpreter; however, it is not required. An attorney who is also an interpreter may not act as the attorney and the interpreter for the non-English speaking party in court during a proceeding.

During the proceeding, the interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. The interpreter should maintain professional relationships with the limited English proficiency speaking parties and witnesses and should limit his or her involvement in the proceedings to that of interpretation. The interpreter should discourage limited English proficiency speaking parties or witnesses personal dependence on the interpreter.

The interpreter appointed to work with an attorney is to interpret what is spoken by the limited English proficiency speaking party in private conferences and conversations between the appointed attorney and the limited English proficiency speaking party. In a case where the court has appointed the attorney and the interpreter, the interpreter may also sit at the counsel table and interpret the proceeding for the limited English proficiency person in a simultaneous interpretation mode.

Though appointed as a member of the legal team, the interpreter should avoid any conduct or behavior that presents the appearance of any personal favoritism toward any of the parties. The interpreter should maintain professional relationships with the attorney and the limited English proficiency party and should limit their

involvement with the limited English proficiency party's personal dependence on the interpreter and should defer all questions the party may have to the attorney.

Though a member of the legal team, the interpreter must not advocate for the limited English proficiency speaking party. Despite the fact that the interpreter is a member of the legal team, the interpreter must still interpret everything that is said in court to the limited English proficiency speaking party. For example, if in a criminal case, the defendant becomes angry during the proceedings and starts to shout obscenities at a witness who is testifying, it is the interpreter's duty to interpret for the court participants everything that the defendant is saying, even if what is being said by the defendant is not helpful to the defense effort.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

During the course of the proceedings, the interpreter should refrain from conversations with parties, witnesses, jurors, attorneys, or with friends or relatives of any party in or near the courtroom, except in the discharge of their official functions. Especially important is that the interpreter, who is 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 the court that may convey an appearance of a special relationship or partiality to any of the court participants other than that of the professional relationship of interpreting for the appointed attorney and the limited English proficiency speaking party.

An example of conversation that would be within the interpreter's duties would be communicating with the limited English proficiency speaking party prior to appointment to the case in an informal setting where the interpreter would listen to accent, rhythm, and the choice of words of the limited English proficiency speaking party. This conversation would help to determine if the interpreter can adequately interpret for the limited English proficiency speaking party.

The interpreter should strive for professional detachment. The interpreter should avoid all verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions.

Should the 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 attorney. The attorney shall either petition the court for the appointment of a different interpreter to the case thereby releasing the interpreter from the interpreter's obligation in the case, or the attorney shall bring the situation to the attention of the court and opposing party, on the record. If the attorney fails to bring the conflict to the attention of the court, the interpreter must notify the court of a potential conflict of interest. This disclosure shall not include privileged or confidential information. If the judge and all parties agree that the interpreter may serve on the case, the interpreter may remain on the case.

#### **4. PROFESSIONAL Demeanor**

*Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible, maintaining a respectful and professional demeanor at all times.*

##### **Commentary:**

The interpreter should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, the interpreter should speak at a rate and volume that enables the interpreter to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. The interpreter should dress in a manner that is consistent with the dignity of the court proceedings.

The interpreter should avoid obstructing the view of any individual involved in the proceeding. An interpreter, who uses sign language or other visual modes of communication, however, must be positioned so that the sign language, facial expressions, and whole-body movement are visible to the person for whom the interpreter is interpreting.

The interpreter shall avoid personal or professional conduct that could discredit the court in or out of the courtroom.

## **5. CONFIDENTIALITY**

*Interpreters shall understand and follow the rules of privileged and other confidential information and 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 his or her duties. It is especially important that the interpreter understands and upholds the attorney-client privilege that requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

The interpreter must also refrain from repeating or disclosing case information obtained by the interpreter in the court of employment.

In the event the 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 the criminal presiding judge or a judge who is not involved in the proceeding (if the presiding judge is involved in the proceeding). At that point, it will become that judge's responsibility to determine what action, if any, should be taken regarding the situation.

## **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.*

## **7. SCOPE OF PRACTICE**

*Interpreters shall limit themselves to interpreting or performing sight translation and shall not give legal advice, express personal opinions to individuals for whom they are interpreting or engage in any other activities that may be construed to constitute a service other than interpreting or translating.*

### **Commentary:**

Because the interpreter is responsible only for enabling others to communicate, the interpreter should limit himself or herself to the activity of interpreting or translating only. The interpreter should refrain from initiating communications while interpreting, unless it is necessary for assuring an accurate and faithful interpretation.

The interpreter may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing his or her 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 the interpreter's own interpreting errors, or notifying the court of reservations about his or her ability to satisfy an assignment competently. In such instances, the interpreter should make it clear that the interpreter is speaking for himself or herself.

The interpreter may convey legal advice only when the interpreter is interpreting legal advice that an attorney is giving. The interpreter should not explain the purpose of forms, services, or otherwise act as a counselor or advisor unless the interpreter is interpreting for someone who is acting in that official capacity.

The interpreter should not personally perform acts that are the official responsibility of other court officials, including, but not limited to, court clerks, pretrial release investigators, indigence verification specialists, or probation counselors.

An interpreter appointed to a case should not perform bilingual paralegal, investigative, or clerical work on the same case. The interpreter shall not claim paralegal, investigative, or clerical work as interpretation in any billings.

## **8. ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE**

*Interpreters shall, at all times, assess 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 court.*

### **Commentary:**

If the communication mode or language of the limited English proficiency speaking person cannot be readily interpreted or becomes difficult to readily interpret, the interpreter should notify the court immediately. The interpreter should notify the court of any environmental or physical limitation that impedes or hinders the interpreter's ability to deliver interpreting services adequately.

e.g., the courtroom is not quiet enough for the interpreter to hear or be heard by the limited English proficiency 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. A sign language interpreter must ensure that he or she 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 sign language.

The interpreter should notify the court of the need to take periodic breaks in order to maintain mental and physical alertness and to prevent interpreter fatigue. The interpreter should recommend and encourage the court to use more than one interpreter in a lengthy proceeding or trial.

Even a competent and experienced interpreter 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, the interpreter should request a brief recess in order to familiarize him or herself with the subject matter. If familiarity with the terminology requires extensive time or more research, the interpreter should inform the judge.

The interpreter is encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables the interpreter to more closely match his or her professional qualifications, skills, and experience to potential assignments, and more accurately assess the interpreter's ability to competently satisfy those assignments.

The interpreter should refrain from accepting a case if the interpreter feels the language and subject matter of that case may exceed his or her skills or capacities. The interpreter should feel no compunction about notifying the court if the interpreter feels unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding witnesses or defendants.

The interpreter should notify the presiding judge of any personal bias he or she may have involving any aspect of the proceedings, including any bias as to the subject matter of the case, or bias against any of the parties in the case.

## **9. DUTY TO REPORT ETHICAL VIOLATIONS**

*Interpreters shall report to the court any actions by the persons that may impede their compliance with any law, any provision of this code, or any other official policy governing court interpretation and sight translation.*

### **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 the court's interpreter coordinator, court administrator, court clerk, or judge to resolve the situation.

#### **10. PROFESSIONAL DEVELOPMENT**

*Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training, education and interaction with colleagues and specialists in related fields.*

##### **Commentary:**

The interpreter must continually strive to increase his or her knowledge of the languages in which the interpreter works professionally, including past and current trends in technical, vernacular, and regional terminology, as well as their application within court proceedings.

The interpreter should keep informed of all statutes, rules of courts, and policies of the judiciary that relate to the performance of the interpreter's professional duties.

The interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.