Recommended Guidelines for the Use of Deaf Intermediary Interpreters

ADMINISTRATIVE OFFICE
OF THE COURTS

COURT INTERPRETERS PROGRAM

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RECOMMENDED GUIDELINES FOR THE USE OF DEAF INTERMEDIARY INTERPRETERS

Courts must be mindful that individuals who are deaf or hard of hearing may not be fluent in American Sign Language (ASL) or may be affected by "numerous environmental factors combined with physiological deafness [that] can result in a juvenile or adult who has limited communication skills and has either limited or no facility communicating in ASL."[1] In these cases, the court must take other measures to ensure that the interpretation takes place in a manner that protects an individual's right to meaningfully participate in the proceedings.

California Evidence Code section 754(g) provides that courts shall, in consultation with a party or witness who is deaf or hard of hearing, appoint an "intermediary interpreter" to assist in providing accurate interpretation between an individual party or witness who is deaf or hard of hearing and a qualified interpreter[2] when that party or witness is not fluent in ASL.

An intermediary interpreter is by practice, if not by definition, deaf or hard of hearing. These guidelines relate only to intermediary interpreters who are deaf or hard of hearing, and the term "intermediary interpreter" is used interchangeably with "deaf interpreter" (DI). Deaf interpreters always function as part of a team with a certified ASL court interpreter who is enrolled with the Judicial Council and appears on the Master List.

Since Evidence Code section 754 does not define the qualifications required of a DI, these guidelines will help courts select and use DIs in proceedings.

Testing and Qualification Entities and Interpreter Terminology

The Registry of Interpreters for the Deaf (RID) is the only authorized testing entity for certified court interpreters in American Sign Language, as required under Evidence Code section 754(f) and (h), and is the only testing entity currently offering a certification for deaf interpreters. RID provides a number of different certifications, including the SC:L (the Specialist Certificate: Legal, specified by the Judicial Council for ASL interpreters) and a generalist certificate for deaf interpreters, the CDI (Certified Deaf Interpreter), which is not specific to court work. An interpreter who holds the CDI is referred to as a "certified deaf interpreter" (CDI) in the Deaf community but is not a certified court interpreter in California. The same is true for the holder of a CLIP-R (Conditional Legal Interpreting Permit-Relay), a legal provisional certification provided by RID for deaf interpreters; a holder of the CDI or the CLIP-R is not recognized as a certified court interpreter in California but only as holding an RID specialist certificate. "CDI" is the common term used for deaf intermediary interpreters with RID certification, and "DI" is the common term for a deaf intermediary interpreter who may or may not be RID certified.

When a Court Needs a Deaf Interpreter

In order to facilitate effective communication, the court will need a DI when any of the following situations arise. The deaf or hard-of-hearing person:

- Uses idiosyncratic, nonstandard signs or gestures, commonly referred to as "home signs," that are unique to a family
- Uses a foreign sign language
- Uses signs particular to a given region, ethnicity, or age group[3]
- Relies on uniquely deaf experiences that are unfamiliar to the hearing interpreter
- Has no language foundation because of no or inadequate education

In addition, a deaf interpreter is presumed needed when the deaf or hard-of-hearing person:

- Is dealing with mental health issues, or
- Is a juvenile.

Informing the Court of a Need for a Deaf Interpreter

Generally, the certified ASL court interpreter is the first person who will assess the need for a DI and inform the court. An intermediary interpreter may also be requested by "the court or other appointing authority . . . in consultation with the individual who is deaf or [hard of hearing] or his or her representative ." [4]

Finding a Deaf Interpreter

Once it is determined that a DI is needed, the court should contact its local interpreter coordinator or Americans With Disabilities Act coordinator, depending on the court, for assistance in finding and scheduling a deaf interpreter. The assigned certified ASL court interpreter may be a good resource for finding an appropriate DI.

Deaf Interpreter Qualifications for Working in the Courts

Ideally, an intermediary interpreter will have the following qualifications, in order of preference:

- A Certified Deaf Interpreter certificate, awarded by the Registry of Interpreters for the Deaf (RID), and the CLIP-R, or any legal certification that might be established by California's certifying entity in the future
- A Certified Deaf Interpreter certificate, familiarity with the California Court Interpreters Professional Code of Conduct, and at least introductory training in legal interpretation by an approved RID sponsor
- Equal preference is given to:
  - A CDI with no legal training
  - Working experience as a noncertified deaf interpreter (no CDI), familiarity with the California Court Interpreter's Professional Code of Conduct, and at least introductory training in legal interpretation by an approved RID sponsor

Proceedings and Individuals That Require Use of a Deaf Interpreter

An intermediary interpreter shall be provided in all civil and criminal actions in which the service is needed for effective communication and in which the deaf or hard-of-hearing individual is a party or witness in a case. These include traffic or other infractions, small claims court proceedings, juvenile court proceedings, family court proceedings, hearings to determine mental competency, and court-ordered or court-provided alternative dispute resolution, including mediation and arbitration.

A deaf or hard-of-hearing individual who does not use sign but has command of English may be accommodated through other means, such as real-time captioning or the use of assistive listening devices.

How Courts Use Intermediary Interpreters

An intermediary interpreter is deaf or hard of hearing and will work with the certified ASL court interpreter as part of a team. The process resembles a relay interpretation with some modifications, described as below:

- The ASL interpreter takes the spoken English information and interprets it into standard ASL for the intermediary interpreter or DI. This process is done using either the consecutive or simultaneous mode of interpretation.

- The DI takes the signed information and relays it to the deaf or hard-of-hearing person, using the unique communication method of that person. This is usually done in the consecutive mode of interpretation.
- When the deaf of hard-of-hearing person is communicating, the DI takes the information expressed by the unique communication method of that person and relays it to the ASL interpteter in standard ASL. This is usually done in consecutive mode.
- The ASL interpreter translates the deaf interpreter's standard ASL into spoken English. This is done using either the consecutive or simultaneous mode of interpretation.
- A DI may do sight translations directly from the printed source or through the relay process with an ASL interpreter. Each ASL/DI interpreter team determines the best approach in a given situation.
- The DI sits or stands facing the deaf or hard-of-hearing person; the ASL interpreter sits or stands facing the intermediary interpreter.

Issues a Court Should Think About in Advance

The process required to establish communication, particularly during the first meetings between the ASL/DI team and the deaf or hard-of-hearing person, moves particularly slowly. The court should allot a period two to four times longer than it would for a noninterpreted proceeding.

- Alternative and nonlinguistic methods of communication, such as drawings or hand gestures, may be used to establish communication.
- Because consecutive interpretation requires frequent pauses, judges and attorneys should agree on a system whereby an interpreter can ask for pauses. While simply slowing down the rate of speech does *not* help the interpreters, pausing often between complete thoughts is crucial.
- The flow or speed of an interpretation may pick up significantly once communication has been well established or depending on the speaker or purpose of the interpretation (i.e., witness testimony, attorney-client communication, etc.).

How the Court Can Help the Proceedings Move Smoothly

Planning ahead for the use of deaf interpreters in court is highly recommended for several reasons.

- There is a scarcity of deaf interpreters qualified for court work throughout the country, as well as in California. Scheduling in advance is highly recommended.
- Allowing for, or even requiring, a preappearance interview between the interpreter team and the deaf or hard-of-hearing person is likely to save hours of time and is necessary if that interpreter team has not previously worked with the individual.
- Similarly, providing an opportunity for the ASL/DI team to review the evidence, particularly written evidentiary documents, including maps, photos, etc., before the proceeding will probably help move things along.
- Communication where the deaf or hard-of-hearing person is a juvenile or has mental health issues should be presumed to require an ASL/DI team because the individual's linguistic ability will probably not be fully developed. Many hours of the court's time will be saved by starting out with a full team.

Creating Staff Interpreter Positions

Although deaf interpreters and ASL interpreters are excluded from Senate Bill 371 (Stats. 2002, ch. 1047), courts that often use ASL/DI teams in the courtroom may benefit financially and otherwise by creating part-time or full-time ASL staff interpreter positions for the following reasons:

- A staff ASL interpreter can help courts use an ASL/DI team effectively and assist in finding DIs.
- For courts contracting ASL interpreters at higher, negotiated rates, paying a regular staff interpreter salaried wages may significantly reduce court costs.

Courts using the regular services of a DI may also benefit by creating a part-time or full-time staff DI position for the following reasons:

- A staff DI, even a part-time one, can give priority to the court calendar; a contractor often has another, primary profession and little availability for courts.
- Consistent use of an intermediary interpreter reduces court time because it aids communication between the interpreter team and the deaf or hard-of-hearing individual.
- For courts contracting DIs at higher, negotiated rates, employing a staff DI at salaried wages may significantly reduce court costs.

Endnotes

1. "Guidelines for Proceedings That Involve Deaf Persons Who Do Not Communicate Competently in American Sign Language," May 2000 (Revised February 2004), Language Services Section Special Programs Unit, Programs and Procedures Division, Office of Trial Court Services, Administrative Office of the Courts, Trenton, New Jersey.

2. California Evidence Code section 754(f) defines "qualified interpreter." Although the code uses the terminology "hearing impaired," this document uses "hard of hearing" as that term is preferred by both deaf and hard-of-hearing members of the community. No change in definition or substance is intended nor should one be attributed to this change in phraseology.

3. "Use of a Certified Deaf Interpreter," 1997, Registry of Interpreters for the Deaf, Professional Standards Committee, Alexandria, Virginia.

4. California Evidence Code section 754(g).

5. In 2002, the Trial Court Interpreter Employment and Labor Relations Act (Sen. Bill 371) established an employment model for spoken-language court interpreters. Nothing in SB 371 precludes courts from hiring qualified ASL or deaf interpreters as staff.

For additional information about using DI and ASL interpreters, visit *www.nciec.org/projects/legal.html*.

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