

Article for DCBA Newsletter

Working With Interpreters: Tips for Attorneys

Language is the tool of the courts. English is the language of our courts. Without a skilled interpreter, a party who speaks or hears no English cannot listen to the testimony, present their case, challenge the evidence or consult with an attorney. A party who cannot communicate is being denied access to justice as surely as if the door was locked against them.

*Hon. Elsa Lamelas,
Milwaukee Circuit Court, Br 23*

It is not easy to be a professional, competent court interpreter. It requires great skill, experience and an extensive knowledge of the court system. To be bilingual or self-taught is not enough. The Supreme Court and Director of State Court have recognized the importance of this critical service. With the goal of developing a statewide roster of trained, tested and eventually certified court interpreters, the court has established training programs for interpreters and judges. But it is important that attorneys learn the same concepts and principles. Indeed, attorneys may have the greatest interest in ensuring that correct interpretation takes place. Only if everyone works together can we improve the level of interpreting services in court and help ensure full and equal access.

The statutes were significantly changed in 2001 (see §885.38 Wis. Stats.). Additional enhancements have been introduced in the Governor's budget, although at this time nothing is final.

Equally important has been the adoption of Chapter 63 of the Supreme Court Rules (available on the Court's website, www.wicourts.gov/circuit/courtinterpreter.htm). This established a professional code of conduct for court appointed interpreters, effective July 1, 2002. This code of ethics has become the foundation for interpreter and judicial training.

There are ten canons to the code: Accuracy and completeness; Representation of qualifications; Impartiality and avoidance of conflict of interest; Professional demeanor; Confidentiality; Restriction on public comment; Scope of practice; Assessing and reporting impediments to performance; Duty to report ethical violations; and, Professional development. While all of these canons are important for interpreters, and you are encouraged to review them all, the following may be of greater import to attorneys who work with interpreters in court.

SCR 63.01 Accuracy and completeness: Interpreters are being instructed to interpret without additions or omissions. This includes a prohibition against summarizing, paraphrasing, editing or simplifying judicial or attorney statements to 'help' the client. It also prohibits erasing bad manners, grammar, slang or profanity from the client's speech, or improving the register of the client's speech to give an appearance of greater education or sophistication. If the client is sarcastic, swears, repeats or contradicts himself that is exactly what should be interpreted. Equally, if the client is clear, concise, articulate that is the message the interpreter must convey.

SCR 63.03 Impartiality and avoidance of conflict of interest: When appointed by the court, interpreters serve as officers of the court. Like jurors, they must be, and appear to be, neutral and unbiased. Not only should interpreters disclose prior contact with the client or any interest in the outcome of the case, they must also refrain from socializing with counsel or the client and converse only as part of their duties in order to prevent the appearance of favoritism or bias. However, an introductory meeting between the interpreter, client and attorney, and a brief, non-case related conversation to ensure communication is taking place is appropriate.

SCR 63.05 Confidentiality: The exception to privileged communication is when the interpreter becomes aware, during the course of court proceedings, of information that indicates imminent harm to someone or relates to a crime being committed. In this circumstance interpreters are being advised to disclose the information to the appropriate authority. Otherwise interpreters must understand and uphold the attorney-client privilege.

SCR 63.07 Scope of Practice: This is the area where the most mistakes are made – usually from the best of intentions. Interpreters want to help. But court appointed interpreters shall only interpret. They shall not give procedural, personal or legal advice – even if they know the answer to a client’s question. In training interpreters are being urged to make a brief statement to clients and counsel at the start of a case describing the limits of their duties to prevent misunderstandings and inappropriate questions or requests by the attorney and/or client. It is suggested interpreters explain that to answer such questions is contrary to the code of ethics. Instead, the interpreter should offer to locate the client’s attorney or the correct court official and interpret the conversation.

Attorneys must not ask interpreters to explain forms, procedures, to escort the client to the payment window on their own, or in any other manner to assume the duties of the attorney or court. Nor should attorneys attempt to question interpreters about statements made by the client or their impressions of the client. Think of the interpreter as solely a conduit. If a court interpreter who has, in the past, agreed to perform these services for you should now refuse based on the code of ethics, respect that position. They are not paralegals, hallway lawyers or community advocates and should neither take these roles on themselves nor be asked to do so by court staff or counsel. Interpreters have done their job well when they place a person with limited English proficiency on an equal footing with English speakers: not better, not worse.

SCR 63.08 Assessing impediments to performance: There are many aspects to this cannon. How it will most likely affect attorneys is that the interpreter may ask the court to remind counsel to slow their speech, to talk one at a time, to address questions directly to the witness - not the interpreter, and to use first person. Interpreters may also occasionally request the court’s permission to use a dictionary, for clarification of a legal term, or for an attorney to re-phrase a question if an equivalent word is not available in the non-English language. If not abused, this is the mark of a professional, conscientious interpreter.

Attorneys who find themselves working with court interpreters are encouraged to read and become familiar with the entire code of ethics. Interpreters, no matter how scrupulous, cannot by themselves be expected to change ingrained habits and regrettable past practices of court

interpreting. Everyone in the court has a role to play in improving interpreting services. While it is acknowledged that the profession of court interpreting is in its infancy in the Wisconsin courts and that quality interpreter resources are scarce, judges are being urged to appoint the most qualified interpreters available. If attorneys set high expectations, question interpreter credentials and ask for the best, it will promote continued improvement in interpreting. Successful court interpreting takes place with full, accurate exchange of content, context and meaning. Your assistance is needed and greatly appreciated