

KetKm
KFT
529.7
596
A3
no.3

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Adoption)
)
 of)
)
 the Policies for Interpreted)
 Proceedings in the Courts of)
 the State of Hawai'i)
)

L. HAKAGAWA
CLERK SUPREME COURT

JUN 22 8:32 AM '95

FILED

ORDER ADOPTING THE POLICIES FOR INTERPRETED
PROCEEDINGS IN THE COURTS OF
THE STATE OF HAWAI'I

IT IS HEREBY ORDERED that the attached Policies for Interpreted Proceedings in the Courts of the State of Hawai'i are adopted, effective immediately.

DATED: Honolulu, Hawai'i, June 22, 1995.

E. J. ...
Chief Justice



POLICIES FOR INTERPRETED PROCEEDINGS IN THE COURTS
OF THE STATE OF HAWAI'I

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 speech or hearing impairment. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. When interpreters act as officers of the court, they help assure that such persons enjoy equal access to justice and that court proceedings function efficiently and effectively.

These policies are offered to give our courts, those who appear before our courts, and those who are working to improve language interpretation in our courts, a guide to providing needed language services. Application of these policies must be considered in the context of state and federal constitutional rights and other relevant state and federal law.

INTERPRETED PROCEEDINGS

I. STANDARDS FOR DETERMINING THE NEED FOR A COURT INTERPRETER

(A) **When an interpreter is needed.** An interpreter is needed if, upon examination by the court, (1) a party or witness is unable to speak English so as to be understood directly by counsel, court, and jury, or (2) if a party is unable to hear, understand, speak and/or use English sufficiently to comprehend the proceedings and to assist counsel in the conduct of the case. One interpreter should interpret witness testimony for the court. Additional, separate interpreters may be needed for each non-English speaking party.

(B) **When an Examination is Required.** If it appears that a party's or witness' primary language is not English or that a party or witness may not hear, understand, speak and/or use English well enough to participate fully in the proceedings, the court, with or without a motion, should conduct an examination on the record to determine whether a court interpreter is needed. After the examination, the court should state its conclusion on the record. If the court concludes an interpreter is needed, the case file should be clearly marked to ensure that an interpreter will be present when needed in any subsequent proceeding.

(C) **Examination of Party or Witness.** The examination of a party or witness to determine if an interpreter is needed should usually include questions about the following:

(1) Identification (for example: name, address, birthdate, age, place of birth);

(2) Active vocabulary in vernacular English (for example: "How did you come to the court today?" "What kind of work do you do?" "Where did you go to school?" "What was the highest grade you completed?" "Describe what you see in the courtroom." "What have you eaten today?"). Questions should be phrased to avoid "yes-no" replies;

(3) The court proceedings (for example: the nature of the charge or the type of case before the court, the purpose of the proceedings and function of the court, the rights of a party or criminal defendant, and the responsibilities of a witness).

(D) **Qualifications of Interpreters.** Courts should use interpreters who can (a) understand terms generally used in the type of proceeding before the court, (b) explain these terms in English and the other language being used, and (c) interpret these terms into the other language being used. If a list of recommended interpreters is not available, or if it appears an interpreter cannot understand and interpret the terms used in the

proceeding, the judge should conduct a brief examination of the interpreter to determine if the interpreter is qualified to interpret in the proceeding. When conducting the examination the judge should, if possible, seek the assistance of an interpreter whose qualifications have been established.

(E) When a Sound Recording of Interpreted Testimony is Needed. Upon the motion of a party, the judge shall determine whether to require electronic sound recording of a judicial proceeding in which an interpreter is used under this section. The electronic sound recording shall record both the testimony of the witness and the interpreter's interpretation. In making this determination, the judge shall consider, among other things, the qualifications of the interpreter and the interpreter's prior experience in interpretation of court proceedings; whether the language to be interpreted is one of the languages for which the court has qualified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, the presiding judge shall require electronic sound recording of any portion of the proceeding in which an interpreter is used.

II. INSTRUCTING PARTICIPANTS ABOUT PROCEDURE

In interpreted proceedings the court shall instruct the participants about the procedure to be followed. These instructions may be given either in writing or orally and should usually include:

(A) Instructing Interpreters.

(1) A preappearance interview should be held with the party or witness under the supervision of the court to enable the interpreter to become familiar with speech patterns and linguistic traits and to determine what technical or special terms may be used. Pending proceedings should not be discussed with the party unless the party's counsel is present or with a witness unless counsel for all parties are present.

(2) During the preappearance interview with a non-English speaking witness, the interpreter should give the following instructions on procedure:

(i) Speak in a loud, clear voice so that the entire court and not just the interpreter can hear.

(ii) All responses should await the full interpretation of the question in English, and then be directed to the person asking the question, not to the interpreter.

(iii) All questions should be directed to counsel or to the court and not to the interpreter. Do not seek advice from or engage in discussion with the interpreter.

(3) During the preappearance interview with a non-English speaking party, the interpreter should give the following instructions on the procedure to be used when the party is not testifying:

(i) The interpreter will interpret all statements made that are a part of the record in the case.

(ii) All questions should be directed to counsel for the party. The interpreter will interpret all questions to counsel and the responses. Do not seek advice from or engage in discussion with the interpreter.

(4) Communications between counsel and client are not to be disclosed.

(5) Interpreters shall not give legal advice to a party or witness. Legal questions should be referred to the attorney for the party or to the court.

(6) All statements made by any witness should be interpreted, including statements or questions to the interpreter. No summary of any testimony should be made except on instruction by the court.

(7) The court should be informed if the interpreter needs to consult a dictionary or other linguistic reference aid or is unable to interpret a word, expression, or special terminology.

(8) All words, including slang, vulgarisms, and epithets, should be interpreted to convey the intended meaning.

(9) All statements made in the first person should be interpreted in the first person. For example, a statement or question should not be introduced with the words, "He says"

(10) All inquiries or problems should be directed to the court and not to the witness or counsel. In unusual circumstances, the interpreter may request permission to approach the bench with counsel to discuss the problem. The court may instruct the jury that no adverse inference may be drawn from the interpreter's request.

(11) The interpreter should be positioned near the witness or party but should not block the view of the judge, jury, or counsel.

(12) The court should be informed if the interpreter becomes fatigued during the proceedings.

(13) An interpreter who is to interpret for a party at counsel table should speak loudly enough to be heard by the party or counsel but not so loudly as to interfere with the proceedings.

(14) Whenever an objection is made, the interpreter shall interpret everything that was said up to the objection and instruct the witness by hand gesture not to speak until the court has ruled on the objection. The court may at that time explain to both the jury and the witness that the interpreter has been instructed not to interpret until the

court rules on the objection pending, in order that the interpreter not lose his or her credibility.

(15) Each court interpreter shall be sworn for the record before engaging in the interpretation of a proceeding as follows: "Do you solemnly swear or affirm that you will interpret accurately and impartially to the best of your ability, in the case now pending before this court?"

(B) Instructing Counsel.

(1) All questions by counsel examining a witness with an interpreter present should be directed to the witness and not to the interpreter. For example do not say, "Ask him if

....."
(2) If counsel understands both languages and disagrees with the interpretation, any objection should be directed to the court and not to the interpreter. Counsel should ask permission to approach the bench to discuss the problem.

(3) If counsel believes that a prospective interpreter lacks the qualifications necessary to serve as an interpreter in the matter before the court, counsel may be permitted to conduct a brief supplemental examination of the interpreter before the court decides whether to appoint the interpreter.

III. CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS

Rule 1. Court interpreters shall act strictly in the interests of the court they serve.

Rule 2. Court interpreters shall reflect proper court decorum and act with dignity and respect toward the officials and staff of the court and all other participants in the proceedings.

Rule 3. Court interpreters shall avoid professional or personal conduct which could discredit the court.

Rule 4. A court interpreter shall not disclose privileged communications between counsel and client. A court interpreter shall not make statements about the merits of the case during the proceeding. Court interpreters, except upon court order, shall not disclose confidential information about court cases obtained while performing interpreting duties.

Rule 5. A court interpreter shall disclose to the judge and to all parties any actual or apparent conflict of interest. Any condition that may interfere with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action or others significantly involved in the case, or if the interpreter has an interest in the outcome

of the case. An interpreter shall not engage in conduct creating the appearance of bias, prejudice, or partiality.

Rule 6. Court interpreters shall work unobtrusively with full awareness of the nature of the proceedings.

Rule 7. Court interpreters shall interpret accurately and faithfully without indicating personal bias and shall avoid even the appearance of partiality.

Rule 8. Court interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, and parties and their families, and by avoiding contact with jurors. This should not limit, however, appropriate contacts necessary to prepare adequately for their assignment.

Rule 9. A court interpreter shall not give legal advice to parties and witnesses, nor recommend specific attorneys or law firms. Court interpreters shall refrain from giving advice of any kind to any party or individual and from expressing personal opinion in a matter before the court.

Rule 10. Court interpreters shall perform to the best of their ability to assure due process for the parties, accurately state their professional qualifications and refuse any assignment for which they are not qualified or under conditions which substantially impair their effectiveness.

A court interpreter's best skills and judgment shall be used to interpret accurately without embellishing, omitting or editing. Court interpreters shall preserve the level of language used, and the ambiguities and nuances of the speaker and the language used. They shall also correct any error of interpretation, and shall request clarification of ambiguous statements or unfamiliar vocabulary and analyze objectively any challenge to their performance. Interpreters shall call to the attention of the court any factors or conditions that adversely affect their ability to perform adequately.

Rule 11. Court interpreters shall accept no remuneration, gifts, gratuities, or valuable consideration in excess of the authorized compensation for the performance of their interpreting duties, and shall avoid conflicts of interest or the appearance thereof.

Rule 12. Court interpreters should support other court interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

Rule 13. Court interpreters shall not take advantage of knowledge obtained in the performance of duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

Rule 14. A court interpreter performing interpretation services in connection with any state court proceeding agrees to be bound by this Code, and understands that appropriate sanctions may be imposed by the court for willful violations.

Rule 15. A court interpreter should, through continuing education, maintain and improve his or her interpreting skills and knowledge of procedures used by the courts. A court interpreter should seek to elevate the standards of performance of the interpreting profession.

Rule 16. Court interpreters should inform the court of any impediment to the observance of this Code or of any act by another in violation of this Code.