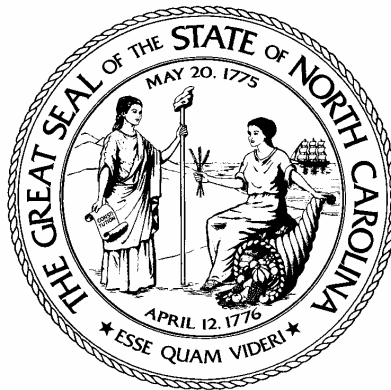


POLICIES AND BEST PRACTICES FOR THE USE OF FOREIGN LANGUAGE INTERPRETING AND TRANSLATING SERVICES IN THE NORTH CAROLINA COURT SYSTEM



**Sarah Parker
Chief Justice
Supreme Court of North Carolina**

**Judge Ralph Walker
Director
Administrative Office of the Courts**

February 2007

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MEMORANDUM

TO: Superior Court Judges
District Court Judges
Clerks of Superior Court
District Attorneys
Public Defenders
Trial Court Administrators
Trial Court Coordinators

FROM: Judge Ralph Walker

DATE: February 1, 2007

RE: Policies and Best Practices for the Use of Foreign Language
Interpreting and Translating Services in the North Carolina Court
System

During the 2006 legislative session, the General Assembly authorized the Administrative Office of the Courts (AOC) to adopt mandatory policies and procedures for the appointment and payment of foreign language interpreters (G.S. 7A-314 (f) and G. S. 7A-343 (9c)). These policies and procedures are to be applied uniformly throughout the General Court of Justice. **Interpreters for the deaf are not covered under these new policies.**

Accordingly, we have revised the previous guidelines for the use of foreign language interpreters to reflect the new policies and procedures. The purpose of these policies and best practices is to facilitate the efficient use of competent and ethical foreign language interpreters and translators in court proceedings.

The guidelines address a number of areas related to foreign language interpreting and translating in the court system, including the following:

- Registration and classification
- Appointment and scheduling
- Code of conduct and ethics for interpreters

- Best practices for court interpreters
- Best practices for court officials using court interpreters
- Compensation
- Certification
- Suspension, Revocation, or De-Certification

We believe that these policies and best practices will assist in improving the quality and efficiency of interpreting in the North Carolina courts, and contribute to a just system.

PART ONE

GENERAL INFORMATION

Section 1.1 Scope

This manual contains the policies and best practices for the use of foreign language interpreting and translating services adopted by the Director of the Administrative Office of the Courts (AOC) pursuant to G.S. 7A-343 (9c).

Section 1.2 Purpose

The purpose of this manual is to facilitate the efficient use of competent and ethical foreign language interpreters and translators in court proceedings. Interpreting and translating in court requires specialized knowledge of grammar, vocabulary, legal and other specialized terminology, slang, idioms and dialectal variations. It also requires special skills in the areas of memory, comprehension, attentiveness, listening and multi-tasking.

Section 1.3 Definitions

The following terms will be used throughout this manual:

- **NES:** Non-English speaking person
- **Interpreting:** Rendering statements spoken in one language into statements spoken in another language.
- **Translating:** Converting a written text from one language into the written text of another language.
- **Sight translating:** Reading a written document silently in one language and rendering it orally in another language.
- **Consecutive interpreting:** Interpreting a person's statement after that person has stopped speaking. For example, an interpreter will interpret an attorney's question to a NES witness after the attorney has completed the question. The interpreter will then interpret the NES witness' response after the witness has finished answering.
- **Simultaneous interpreting:** Interpreting continuously at the same time a person is speaking rather than waiting for the person to finish. For example, an interpreter will interpret an attorney's closing argument for a NES defendant as the attorney is making the argument.
- **AOC Foreign Language and Translation Services Registry (AOC FLTS Registry):** A list of persons who are either certified by the North Carolina Administrative Office of the Courts, or who have otherwise been approved to provide interpretation/translation services before the courts of the North Carolina Judicial Department.

PART TWO

REGISTRATION AND CLASSIFICATION OF FOREIGN LANGUAGE INTERPRETERS AND TRANSLATORS

Section 2.1 Mandatory Registration

Effective February 1, 2007, foreign language interpreters/translators are required to register with the North Carolina Administrative Office of the Courts (AOC) in order to provide interpreting/translating services to the courts. Based on information provided by the registrant and a criminal history record check, the Director of the AOC or his/her designee shall determine if the registrant is eligible to be included on the AOC Foreign Language and Translating Services (FLTS) Registry. Only persons included on the registry shall be compensated by the AOC for providing interpreting and translating services, unless otherwise authorized by the Director of the AOC or his/her designee.

Section 2.2 Eligibility to Provide Interpreting Services

A. Criminal Record

Based on information provided by the registrant, the Director of the AOC or his/her designee shall perform a criminal background check. At the time of registration, a registrant who within ten years of registering, was convicted of a violent felony (Class A-E), a Class A1 misdemeanor, or a crime involving moral turpitude (e.g. fraud, unauthorized practice of law), shall not be eligible for the registry. Other criminal convictions shall be reviewed on a case-by-case basis. A person who is eligible for the AOC FLTS Registry, who is subsequently charged with or convicted of a violent felony (Class A-E), a Class A1 misdemeanor, or a crime involving moral turpitude (e.g. fraud, unauthorized practice of law), is required to report the charge to the Manager of Interpreting Services in the Court Programs and Management Services of the AOC.

B. Ethical and Professional Conduct

A person who is eligible for the AOC FLTS Registry is required to agree to follow the ethical and professional behavior policies outlined in this manual (Part Four). Substantiation of unethical or unprofessional conduct shall result in removal from the AOC FLTS Registry (Part Nine).

Section 2.3 Classification of Court Interpreters

Based on proficiencies documented by attendance at AOC approved classes and scores on standardized written and oral tests administered by the North Carolina AOC or by the Federal Courts, the Director of the AOC or his/her designee shall assign a classification level to the registrant. The registrant's classification level will be amended by the Director of the AOC or his/her designee when the

registrant gains higher proficiencies. The registrant's rate of pay shall correlate to his/her classification level. It is in the discretion of the AOC Director or his/her designee to give credit for written or oral examinations administered in other states; there is no automatic reciprocity for accepting test results or certification from another state.

PART THREE

APPOINTMENT AND SCHEDULING OF FOREIGN LANGUAGE INTERPRETERS

Section 3.1 Authority of the Court

The court has the inherent authority to appoint a foreign language interpreter when, in the discretion of the court, an interpreter is necessary. State v. Torres, 322 N.C. 440, 443-44, 368 S.E.2d 609, 611 (1988). An interpreter is necessary when a person's "normal method of communication is unintelligible to those in the courtroom." State v. McLellan, 56 N.C. App. 101, 102, 286 S.E.2d 873, 874-75 (1982). The same principles hold true for the appointment of a translator. See Wise v. Short, 181 N.C. 320, 322-23, 107 S.E. 134, 136 (1921).

In determining whether an interpreter is necessary, the court should ask the non-English-speaking person open-ended questions requiring elaboration rather than questions requiring a simple "yes" or "no" answer. For example, the court could ask the person about his or her work, education, family, or other similar matters.

Section 3.2 Appointment and Scheduling an Interpreter

Spanish Language

The AOC shall publish an AOC FLTS Registry of persons who are authorized to provide interpreting/translating services to the courts. Appointing and scheduling interpreters for court shall be a local court function. **The court shall give preference to an AOC certified interpreter/translator whenever possible, particularly in superior court or district court trials. However, if an AOC certified interpreter/translator is not reasonably available, the court may use another registered interpreter, giving preference to the next highest classified interpreter/translator that is available.** If no interpreter on the AOC FLTS Registry is available, and the court locates a competent interpreter, the court shall advise the person to contact the AOC Court Interpreting Service Program to become registered; the interpreter shall not be compensated until he/she is registered.

When a registered interpreter is not readily available, the court should avoid acting as an interpreter itself or allowing an attorney or law enforcement officer participating in the case to serve as an interpreter. First, the judge or attorney may not be able to perform his or her duties at the optimum level if he or she is attempting to serve dual roles during the proceeding. Second, serious conflict of interest concerns arise when a judge serves as both fact finder and interpreter, or when an attorney serves as both advocate and interpreter. Similar conflict of interest concerns arise for law enforcement officers serving as court interpreters.

In some cases, the NES person may prefer to use a volunteer interpreter of his or her own who is not on the AOC FLTS Registry, for example a family member or friend. The court should not use a bilingual volunteer to serve in the capacity of court interpreter unless that person's qualifications to provide interpreting/translating services have been evaluated. In determining whether to allow a family member or friend to volunteer as an interpreter, the court should consider the following:

- The person's native language
- How the person learned English (or the foreign language if the person is a native English speaker)
- The person's education and any formal study of English or the foreign language
- The person's mastery of English and the foreign language
- The person's knowledge of idioms, slang, and dialectal variations
- The person's knowledge of legal or other specialized terminology
- Any training or experience the person has in interpreting in other contexts
- Whether the person is familiar with the Code of Ethical Conduct for Court Interpreters (See Part Four)
- Whether the person is able to interpret simultaneously as well as consecutively

Foreign Languages Other Than Spanish

When a foreign language interpreter is needed for a language other than Spanish, the court official or court staff will contact AOC staff by email or telephone for assistance. AOC staff will maintain a list of registered individuals and companies who employ interpreters for languages other than Spanish. AOC staff shall contact such an interpreter, authorize a pay rate, and notify the court official or court staff, or will authorize local staff to do so.

If a court official or court staff identifies a competent interpreter for a foreign language other than Spanish, the court shall seek authorization to appoint that interpreter by (1) requiring the interpreter to complete the AOC registration form, and (2) submitting the registration form to the Manager of Interpreting Service in the Court Programs and Management Services Division of the AOC in advance of any agreement for providing services. The registration form is available through the nccourts.org Web site and this process can usually be completed within 48 hours.

Section 3.3 Use of Form AOC-G-107 (Motion, Appointment and Order Authorizing Payment of Interpreter)

Effective February 1, 2007, district court judges and magistrates will no longer complete a G-107 form for the use of foreign language interpreters/translators.

District court judges and magistrates shall schedule an interpreter in a case, as needed, using the AOC Registry of Foreign Language Interpreters.

Superior Court judges shall continue to use the G-107 Form and submit it to the AOC Controller's Office for Payment. The rate of payment shall be determined by the classification level authorized by the AOC for each interpreter/translator.

Section 3.4 Removal or Withdrawal of an Interpreter from a Case

If the court subsequently determines that an interpreter is not competent, has engaged in misconduct, or is otherwise unable to perform the necessary interpreting services, or that the person does not in fact need an interpreter, the court may in its discretion remove the interpreter. See G.S. 8C-1, Rule 604. ("An interpreter is subject to the provisions of these rules [i.e., the Rules of Evidence] relating to qualification as an expert . . ."); see also State v. Overton, 60 N.C. App. 1, 36-37, 298 S.E.2d 695, 716 (1982) (explaining that an order appointing an interpreter may "be altered upon a showing of changed circumstances"), disc. rev. denied and appeal dismissed sub nom. State v. Ruviwat, 307 N.C. 581, 299 S.E.2d 652 (1983). Similarly, an interpreter who becomes concerned about his or her ability to interpret in a particular proceeding or for a particular person should inform the court immediately.

If the removal of the interpreter by the court is due to misconduct, the court shall report the misconduct to the AOC in writing, and the AOC will begin an investigation to determine if suspension, revocation, or de-certification action is needed (See Part Nine).

Section 3.5 Oath

Rule of Evidence 604 contemplates that a court interpreter will swear or affirm that he or she "will make a true translation." G.S 8C-1, Rule 604 . Districts may want to adopt a more expansive oath by local rule. For example, a guidebook on interpreting issues published by the National Center for State Courts suggests the following oath:

Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and [the Code of Ethical Conduct for Court Interpreters adopted by the Administrative Office of the Courts], follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?

William E. Hewitt, Court Interpretation: Model Guides for Policy and Practice in State Courts 149 (1995).

Section 3.6. Need for More than One Interpreter

The demands of courtroom interpreting, particularly simultaneous interpreting, may cause an interpreter to tire rather quickly. Accordingly, for lengthy or complex matters, the court may choose to appoint more than one interpreter. The two interpreters then may spell each other as they become fatigued.

As a general rule, the court should consider securing more than one interpreter for any proceeding likely to last for two or more hours. It is also worth noting that even the best interpreters may be able to provide simultaneous interpreting services continuously for only thirty to forty-five minutes.

Section 3.7 Appointment by Session Rather than By Case

Some districts may choose to appoint a single interpreter for an entire session of court rather than appointing a different interpreter for each case heard during the session that requires an interpreter. For example, some districts now appoint one interpreter to remain available in the courtroom for an entire day or half-day of Criminal District Court. This interpreter assists any indigent defendants or witnesses during the course of the day who need interpreting services. It is therefore unnecessary to delay a case until an interpreter can be located or to pay multiple interpreters for time spent waiting for their cases to be called.

PART FOUR

CODE OF CONDUCT AND ETHICS OF A FOREIGN LANGUAGE INTERPRETER/TRANSLATOR

Section 4.1 General Conduct and Responsibilities

At all times, the court interpreter/translator shall conduct himself or herself in a manner consistent with the following general conduct and principles:

- (a) Interpreters are officers of the court and shall conduct themselves in a courteous, professional and responsible manner.
- (b) Interpreters should know and observe the established protocol, rules, and procedures when delivering interpreting services. When speaking in English, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves.
- (c) Interpreters should dress in a manner that is consistent with the dignity of the proceeding of the court.
- (d) Interpreters shall refrain from making any type of referrals (e.g. to bondsmen, attorneys).
- (e) Interpreters shall adhere to all instructions given by the court in which their services are being used.
- (f) Interpreters shall accurately represent their education, training and certifications.
- (g) Interpreters shall continually seek to enhance and refine their skills and knowledge through continuing education and training activities.

Section 4.2 The Proper Role of the Interpreter

At all times, a court interpreter/translator shall conduct himself or herself in a manner consider with the following role:

- (a) Interpreters shall interpret completely and accurately. Interpreters shall not alter the meaning of the statements they are interpreting. Interpreters shall never interject their own words, phrases or expressions. Interpreters shall not elaborate on or explain the statements they are interpreting. Interpreters shall not correct misstatements, even when a misstatement is an obvious error (for example, witness answers "1899" rather than "1999").
- (b) Interpreters shall accurately convey the tone and register of the statements they are interpreting.
- (c) Interpreters shall inform the court immediately if they become concerned about their ability to interpret in a particular proceeding or for a particular person. For example, the interpreter cannot understand the defendant's

language, or knows the witness or defendant, or has strong opinions regarding the case.

(d) Interpreters shall notify the court if there is any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the courtroom is not quiet enough for the interpreter to hear or be heard by the non-English speaker, more than one person at a time is speaking, or parties or witnesses are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret).

(e) Interpreters shall notify the presiding official of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters shall recommend and encourage the use of team interpreting whenever necessary.

(f) Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently. Even competent and experienced interpreters 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, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive research, interpreters must inform the presiding official.

(g) Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no compunction about notifying the presiding official if they feel unable to perform competently, due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

(h) Interpreters should not interpret sound recordings in court because of the difficulty involved. In certain instances the presiding official will order the interpreter to interpret in court an audio recording. In such case the interpreter should do so, but should state for the record that he or she cannot certify the accuracy of the interpretation.

(i) Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions to individuals for whom they are interpreting, or engage in any other activities which may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

(j) An interpreter may convey legal advice from an attorney to a person only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity. The interpreter may translate language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

(k) Since interpreters are responsible only for enabling others to communicate; they should limit themselves to the activity of interpreting or

translating. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation.

(l) Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. In this case, the interpreter should ask the court's permission to initiate the communication. 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 their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should make it clear that they are speaking for themselves. (This is achieved by using the 3rd person-Example: "The interpreter requests that the question be repeated, clarified, etc...")

(m) The interpreter should not personally perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation officers.

Section 4.3 Impartiality and Confidentiality

Any person approved for the AOC interpreter/translator registry agrees to the following:

(a) Interpreters shall remain impartial. Interpreters shall not engage in conduct that gives the appearance of partiality. Interpreters shall disclose to the court any possible conflict of interest, however remote. Any condition that interferes with the objectivity of the interpreter constitutes a conflict of interest. Examples of actual or apparent conflicts of interest include, but are not limited to:

1. The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceeding;
2. The interpreter has served in an investigative capacity for any party involved in the proceeding;
3. The interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. 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 that would be affected by the outcome of the case;
5. The interpreter has been involved in the choice of a counsel or law firm for the case.

(b) Interpreters shall disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

(c) Interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

- (d) Interpreters shall not accept money or other consideration or favors of any nature or kind which might reasonably be interpreted as an attempt to influence their actions with respect to the discharge of their obligations except for the authorized payment.
- (e) Interpreters shall not accept payment directly from or on the behalf of a person for whom the interpreter is being paid from Judicial Department funds to provide interpreting or translating services.
- (f) An interpreter who is also an attorney shall not serve in both capacities in the same matter.
- (g) Interpreters shall notify the presiding official of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.
- (h) Interpreters shall preserve the confidentiality of any privileged or confidential information they interpret.
- (i) Interpreters shall not publicly discuss or comment on a matter in which they are providing interpreting services. An interpreter should never grant interviews to the media, make comments, or express personal opinions to any of the parties about any aspect of the case even after a verdict is rendered.
- (j) Interpreters shall strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.
- (k) For the duration of the proceedings, interpreters shall neither interact with nor socialize with the parties, attorneys, witnesses, jurors, presiding officials or friends or relatives of one of these persons, except when carrying out their official duties.
- (l) Interpreters must also refrain from repeating or disclosing information obtained by them in the course of their employment that may be relevant to the legal proceeding.
- (m) In the event that an 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 shall immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.
- (n) No court interpreter shall comment or render an opinion on the propriety or impropriety of a verdict in any matter in which he or she has served.

PART FIVE

BEST PRACTICES FOR FOREIGN LANGUAGE COURT INTERPRETERS/TRANSLATORS

Section 5.1 Effective Preparation for and Delivery of Interpreting and/or Translating Services

A. Pre-Hearing Activities

Where possible, the interpreter should meet with the NES person and his or her attorney prior to the proceeding. This will allow the interpreter to familiarize himself or herself with the NES person's dialect and manner of speaking. It will also allow the interpreter to clarify the nature of his or her role (in other words, that the interpreter will be present to interpret the proceedings for the party, but is not permitted to advise the party in any way). Also where possible, the interpreter should determine the type of case in which he or she will be interpreting. This will allow the interpreter to identify and study the specialized terminology that will be used during the proceeding.

B. Courtroom Protocol

The presiding judicial official (for example, the judge or magistrate) governs the behavior of the parties, attorneys, court employees, and other persons in the courtroom. The interpreter therefore should abide by the instructions and rules of the local district and the presiding official at all times. The following policies may, however, provide the interpreter with general guidance:

- Arrival: The interpreter should arrive at least fifteen minutes prior to the start of the proceeding and should introduce himself or herself to the courtroom clerk. If the interpreter arrives while a proceeding is in progress, the interpreter should ask the bailiff to notify the clerk of his or her arrival. If the interpreter must leave the courtroom, he or she should inform the clerk or the bailiff so that they can locate the interpreter quickly if necessary.
- Courtroom location: Unless the interpreter is using sound equipment that allows him or her to interpret from any point in the courtroom, the interpreter should sit by the NES party at the counsel table when simultaneously interpreting for a party. When consecutively interpreting the testimony of an NES witness, the interpreter should stand by the witness positioned in such a manner that the judge, the parties, the attorneys and the jury are able to view the witness. The interpreter should interpret the witness' testimony loudly enough that the judge, the parties, the attorneys, the jury and the court reporter are able to hear and understand the interpreter. Generally, the interpreter should be as unobtrusive as possible throughout the proceeding.

- Equal access: The interpreter's purpose is, to the extent possible, to place the NES party in a situation equivalent to that of an English-speaking party. Accordingly, the interpreter should interpret for the NES party everything that the party would hear were he or she English-speaking.
- Verbatim vs. complete interpretation: A verbatim interpretation is not necessarily a complete and accurate interpretation. Specifically, an interpreter should not interpret a statement verbatim if a verbatim interpretation would rob the statement of its meaning. This is particularly true for idiomatic expressions. For example, a verbatim translation of the phrase "we kept tabs on him" may fail to convey the meaning of the phrase to the NES person.
- Problems with interpretation: If the interpreter becomes concerned about his or her ability to interpret for a particular case or for a particular person, or if the interpreter becomes concerned about a possible conflict of interest, he or she should notify the court immediately. The interpreter should also inform the court of any material mistakes the interpreter realizes he or she has made in the interpretation.
- Use of first and third person: If it becomes necessary for the interpreter to address the court during the proceeding, the interpreter should speak in the third person. For example, the interpreter should say, "Your Honor, The Interpreter was unable to hear counsel's question." The interpreter should always render a witness' testimony, however, in the first person. For example, if a witness responds, "I saw the defendant around 10:00," the interpreter should not interpret it as, "The witness says she saw the defendant around 10:00." Observing these rules will allow the official court record to reflect clearly (1) when the interpreter is speaking on his or her own behalf and (2) when the interpreter is rendering the testimony of a witness.
- Departure: When the proceeding concludes, the interpreter should not leave the courtroom until the court formally excuses the interpreter.

PART SIX

BEST PRACTICES FOR COURT OFFICIALS IN CASES INVOLVING FOREIGN LANGUAGE INTERPRETING/TRANSLATION

Section 6.1 Local Rules

The AOC encourages each district to adopt local rules governing court interpreting and translating services that are consistent with these policies and best practices.

Section 6.2 Local Coordination

The AOC also recommends that each district identify one person or office in the district (or in each county of the district) to coordinate interpreting and translating services (e.g. assistant or deputy clerk of court, judicial assistant, trial court coordinator, trial court administrator).

Section 6.3 Effective Preparation for and Delivery of Interpreting and Translating Services

A. Pre-hearing activities

The court should encourage the interpreter to meet with the NES person prior to the hearing, if possible, in order to familiarize himself or herself with the person's dialect and manner of speech. The court should also encourage counsel to share with the interpreter any documents that they will be asking the interpreter to sight translate during the proceeding.

B. Instructions

The court may want to (1) introduce the interpreter and (2) provide instructions to the parties, the attorneys and the jury on the proper role of the interpreter. Specifically, the court may want to address the following:

1. The interpreter's role and purpose is limited to facilitating communication. The interpreter may not provide legal or other advice or assistance to any party.
2. The participants in the proceeding should speak directly to one another, not to the interpreter. For example, an attorney should ask a NES witness a question directly. The attorney should not say to the interpreter, "Ask the witness when she saw the defendant." Similarly, the witness should respond directly to the attorney, not to the interpreter.
3. The interpreter will render everything that is said in the courtroom completely and accurately. The interpreter will not

elaborate on, explain, clarify, add to, or omit information from the original statements.

4. The jury should not give any weight to the fact that a party or witness requires the assistance of an interpreter.
5. The court reporter should record only the English spoken during the proceeding. In the verbatim transcript of the proceeding, the reporter should indicate when a witness or party is speaking through an interpreter.

C. Calendar Efficiency

Whenever possible, the court should place the case needing the interpreter near the top of the court's calendar. This will help reduce costs since interpreters are typically compensated for the time they spend waiting in the courtroom as well as the time they are actually interpreting.

Additionally, efficient case management can be achieved by appointing interpreters for entire sessions of court rather than appointing a different interpreter for each case heard during the session that requires an interpreter. For example, some districts now appoint one interpreter to remain available in the courtroom for an entire day or half-day of Criminal District Court. This interpreter assists any indigent defendants or witnesses during the course of the day who need interpreting services. It therefore is unnecessary to compensate multiple interpreters for time spent waiting for their cases to be called.

D. Courtroom Environment

The court should attempt to ensure that the courtroom is as quiet as possible, that all participants speak audibly and clearly, that all participants speak at a reasonable rate of speed, and that the participants speak only one at a time.

- Notepads: Interpreters regularly use (or should use) notepads to assist them in recalling lengthy statements that they must interpret. The court should permit the interpreter to use a notepad in this fashion and may want to explain to the jury and the other participants why the interpreter is using it.
- Interpreting equipment: Many interpreters use wireless interpreting equipment for simultaneous interpretation. The interpreter speaks into a transmitter and the signal is sent to a receiver used by the NES person. This equipment allows the interpreter to move about the courtroom in order to better hear the person who is speaking. By using multiple receivers, the interpreter can also serve multiple NES persons at the same time. The court should permit the interpreter to use this equipment and may want to explain to the jury the nature of the equipment and why the interpreter is using it.

- Use of audiotape back-up: In the most serious cases (for example, capitally tried cases), the court may want to order that the proceedings be recorded on audio tape. This will provide a record of the original statements made in the foreign language should a question arise regarding the adequacy of the interpretation.

E. Multiple interpreters

For lengthy proceedings, the court may want to consider appointing more than one interpreter so that the interpreters may spell each other as they become fatigued.

F. Oath

Rule of Evidence 604 contemplates that interpreters will take a basic oath to "make a true translation." The court may want to use a more expansive oath of the sort set out in Part Three, Section 3.5. If an interpreter will be working regularly in the district, the court may want to require the interpreter to sign a written copy of the oath that the district keeps on file. This will obviate the need for the court to administer the oath to the interpreter each time he or she provides services.

G. Translated forms

Court officials may want to utilize AOC forms translated into Spanish. These forms are available in the Judicial Department Forms Manual. They are printed on lavender paper in order to distinguish them from other AOC forms. These forms are also available on the AOC web page at www.nccourts.org.

PART SEVEN

COMPENSATION OF FOREIGN LANGUAGE INTERPRETERS/TRANSLATORS

Section 7.1 Payment for Interpreter/Translator Services

A. Invoice for Payment

Interpreters/translators listed on the AOC FLTS Registry shall be paid at a rate specified by the Director of the AOC or his/her designee. Interpreters/translators shall submit a Foreign Language/Translator Services Invoice Form (AOC 215) and the Daily Log sheet (AOC-216) monthly, no later than 30 days after provision of services.

B. Normal Work Hours and Exceptions

Normal work hours are considered to be from 8am to 5pm. Except for work performed in magistrates' offices after 5pm, interpreting services for courts, district attorneys, and public defenders, including jail visits for these court officials, shall be scheduled during normal work hours.

Except for regularly scheduled night courts, when the interpreter's services are required after normal work hours or on weekends, the interpreter shall be paid a differential hourly rate established by the Director of the AOC or his/her designee.

C. Minimum Hours of Work

Interpreters/translator shall be paid for interpreting/translating services as follows:

- A minimum of one (1) hour for each individually assigned case
- A minimum of three (3) hours if the interpreter is scheduled to appear for a morning or afternoon session of court
- A minimum of five (5) hours if the interpreter is scheduled to appear for a full day of court

If the interpreter is notified less than 48 hours before the hearing that the interpreter's services will not be needed the interpreter may bill for one (1) hour for a district court case and three (3) hours for a superior court case.

D. Billable Hours of Work

Minimum assignments may not overlap. The interpreter may not bill twice for sessions occurring at the same time on the same date. The interpreter may not bill for interpreting one hour in district court in the morning and also bill for a three hour minimum session, if both appearances occur at the same time.

E. Payment for Travel

The interpreter will not be entitled to reimbursement for mileage, but will be paid one-half the interpreter's hourly rate for their travel time when traveling more than 35 miles one-way for scheduled court appearances. If the interpreter's services will require travel over 50 miles and an overnight stay, the interpreter will be reimbursed up to the State rate for hotel and meals. Pre-approval must be obtained from the AOC Court Interpreting Services Program prior to incurring overnight expenses.

Section 7.2. Responsibility of the State to Bear the Cost of a Foreign Language Interpreter

The court system is authorized to provide foreign language interpreters at State expense in those instances when the State is bearing the costs of representation. For example, the court system bears the cost of a foreign language interpreter in indigent criminal cases where the defendant, or a witness for the defendant, cannot speak or understand English. The court system may also bear the cost of an interpreter for the witness for the prosecution who cannot speak or understand English. Other examples for whom the court system will provide a foreign language interpreter are parties to juvenile proceedings, parents ordered to child custody mediation, and indigent respondents in involuntary commitment proceedings.

There may be a situation where a person has retained his or her own attorney, but is still entitled to other services, such as the assistance of an interpreter, at State expense. See State v. Boyd, 332 N.C. 101, 107-09, 418 S.E.2d 471, 474-76 (1992) (explaining that "whenever a defendant's personal resources are depleted and he can demonstrate indigency, he is eligible for state funding of the remaining necessary expenses of representation"; accordingly, the fact that a defendant has "sufficient resources to hire counsel does not in itself foreclose [the] defendant's access to state funds for other necessary expenses of representation").

There may also be situations where a party appears before a judicial official before any determination of indigency or right to counsel at State expense has been made. For example, at an initial appearance before a magistrate pursuant to G.S. 15A-511, the magistrate may not yet know whether the defendant is indigent. The usual practice in this situation is for the magistrate to appoint an

interpreter even though a determination of indigency (and entitlement to counsel at State expense) has not yet been made. If the defendant is subsequently convicted, the court can assign the interpreter's fee to the defendant as costs.

Section 7.3. Instances in Which the State May Not Bear the Cost of a Foreign Language Interpreter

The Judicial Branch is not authorized to provide interpreters to parties who are required to bear their own costs of representation (for example, civil and domestic litigants, non-indigent criminal defendants). Because the legislature has not authorized or appropriated funds for these other contexts, it would not be appropriate for the court system to begin paying for these services on its own authority.

The Judicial Branch also is not authorized to provide interpreters for law enforcement matters such as interrogations or bookings. Similarly, the Judicial Branch is not authorized to provide interpreters for use by juvenile court counselors. In these instances, the law enforcement agency or the Department of Juvenile Justice and Delinquency Prevention must bear the cost of the interpreter.

Some persons may waive the services of the interpreter that the court intends to appoint. Some districts require these persons to bear the cost of their own interpreters. This approach is consistent with the rules governing the waiver of a court-appointed sign language interpreter. G. S. 8B-3(b). ("A deaf person who has waived an interpreter under this section may provide his own interpreter at his own expense . . .").

Note: The foregoing policies apply to foreign language interpreters only. As a general rule, Chapter 8B of the General Statutes and the Americans with Disabilities Act require the court system to provide sign language interpreters at State expense regardless of the financial status of the person needing the interpreter and regardless of the type of case.

Section 7.4 Assigning the Interpreter's Fee as Costs

The AOC believes that the court is authorized to assess a reasonable fee for the costs of a foreign language interpreter against any party who is required to reimburse the State for the costs of representation. Effective 2/1/07, the court shall assess a \$10 fee or the actual cost of the services, whichever is greater, to the defendant or other responsible party.

Note: The court should never tax the cost of a sign language interpreter (or other accommodation) to a person who is deaf or hard of hearing. Even where the services were provided for a criminal defendant who was convicted, the State must bear the cost.

Section 7.5 Interpreter Fee in Cases Where the State is Not Authorized to Pay

In civil and domestic cases where an interpreter is necessary, the court may appoint an interpreter on its own motion and require the parties to bear the cost of the interpreter. Rules of Evidence 604 and 706 provide the court with this authority.

Pursuant to Rule 706(b), an interpreter appointed by the court in this fashion is "entitled to reasonable compensation in whatever sum the court may allow." G.S. 8C-1, Rule 706 (b). Where there are no "funds which may be provided by law" to pay for the services of the interpreter, "the compensation shall be paid by the parties in such proportion and at such time as the court directs, and thereafter charged in like manner as other costs." *Id.* In other words, in civil actions, domestic actions, and other proceedings where the person must bear the cost of his or her own representation, the court may order the person to bear the cost of the interpreter.

The court could also rely on these rules to remove an interpreter retained by a party. Specifically, if the court determines that the interpreter provided is not adequate, the court could refuse to qualify the interpreter under Rule 604. The court then could appoint an interpreter of its own choosing pursuant to Rule of Evidence 706.

Section 7.6 Special Rule for Chapter 50B Domestic Violence Proceedings

Domestic violence proceedings under Chapter 50B of the General Statutes are civil matters for which the parties must bear their own costs of representation. Accordingly, absent special direction from the General Assembly, the court system would not be authorized to provide foreign language interpreters at State expense in these proceedings.

During the 2000 short legislative session, the General Assembly authorized the Judicial Branch to provide foreign language interpreters at State expense to indigent NES parties in Chapter 50B domestic violence actions. The court should not seek reimbursement for the cost of the interpreter from a domestic violence petitioner. See G.S. 50B-2 (a).

PART EIGHT

CERTIFICATION OF FOREIGN LANGUAGE INTERPRETERS

Section 8.1 Certification of Foreign Language Interpreters Generally

In order to receive formal certification as a foreign language interpreter from the AOC, a candidate must

- Attend any required ethics and skills training classes, and pass the Multiple Choice Consortium Written Examination
- Pass both a written English vocabulary and a Spanish translation test
- Submit an application to sit for the certification examination on a form prescribed by the AOC
- Submit four letters of recommendation from a judge, clerk, district attorney, public defender or magistrate, or a person equivalent in rank in another area in which the candidate has performed interpreting services, or if the person has never interpreted, a supervisor for whom they have worked
- Pass a criminal record check (See Part Two)
- Take a court interpreter certification examination developed by the State Court Interpreter Certification Consortium or by the Federal Court Interpreter Certification Examination Program and achieve passing scores on all three sections of the examination, OR earn a certification or advanced degree from another entity or institution as approved by the AOC Director
- Sign and notarize the Oath of Interpretation
- Agree to be listed in the AOC Foreign Language and Translating Service Registry
- Agree in writing to abide by these policies and best practices, including the Code of Ethical Conduct for Court Interpreters (See Part Four)
- Pay any application fee, training fee, or examination fee charged by the AOC
- Adhere to any evaluation process, renewal fee, certification renewal exam, post-certification orientation sessions or continuing education classes required by the AOC

The final determination of whether to certify a particular applicant rests with the AOC Director.

Section 8.2 Certification Examination

The AOC will, as it deems necessary, administer court interpreter certification examinations developed by the State Court Interpreter Certification Consortium. The Director of the AOC will determine how often, at what locations, and for what

languages the AOC will administer these examinations. The Director will also determine those persons eligible to take the examinations.

Once a person has taken a certification examination, the AOC will work with the Consortium staff to analyze and verify the test results and determine which persons achieved a passing score. The final determination of whether a person has earned a passing score rests with the Director.

In addition to the practical skills examination developed by the Consortium, the AOC will require applicants to pass a written examination on general language proficiency, court-related terms and usage, and ethics and professional conduct.

Section 8.3 Good Character and Fitness

Foreign language interpreters are entrusted by the court and the parties with a significant degree of responsibility. The good character and fitness of the applicant is therefore a crucial factor in determining whether the applicant is eligible for certification. In determining whether an applicant has demonstrated good character and fitness, the AOC shall rely on a criminal record check of the applicant and on recommendations from court officials who have known and worked with the applicant. The final determination of whether a person has demonstrated good character and fitness rests with the Director.

Section 8.4 List of Certified Interpreters

The AOC will indicate on its FLTS Registry which interpreters are certified as court interpreters by the AOC. The list will include the name, address and telephone number of each certified interpreter. The AOC will make the list available on the AOC intranet and in hard copy form.

Section 8.5 Mentorship, Performance Evaluation and Certification Renewal

The AOC may institute a mentorship or similar performance enhancement and evaluation process for court interpreters. The determination of whether and when to institute such a process rests with the AOC Director.

Similarly, the AOC may implement a certification renewal process. The AOC Director will determine whether and when to institute this process. This process may require, for example, an application for certification renewal, post-certification orientation and training sessions, a follow-up criminal record check, and a renewal fee.

PART NINE

SUSPENSION, REVOCATION OR DE-CERTIFICATION PROCEDURES FOR FOREIGN LANGUAGE INTERPRETERS/TRANSLATORS

Section 9.1 Purpose

The North Carolina Administrative Office of the Courts will monitor the quality of interpreting services offered in the North Carolina courts. This policy allows for the suspension and/or revocation of the registration and/or de-certification of court interpreters/translators by the Director of the Administrative Office of the Courts or his/her designee (AOC).

Section 9.2 Applicability

This policy applies to any interpreters/translators who perform foreign language interpretation/translation for the North Carolina courts including individuals who are:

1. certified in foreign language interpretation by the AOC
2. certified by an entity other than the AOC
3. listed on the AOC Foreign Language and Translation Services Registry
4. contract interpreters of those employed by interpreting companies.

Section 9.3 Reasons for Revocation, Suspension, or De-Certification

Certification or registration status may be suspended or revoked by the Director of the Administrative Office of the Courts or his/her designee for any of the following reasons:

1. conviction of a violent felony (Class A-E), a Class A1 misdemeanor, or for a crime involving moral turpitude (e.g. fraud, unauthorized practice of law)
2. fraud, dishonesty, or corruption related to the functions and duties of a court interpreter/translator (e.g. charging a party when services are being paid for by the State, or charging for hours not worked)
3. continued false or deceptive advertising after receipt of notification to discontinue
4. knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity
5. incompetence, unprofessional behavior, or unethical conduct
6. failing to appear as scheduled or to follow an order of the court without good cause

7. engaging in behavior that constitutes discrimination or harassment
8. noncompliance with any training, certification or registration requirements

Section 9.4 Complaint Procedures

A. Filing of a Complaint

A complaint must be submitted in writing, signed by the complainant, and mailed or delivered to the Manager of Interpreter Services in the Court Programs and Management Services Division of the AOC. The complaint shall state the date(s), time(s), and place and nature of the alleged improper conduct. If possible, the complainant shall include the name(s), title(s), and telephone number(s) of possible witnesses. The complaint shall state why the complainant believes the alleged improper activity should be sanctioned.

If the complainant is unable to communicate in written English, the complainant may submit the complaint in his or her native language.

Efforts to resolve the complaint informally between the complainant and the interpreter may be initiated by any of the parties to the complaint at any time. Any resolution reached must be submitted in writing to the Manager of Interpreter Services in the Court Programs and Management Services Division of the AOC, for approval. Upon approval of any resolution reached informally, the Manager shall notify the complainant and the court interpreter of the decision in writing.

B. Review of Complaint

1. The Manager of Interpreter Services shall review the complaint and determine whether the allegations, if true, would constitute grounds for suspension, revocation, or de-certification. If the Manager determines that the complaint alleges conduct that would be grounds for suspension, revocation, or de-certification, an investigation shall proceed.
2. If the Manager determines that the complaint does not allege conduct that would be considered grounds for suspension, revocation, or de-certification, the Manager shall dismiss the complaint and notify the interpreter and complainant via first class mail. The notification, within sixty (60) days of receiving the complaint, shall include an explanation of the reason(s) for the Manager's determination that the complaint does not allege conduct that would be grounds for suspension, revocation, or de-certification.
3. If the complainant disagrees with the Manager's determination in (2) above, the complainant may file a petition for review by the Director of the Administrative Office of the Courts within thirty (30) days of receipt by the complainant of the Manager's determination. The petition shall briefly

state the facts that form the basis for the complaint and the complainant's reasons for believing that the review is warranted. A copy of the appeal petition shall be provided to the Manager.

The Manager shall submit to the AOC Director a response to the complainant's appeal of the Manager's determination within thirty (30) days after receipt of the copy of the complainant's appeal petition.

The Director of the AOC shall make a decision on the complainant's petition within thirty (30) days after receipt of the Manager's response. If the Director of the AOC determines that the complaint does allege conduct that, if true, would be grounds for suspension, revocation, or de-certification, the Manager shall proceed to investigate the complaint.

If the Director of the AOC determines that the complaint does not allege conduct that would be grounds for suspension, revocation, or de-certification, the Director of the AOC shall dismiss the complaint and notify the interpreter and complainant via first class mail. The notification shall include an explanation of the reason(s) for the Director of the AOC's determination that the complaint does not allege conduct that would be grounds for suspension, revocation, or de-certification. Such a determination by the Director of the AOC shall be final.

4. The Director of the AOC may appoint a designated person to act on behalf of the AOC Director in carrying out any of the aforementioned duties.

C. Procedure for Investigation

If the complaint does allege conduct that would be grounds for suspension, revocation, or de-certification, the Manager of Interpreter Services shall investigate as necessary or refer the investigation to a qualified agency or individual.

As part of the investigation, the Manager shall contact the interpreter, inform him/her of the complainant's allegations, and give the interpreter the opportunity to respond. This response shall be included in the Court Interpreting Services Manager's investigation report.

At the conclusion of the investigation, within sixty (60) days of the filing of the complaint, if the Manager determines that conduct occurred that would be grounds for suspension, revocation, or de-certification, the Manager shall submit a report of his/her findings to the Director of the AOC for review.

If, at the conclusion of the investigation, the Manager determines that no conduct occurred that would be grounds for suspension, revocation, or de-certification, the Manager shall dismiss the complaint and notify the interpreter and the complainant by first class mail. The notification shall include an explanation of the reason(s) for the Manager's determination that no grounds for suspension,

revocation, or de-certification exist. If the complainant disagrees with the Manager's determination, he/she may file a petition for review with the Director of the AOC under the same procedures outlined in the Review of Complaint section above.

D. Determination of the Need for Suspension, Revocation, or De-Certification

If, upon reviewing the results of the investigation, within thirty (30) days, the Director of the AOC determines suspension, revocation or de-certification is not warranted, the Director shall dismiss the complaint and notify the interpreter and the complainant by first class mail. The notification shall include an explanation of the reason(s) for the Director's determination that the alleged conduct is not grounds for suspension, revocation, or de-certification. Such a determination by the Director shall be final.

If the Director of the AOC determines that suspension, revocation, or de-certification is warranted, the Director, within thirty (30) days of receiving the results of the investigation, shall send to the interpreter, by certified mail, a copy of the complaint, the Court Interpreting Services' Manager's report, a citation of the policy which was violated, and the sanctions deemed appropriate by the Director. Such a determination by the Director of the AOC shall be final.

E. Sanctions

If based on the result of an investigation by the Manager of Interpreter Services and/or the Director of the AOC, it is determined that suspension, revocation, or de-certification is warranted, the following sanctions or combination of sanctions may be applied:

- Issuing a private or public reprimand
- Specifying corrective action with which the interpreter must comply in order to remain on the AOC Foreign Language and Translation Services Roster or remain certified by the N. C AOC
- Suspension of work by the interpreter/translator with the North Carolina courts
- Prohibition on work by the interpreter/translator with the North Carolina courts
- Suspension of the certification for foreign language interpreting bestowed by the N. C. AOC
- Revocation of the certification for foreign language interpreting bestowed by the N. C. AOC

If the sanctions include suspension or revocation of the interpreter's court certification or registration status, the Director shall specify the conditions and timeframe, if any, within which the interpreter may apply for reinstatement of his or her prior certification or registration status.

F. Reinstatement

An interpreter/translator whose court certification or registration status has been suspended or revoked may apply in writing to the Director of the AOC for reinstatement, within the timeframe established in the suspension/revocation decision issued by the Director of the AOC. The Director of the AOC or his/her designee shall have sole discretion in determining whether the conditions for reinstatement have been satisfied.