

## Appendix 11

# **GUIDELINES FOR TRIALS INVOLVING DEAF JURORS WHO SERVE WITH THE ASSISTANCE OF AMERICAN SIGN LANGUAGE INTERPRETERS**

(Revised 2016)

## 1. Introduction

Jurors are an essential part of justice. People who are deaf or hard of hearing have an equal right and a civic duty to serve as grand jurors and petit jurors. These guidelines, consistent with the Bench Manual on Jury Selection, have been prepared to assist judges when a trial involves a prospective juror who indicated that he or she requires the services of an American Sign Language interpreter to serve as a juror, whether that need is made known on the Juror Qualification Questionnaire or communicated in some other way to court personnel. All other accommodation requests for communication assistance (e.g., assistive listening devices or real-time transcription) should be referred to and handled by the vicinage's Americans with Disabilities Act Coordinator.

## 2. Legal Background

In DeLong v. Brumbaugh, 703 F. Supp. 399 (W.D. Pa. 1989), the U.S. District Court found that a state trial court violated Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, when it disqualified a prospective juror "...solely because she [was] deaf." Section 504 prohibits discrimination against persons with hearing loss in any program or activity that receives federal funding.

- a. The Americans with Disabilities Act (ADA) of 1990 extended the prohibition of discrimination against persons with hearing loss to all government entities and requires them to make all their services, programs, and activities available to "qualified individuals" with disabilities. Section 202 of the ADA (42 U.S.C. §12132).
- b. Deaf<sup>1</sup> persons have successfully served as jurors on numerous occasions in New Jersey and elsewhere nationwide. The Administrative Director of the Courts issued an advisory memorandum to the Assignment Judges shortly after the first such service in New Jersey by a deaf juror ("Service by Deaf Jurors," October 1, 1984). It stated that deafness is not necessarily a limitation of the requirement to be able to read, write, and understand English and that a trial judge could find that a Deaf juror meets the statutory qualifications for jurors. Please note that the qualification statute has been revised to require only that a juror be able to read and understand English, N.J.S.A. 2B:20-1b.

## 3. Team of Interpreters

The Jury Manager, with assistance from the Vicinage Coordinator of Interpreting Services, will review all relevant factors prior to scheduling a deaf or hard of hearing juror for jury service and complete the scheduling process. Ordinarily, the two ASL interpreters employed by the Administrative Office of the Courts will be scheduled to interpret for deaf jurors on every day of the juror's service for trial continuity and efficient use of judiciary resources.

## 4. Qualification and Challenges of Jurors Who Require an ASL Interpreter

- a. No Presumption of Automatic Disqualification  
The fact that a juror is deaf or hard of hearing and requires an interpreter in order to understand the proceedings or communicate with the court is not grounds, by itself, to disqualify that juror.
- b. *Voir Dire* of Jurors Who Are Deaf or Hard of Hearing

---

1 The term "deaf" (with the lowercase "d") refers to the audiological condition of not being able to hear. The term "Deaf" (with the uppercase "D") refers to a particular group of deaf people who share a common language (ASL) and whose cultural knowledge, values, and beliefs were historically created and are actively transmitted across generations. Padden, C., & Humphries, T. (1988). *Deaf in American: Voices from a culture*. Cambridge, Mass.: Harvard University Press.

As is done for every juror, the trial judge is responsible to determine, at *voir dire*, whether the juror is qualified to serve on that particular trial, including whether the juror meets the statutory qualifications for jury service.

The ADA prohibits direct questioning of an individual regarding the deaf or hard of hearing person's disability. Judges should focus on the skills required to adequately perform the duties of a juror, such as the ability to attend for long periods of time, the ability to weigh evidence, and the ability to deliberate.

It is appropriate to inquire if the juror can understand the interpreter that has been provided and if she or he has any suggestions for further facilitating successful communication in the courtroom.

c. Challenges of Jurors Who Are Deaf and Hard of Hearing

Once the trial judge determines that the deaf juror possesses the required qualifications to serve as a juror and requires interpreting services, that juror, like any other juror, can be removed from the trial panel by successful challenge, whether for cause or by means of a peremptory challenge exercised by any party.

## 5. Administration of Oath to Interpreters

The interpreter's oath, per Standard 3.1 Interpreter's Oath, should be administered to each interpreter for whom it is required prior to the delivery of any interpreting services.

**“Do you solemnly swear or affirm that you will interpret accurately and impartially, follow all guidelines for court interpreting that are binding on you, and discharge all of the solemn duties and obligations of an official interpreter?”**

Once a deaf juror is empaneled and the jury has been sworn, the judge should administer the following expanded oath, per Standard 2.10.2 Interpreter Expanded Oath, to the interpreters in the presence of the jury:

**“Additionally, in this case your function is to provide communication access for a deaf juror, and in doing so, do you swear that you will not participate in the deliberations, you will keep all communications in the jury room confidential, and you will not speak directly to any juror or allow a juror to speak to you but will, instead, provide communication access with fellow jurors so that the deaf juror can faithfully discharge his or her duties as a juror?”**

## 6. Interpreting Modes During *Voir Dire*

Interpretation most likely will be delivered in the simultaneous mode when the judge is addressing all jurors or during the questioning of the other prospective jurors. However, when the deaf or hard of hearing prospective juror is being questioned or is answering, interpretation will most likely be delivered in the consecutive mode.

## **7. Positioning of Deaf Jurors**

While sitting in the gallery, the deaf or hard of hearing juror should be in the front row or at the end of any row.

If empaneled, the deaf or hard of hearing juror should be assigned a seat that will ensure a direct line of sight to the interpreters. This can best be determined by having the interpreter work with the deaf person as well as the trial judge and judiciary staff, regarding the best possible location.

## **8. Positioning of ASL Interpreters in the Courtroom**

Positioning of ASL interpreters for *voir dire* and trial will vary depending on the configuration of the particular courtroom. The ASL interpreters will evaluate the courtroom to determine the appropriate locations at which they should be positioned throughout the deaf juror's service. Interpreters will take into consideration providing a wide enough view for the deaf juror to see both the interpreter and each speaker (including witnesses, the judge, and the attorneys) without blocking the view of the judge, attorneys, witnesses, or other jurors.

The interpreters will approach the bench to inform the court as to their proposed positioning. The interpreters will consult with the judge and deaf person to identify what seating arrangement will be optimal in the jury box.

During the trial, the interpreters will adapt their positions, if necessary, as the speakers change. During witness testimony, the interpreters will position themselves so that the deaf juror can always see the interpreters and the witness. During videotaped testimony or introduction of exhibits, the interpreters will move to a place where the juror can see both the evidence and the interpreters.

Once the jury is empaneled, the interpreters will accompany the deaf juror into the deliberation room at all times to provide communication access among the jurors.

## **9. Judicial Assistance in Access to Preparation Materials**

The court should provide access to case file information necessary for court interpreters to prepare for a case. Preparation removes barriers to accurate and meaningful interpretation and ensures a more efficient and effective proceeding, per Standard 3.7 Interpreter Access to Case File Information.

Typically an ASL interpreter will enter the courtroom before the jury pool enters to inform the court of the presence of a deaf juror and to request the case caption, complete witness lists, and the names of the attorneys and their law firms. Once the deaf juror is seated as a trial juror, the interpreting team will need to be provided with access to exhibits and experts, for which they may need the assistance of the judge to obtain. After the charge conference, the judge will provide a copy of the proposed jury instructions for the same reasons noted above.

## **10. Instructions to the Parties and Jurors About Interpreter's Role**

Once a deaf or hard of hearing juror is empaneled, the judge should instruct the jury with reference to the interpreters' role. (Additional information available in Bench Manual on Jury Selection, 5.1 Jury Service for Persons with Disabilities, p. 32-33.) The instructions should include as many of the following points as the judge deems appropriate:

- a. Do not allow yourselves to be distracted by the interpretation.
- b. The novelty of having the interpreters at trial will subside.
- c. The interpreters' role is to enable the deaf or hard of hearing juror to participate fully as a juror by giving him or her full access to everything being said.
- d. The interpreters are required to abide by the Code of Professional Conduct approved by the Supreme Court and the Code of Ethics promulgated by the Registry of Interpreters for the Deaf, Inc., which is the professional association of ASL interpreters. Among other things, these codes require the interpreter to:
  - i. Interpret everything accurately and never leave out, add, or change anything being said.
  - ii. Keep confidential everything that is ever said during the jury's conversations and deliberations.
  - iii. Be unbiased and free of conflicts of interest.
- e. Team interpreting will be used, which means that the two interpreters will be switching between roles as the primary and the supporting interpreter every twenty to thirty minutes (or whenever natural breaks occur in the proceedings).
- f. Parties and jurors, when talking among themselves, are not to talk to or try to involve the interpreter in conversation or discussion. Interpreters are not allowed to participate in conversations or in deliberations.

## **11. Charge to the Jury**

- a. **Remind Jurors of Interpreters' Role**  
The judge should remind the jury of the interpreters' role, using as many of the points in section 10 above, as the judge deems appropriate.
- b. **Give Suggestions to the Jurors Regarding How Best to Deliberate When there is a Deaf Juror Participating**  
Judges should instruct jurors to speak one at a time during deliberations and should consider assigning the jury foreperson the responsibility of ensuring that the deaf or hard of hearing juror, with the assistance of interpreters, has the opportunity to fully participate in deliberations. This can be done, for example, by having jurors take turns speaking during deliberations.