

## Appendix 12

# **GUIDELINES FOR USING SPECIALIST INTERPRETERS FOR PEOPLE WHO ARE DEAF AND HARD OF HEARING**

(Revised 2016)

(Specialist Interpreters: Certified Deaf Interpreters, Deaf-Blind Interpreters, Trilingual Interpreters, and Oral Transliterators)

## 1. Introduction

These Guidelines are designed to help judges, lawyers, and others involved in the New Jersey Judiciary (1) understand the unique communication needs of people who are deaf and hard of hearing and (2) provide guidance for improving the odds of successfully accommodating those needs. There is great deal of communication diversity among court users who are deaf and hard of hearing. Over the years the Judiciary has served deaf persons who use non-standard forms of sign language, who use a sign language from another country, who have a secondary disability e.g. deaf and blind, who use sign language and speechread Spanish, or who do not know any sign language and speechread English. In these situations the traditional accommodation of providing the services of an American Sign Language (ASL) interpreter alone is insufficient for ensuring equal access to court services, and a specialist interpreter is needed.

## 2. Types of Specialized Interpreters

In the field of professional sign language interpreting there are a number of specialist interpreters that have been used in courts nationwide. These interpreters are first certified to do generalist interpreting and then take specialized training and testing to prove their abilities in a specialty area. The following four interpreting specialties identified immediately below are explained in greater detail in the remainder of this document.

- The **Certified Deaf interpreter** (CDI) is the most commonly used specialist interpreter used in the courts and has the widest range of abilities.
- The **Deaf-Blind Interpreter** provides interpretation in various modes to people who are deaf and have limited vision.
- **Trilingual Interpreters** provide interpretation between English, ASL, and Spanish.
- **Oral Transliterators** provide communication access in a way that is easily accessible to those people who do not know sign language and depend on speechreading.

## 3. Certified Deaf Interpreters (CDI)

**A CDI shall be provided if a person who is deaf or hard of hearing requests one. A CDI shall also be assigned if an ASL interpreter meeting the requirements Standard 2.3 Who May Interpret for the Deaf and Hard of Hearing or a person who is deaf or hard of hearing states that the interpretation is not satisfactory and a CDI would improve the quality of the interpretation. (N.J.S.A. 34:1-69.9)**

Some deaf or hard of hearing individuals have inadequate or no environmental supports and/or have functional skills and competencies significantly below average, making them the most at risk and underserved portion of the overall deaf population.<sup>1</sup> These deaf people are at greater risk for becoming involved in the legal system. In order for this segment of the deaf population to meaningfully participate in court proceedings, programs, and services, they will require the use of a Certified Deaf Interpreter (CDI), sometimes called relay or intermediary interpreter.

The CDI is an interpreter certified by the Registry of Interpreters for the Deaf, Inc. (RID) as proficient in recognizing those ASL constructs that are appropriate to use with such individuals precisely because the CDI lives in an environment without meaningful access to sound - their world is organized visually. CDIs have specialized training and/or experience in the use of gesture, mime, props, drawings, and other tools to enhance communication. The deaf court

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<sup>1</sup> NAD (National Association of the Deaf) Position paper, May 2004, [A Model for a National Collaborative Service Delivery System Serving Individuals Who are Low Functioning Deaf](#), at [www.nad.org](http://www.nad.org).

user receives the same content as others in the interaction just organized in a more visual, spatial and natural manner.<sup>2</sup>

Similarly, some ASL interpreters do not have native-like competency in ASL and therefore the interpretation of complex legal concepts may have deficiencies consistent with those of a second-language learner. The CDI ensures that the interpretation achieves the level of accuracy required in legal settings.

CDIs must work in partnership with an American Sign Language (ASL) interpreter who can hear and are subject to the same rules and oaths as all other interpreters. In this **Deaf-Hearing interpreting team**, the hearing ASL interpreter interprets from spoken English into sign language that is directed to the CDI. The CDI interprets the ASL message linguistically and culturally in the language or communication mode most readily understood by the deaf court user. The deaf court user communicates information to the CDI, who then interprets the information in ASL to the hearing ASL interpreter, who renders the message into spoken English.

Characteristics of Deaf<sup>3</sup> court users that require the use of a CDI include but are not limited to:

- a. Limited opportunities for acquisition of ASL. Some deaf people do not interact with the signing community and this inhibits their exposure to and acquisition of ASL or any other language.
- b. A bilingual home/school environment, e.g., deaf children born into Spanish-speaking homes who speechread Spanish until entering school where they then begin to be exposed to English, a sign language and any other mode of communication very late in their language development.
- c. The presence of a secondary factor such as limited vision, intellectual and developmental disability, a learning disability, mental illness or problems caused by substance abuse.
- d. A lack of natural language development during the crucial ages of 0-5 years, e.g., a deaf child born into a hearing family in which no one signs. Deaf court users under the age of 16 typically fall into this category.
- e. Limited or no formal education.
- f. Social isolation. Some deaf people lead their lives isolated from both the hearing and deaf worlds. They may lack the general social and cultural knowledge necessary for fluent communication in any language.
- g. Immigrants, migrants, or refugees who are fluent in their native sign language (e.g., British Sign Language, Polish Sign Language, Puerto Rican Sign Language, or Colombian Sign Language), but who have acquired little or no ASL.

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2 NCIEC (National Consortium of Interpreter Education Centers), 2009, [Deaf Interpreters in Court](#) (p. 20-21), at [www.interpretereducation.org](http://www.interpretereducation.org).

3 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.

The use of CDIs is considered the ideal accommodation for ASL users, even for those who communicate in standard ASL. Therefore in addition to the reasons listed above, CDIs may also be used in significant cases to ensure there are no communication issues, such as first degree crimes.

Once a CDI is requested by the litigant or an ASL interpreter, a CDI must be provided for all subsequent events unless the deaf or hard of hearing person confirms in writing they no longer need the CDI, per Standard 2.9 Waiver of Right to a Sign Language Interpreter, with an exception being the discretionary use noted above.

#### **4. Consecutive Mode Required**

Working with a Deaf-Hearing interpreting team requires the strict use of the consecutive mode in all situations. This means the ASL interpreter begins interpreting into ASL only after the English speaker has completed an utterance. Once that interpretation is completed, the CDI then begins interpreting to the deaf person using a variety of visual/gesture communication techniques. The process will be repeated in reverse when the deaf person is the source of the message to be interpreted. Therefore, simultaneous interpretation is not viable in this context.

#### **5. Unique Characteristics of Cases that use a CDI**

Each case requiring a CDI is unique and presents its own set of complex linguistic challenges. The value of the CDI lies in the ability to provide an interpretation that conveys information which conforms to the experiential and linguistic framework of the deaf litigant<sup>4</sup>. Therefore the following may occur in these types of cases:

- a. It's not unusual for the Deaf-Hearing team to consult with each other to achieve an accurate interpretation. For example, the ASL interpreter may ask the CDI for verification or clarification before rendering an interpretation into English.
- b. Judges and attorneys may become uncomfortable while they wait for the communication process to be completed. The extra time is necessary given the complexities and unique communication needs of these cases.
- c. At times the CDI may request permission to verify or clarify the testimony from the deaf party.
- d. The interpreters may request clarification from counsel periodically throughout questioning. The interpreters may need to know what the situation looked like visually in order to communicate the concept to the witness. For example, "Do you remember when the DYFS worker came to your house after school?" The interpreters may request to know the gender of the DYFS worker in order to focus the witness back in time to the day "the woman or the man" stopped by her house after school. Similarly a phrase such as "threaten with a weapon" may need clarification as to the type of weapon and the exact nature of the threatening gesture. This may necessitate sidebar discussions or can be part of the open court record, at the discretion of the trial judge.
- e. The interpreters may need to use concrete objects such as paper and pencil for drawing, calendars, clocks, pictures, and dolls to supplement their gestures and signs. Additional space may be needed to allow the deaf person to physically pantomime responses.

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<sup>4</sup> NCIEC (National Consortium of Interpreter Education Centers), 2009, [Deaf Interpreters in Court](http://www.interpretereducation.org) (p. 20-21), at [www.interpretereducation.org](http://www.interpretereducation.org).

## **6. General Suggestions when using a Certified Deaf Interpreter**

To increase the likelihood of a successful communication event, it is suggested that the court do the following:

- a. Increase the amount of time scheduled for each phase of the case.
- b. Make every effort to use the same interpreting team throughout the case.

## **7. Guidelines for Asking Questions to Deaf Persons with Limited or No Ability to Communicate in ASL**

The normal process by which attorneys and judges ask questions in a court of law will not always work successfully when this type of interpreting is necessary. The following suggestions are designed to help attorneys or judges adapt their styles of asking questions to have the greatest likelihood of succeeding in communicating effectively with these types of deaf litigants and witnesses:

- a. Keep questions brief and as specific as possible.
- b. Avoid vague or abstract questions.
- c. Avoid double negatives.
- d. Present questions in sequential time order of the actual series of events in question.  
Note: Switching back and forth between or among verb tenses can hamper communication.
- e. When the deaf party or witness is unable to answer a specific form of a question, the court should consider allowing leading questions by the direct examiner.

## **8. Instructions to the Jury When a Deaf Witness Who Has Limited or No Ability to Communicate in ASL Testifies**

One noticeable characteristic of signed communication is nodding. This signifies that the communication is received, but does not necessarily signal agreement or an affirmative response. Judges should advise juries of the following:

- a. When the deaf witness nods, it is in no way an indication that he or she understands what is being communicated. It may merely indicate a willingness to continue the conversation.
- b. Similarly, nodding is in no way an indication that the deaf person is answering "Yes" or "No."
- c. Ignore the nods and wait for the interpreters to render the complete response -before drawing any inferences about what the witness said.

## **9. Deaf-Blind Specialist Interpreter**

Court users with visual impairments will have differing degrees of vision loss and hearing loss. The amount and type of vision and hearing loss a person has determines the type of interpreting that will be most effective for that individual<sup>5</sup>. An experienced and certified Deaf-Blind interpreter can assess the appropriate method and position required to best accommodate the

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<sup>5</sup> RID Standard Practice Paper, Interpreting for Individuals who are Deaf-Blind, 2007, <http://rid.org/about-interpreting/standard-practice-papers/>

court user. Most CDI interpreters can provide this service in a Deaf-Hearing team as described in section 4.

Two common types of deaf-blind interpreting:

- a. Close visual range - The interpreter(s) and the deaf-blind consumer are positioned very close to one another and often provided with additional lighting.
- b. Tactile sign language - The sign language is received by the sense of touch with one or two hands.

Deaf-blind interpreting is physically and mentally demanding and will require a team of interpreters unless the event is under one hour, in which case one interpreter may be sufficient.

## 10. Tri-Lingual Specialist Interpreters

Trilingual interpreters are most often used for situations in which the court user is of Hispanic/Latino origin and for whom ASL is a second or foreign language<sup>6</sup>. There has been an increase in the number of court users who are deaf, speechread Spanish and may need support by using American Sign Language. In these situations a trilingual interpreter (English, Spanish and ASL) is the best accommodation. The term “trilingual interpreting” as a standalone term refers to the act of interpreting between three independent languages. For the purposes of this document “trilingual interpreting” will refer to the act of interpreting between ASL, Spanish and English.

A trilingual interpreter must be competent in these three languages and their regional varieties<sup>7</sup>. Many trilingual interpreters will incorporate signs from the sign language of the deaf person’s native country. There is a limited number of trilingual interpreters. As of 2015 only the state of Texas offers a trilingual certification. Interpreters with this certification should be used preferentially and all others need to be voir dired by the trial judge. See Standard 1.3.5 Rule of Evidence 604 Interpreters. In some cases, a CDI may be useful when a true trilingual interpreter is not available.

## 11. Oral Transliterators

**Oral Transliterators, also called oral interpreters, facilitate spoken communication between individuals who are deaf and hard of hearing and individuals who are not. Individuals who use this type of interpreter, use speech and speechreading as their primary mode of communication and may or may not know or use manual communication or sign language<sup>8</sup>.**

Oral transliterators always position themselves very close to the deaf or hard of hearing person, typically directly across from them. Courtrooms typically pose difficulties for speech readers since speakers including witnesses, the opposing attorney and judge may not be close enough for speechreading.

Oral transliterators can be located through the same agencies that provide ASL interpreters. The Registry of Interpreters for the Deaf does certify oral transliterators. It is preferable to have an interpreter with this credential. It is important to convey that the assignment needs an oral transliterators since not all ASL interpreters possess this skill set.

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6 NCIEC (National Consortium of Interpreter Education Centers), 2014, [Toward Effective Practice: Interpreting in Spanish-Influenced Settings](#) (p. 4), at [www.interpretereducation.org](http://www.interpretereducation.org).

7 NCIEC (National Consortium of Interpreter Education Centers), [ASL/Spanish/English](#), at [www.interpretereducation.org](http://www.interpretereducation.org).

8 RID Standard Practice Paper, Oral Transliteration, 2007, <http://rid.org/about-interpreting/standard-practice-papers/>

**Resources:**

**National Consortium of Interpreter Education Centers** ([www.interpretereducation.org](http://www.interpretereducation.org))

- [Deaf Interpreters in Court: An accommodation that is more than reasonable](#)
- [Toward Effective Practice: Interpreting in Spanish-Influenced Settings](#)

**Registry of Interpreters for the Deaf** ([www.rid.org](http://www.rid.org))

- [Standard Practice Paper](#) on Certified Deaf Interpreters
- [Standard Practice Paper](#) on Deaf Blind Interpreting
- [Standard Practice Paper](#) on Oral Transliteration

**Trilingual Sign Language Interpreters in the US** ([www.manoamano-unidos.org/](http://www.manoamano-unidos.org/))