

ADMINISTRATIVE OFFICE OF THE COURTS
STATE OF NEW JERSEY

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SUPPLEMENT TO
DIRECTIVE #3-04

TO: Assignment Judges
Trial Court Administrators

FROM: Glenn A. Grant, J.A.D.

SUBJECT: Directive #3-04 – Clarification of Providing Interpreters for Court-Ordered Events Outside the Courthouse

DATE: March 20, 2009

We have recently received questions as to whether the Judiciary should pay for interpreting events that occur outside of the courthouse. This memo clarifies the Judiciary's interpreting standards (Directive #3-04), and specifically Standard 1.2 (attached) on this point. This clarification, as with all of Standard 1.2, applies only to spoken language interpreters. Requests for sign language interpreters for the deaf and hard of hearing may raise complex issues under the Americans with Disabilities Act (ADA) that need to be determined on a case-by-case basis.

With certain specific exceptions noted below, court ordered events that take place outside the courthouse, and that do not involve Judiciary staff, are generally not eligible for a Judiciary-provided interpreter, although some are. Common examples of court ordered events that take place outside of the courthouse include non-foreclosure civil mediation, family economic mediation, psychological evaluations, psychological counseling, child placement review boards, juvenile conference committees and civil commitment hearings. Each of these events is addressed below.

Mediation. In order for the Judiciary to provide a spoken language interpreter for court ordered mediation, the mediation must take place at the courthouse. Attorneys who regularly handle non-foreclosure civil mediation and family economic mediation in their private offices should be instructed to schedule any mediation that necessitates the use of an interpreter at

the courthouse. If the mediation is held at the courthouse, the Judiciary will arrange for and pay the costs of the interpreter. Foreclosure mediation ordinarily occurs in the courthouse.

Evaluations. With respect to court-ordered psychological evaluations, custody evaluations and the like, when conducted outside the courthouse, if the Judiciary is bearing the cost of the evaluation the Judiciary should provide and pay for the interpreter. If another party (litigant, DYFS, county agency, etc.) is bearing the cost of the evaluation, then that party should also pay for the interpreter as part of the evaluation process. Since the evaluation report may constitute evidence or expert opinion of significance in the court's consideration of the case, as a general rule only approved interpreters on the Judiciary's registry should be used for such evaluations.

Counseling. There are no foreseeable circumstances under which the Judiciary would pay for interpreters in pre or post dispositional counseling programs.

Civil Commitment Hearings. Although civil commitment hearings are addressed directly in Standard 1.5, it is re-iterated here that, because they are conducted on the record before a Judge, these events should always be provided with a Judiciary interpreter should one be needed.

Child Placement Review Boards and Juvenile Conference Committees. Although Child Placement Review Boards and Juvenile Conference Committees may take place off-site and do not include Judiciary staff, these two entities function as an arm of the court, and as such it is appropriate for the Judiciary to provide an interpreter if one is required.

Any questions regarding this matter or other questions regarding the Interpreting Standards may be directed to Leigh Eastty, Manager, Programs and Procedures Unit, at 609-984-2172 or Brenda Carrasquillo, Manager, Language Services Section, at 609-984-5024.

G.A.G.

Attachment

c: Chief Justice Stuart Rabner
Hon. Joseph B. Small, Tax Court Presiding Judge
Presiding Judges (Civil, Criminal, Family, General Equity)
AOC Directors and Assistant Directors
Jennifer Perez, Chief Deputy Clerk of the Superior Court
Cheryl Ryan, Tax Court Administrator/Clerk
Leigh Eastty, Manager, Programs and Procedures
Brenda Carrasquillo, Manager, Language Services
Division Managers (Civil, Criminal, Family, Finance, Municipal, Operations)
Vicinage Chief Probation Officers
Vicinage Coordinators of Interpreting Services
Steven D. Bonville, Special Assistant
Francis W. Hoeber, Special Assistant

Excerpt From Directive #3-04, *Interpreting Standards*, March 22, 2004:

Standard 1.2. Who should be assigned an interpreter.

The judiciary should generally assign interpreters to interpret all phases of court-connected proceedings for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part, is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony. Such phases include, most critically, those proceedings for which a transcript may be made, but also, when necessary, court-ordered arbitration and mediation and delivery of services involving court personnel, particularly in criminal and quasi-criminal cases. Interpreters should be provided whenever a failure of communication may have significant negative repercussions.

Comment:

A basic tenet of justice is equal access. There can be no equal access if the ability to comprehend is compromised by language barriers. At any proceeding on the record before a judge or hearing officer, interpreters must be used if a language barrier exists. This ensures a consistent and high level of interpretation services for the most critical phases of a case.

In instances in which certain direct services are rendered by paid or volunteer staff, qualified bilingual staff, if available, should provide the service in lieu of an interpreter. If no qualified bilingual staff is available, an interpreter should be assigned. In appropriate cases, telephone interpreting may also be a logical, cost-effective, and efficient alternative. (See Standard 1.6.) Examples of such direct services are mediations, arbitrations, first contacts with probationers, Child Placement Review Boards, Juvenile Conference Committees, and contacts that could result in a violation of probation. In general, the services rendered are those in which a failure of communication may have significant negative repercussions.

In direct service situations that are less likely to have significant negative repercussions in a case (like routine probation reporting and intake at Civil Division counters), the convening authority should weigh the equities in deciding whether, in the absence of qualified bilingual staff, a court-assigned interpreter is required or whether adult family or friends of parties may instead be used. (Using minors to communicate with limited-English proficiency adults is fraught with obvious perils and should be avoided except to gather ancillary or basic information, like addresses and phone numbers. Juveniles should not be used for substantive matters that would put undue pressure on them to secure a “favorable” outcome for their parents.)

In the absence of qualified bilingual staff, the nature of the particular direct service

event is crucial to determining whether to assign an interpreter. Doubts should always be resolved in favor of assigning an interpreter, even if doing so requires rescheduling the event. The ideal of justice dictates that, as resources become available, all direct service rendered to limited-English proficient persons should be provided either by qualified bilingual staff or with the assistance of a court-assigned interpreter.

This standard implicitly excludes provision of court-assigned interpreters for depositions and private alternative dispute resolution and, more generally, for contacts between the party needing an interpreter and a person who is not connected with the judiciary, except as these standards may otherwise provide.

The judiciary will provide and bear the costs of interpreting services in contested probate matters handled in the Superior Court. It may also provide interpreting services in matters involving the Surrogate if the county reimburses the State for the costs of the interpreter.