NOTICE OF REQUEST FOR COMMENTS
REGARDING
PROPOSED ETHICS FOR
COURT INTERPRETERS

The Administrative Office of Courts now seeks comments from the Bench, the Bar and the public on the proposed Code of Ethics for Court Interpreters.

Comments should be filed with the Administrative Office of Courts, Gartin Justice Building, Post Office Box 117, Jackson, Mississippi, 39205-0117, no later than Tuesday, May 31, 2011.

PREAMBLE

Many persons who come before the courts of this state are partially or completely excluded from full participation in the proceedings due to limited English proficiency (LEP). It is essential that any communication barrier be removed, as far as possible, so that these limited English proficiency (LEP) individuals are placed on equal footing with similarly situated persons for whom there is no such barrier. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. As officers of the court, interpreters help assure that LEP individuals enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively.

APPLICABILITY AND ENFORCEMENT

This code shall guide, and be binding upon, all persons, agencies and organizations that administer, supervise, use, or deliver interpreting services to the judicial system. This code is also binding upon any person who attempts to become, or does become, credentialed to deliver interpreting services to the judicial system. The Canons and any sub-parts are mandatory upon persons who are bound by this code. The commentary is not mandatory and exists to provide guidance in interpreting the code.

Violations of this code may result in the interpreter being removed from a case and being denied future appointments by the courts. Other sanctions may be invoked as deemed appropriate by the Director ("Director") of the Administrative Office of Courts ("AOC"), including the revocation of credentials.

The Director is authorized to adopt policies and procedures necessary to enforce the code.

Interpreters for the hearing impaired are not covered by this code. *See Miss. Code Ann*. §§ 13-1-301 to 13-1-315 regarding guidelines for hearing impaired interpreters.

TERMINOLOGY

(1) Consecutive Interpretation - providing the target-language message after the speaker has finished speaking.

(2) Source Language - the input language requiring interpretation.

(3) Target Language - the output language into which the utterance is being interpreted.

CANON 1 - ACCURACY AND COMPLETENESS

Court interpreters shall render a complete and accurate interpretation or translation without altering, omitting, or adding anything to what is stated or written.

The interpreter has a twofold duty: to ensure that the proceedings in English reflect precisely what was said by the LEP speaker, and to place the LEP speaker on an equal footing with those who understand and speak English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters shall demonstrate their professionalism by objectively analyzing any challenge to their performance.

Commentary

Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent, should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. If the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

The ethical responsibility to accurately and completely interpret includes the responsibility of being properly prepared for interpreting assignments. Interpreters are encouraged to obtain documents and other information necessary to familiarize themselves with the nature and purpose of a proceeding. Prior preparation is especially required when testimony or documents include highly specialized terminology and subject matter.

CANON 2 - REPRESENTATION OF QUALIFICATIONS

Court interpreters shall accurately and completely represent and document their credentials, training, and pertinent experience, and make such documentation available to each and every court to be maintained on file by such court, if so desired.

Commentary

Acceptance of a case by an interpreter is a representation to the court of linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources. It is therefore essential that the interpreter present a complete and truthful account of training, credentials, and experience prior to appointment so the officers of the court can fairly evaluate qualifications for delivering interpreting services.

A court can determine an interpreter's credentialing status by consulting the interpreter roster, which can be found on the AOC's website:

http://www.mssc.state.ms.us/aoc/aoc.html

CANON 3 - IMPARTIALITY AND AVOIDANCE OF CONFLICT

Court interpreters shall be impartial and unbiased and shall refrain from conduct which may give an appearance of bias. Court interpreters shall immediately disclose any real or perceived conflict of interest.

Any condition which interferes with the objectivity of an interpreter constitutes a conflict of interest. Before providing services in a matter, a court interpreter shall disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. Such disclosure(s) shall include, but shall not be limited to, the fact that the interpreter has previously been retained by one of the parties for private employment. Such disclosure(s) shall not include privileged or confidential information.

Whenever an interpreter has an actual or apparent conflict of interest, the interpreter shall declare in open court before appointment such conflict, and the court shall determine whether the interpreter may serve in the case. Situations, including but not limited to the following, shall be presumed to create an actual or apparent conflict of interest:

(1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

(2) The interpreter has served in an investigative capacity for any party involved in the case;

(3) The interpreter has previously been retained by a law enforcement agency or any party to assist in the preparation of the case at issue;

(4) The interpreter or the interpreter's friend or relative has a financial interest in the subject matter in controversy or is 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 counsel or law firm for that case; or

(6) Any other situation in which the interpreter thinks that his or her impartiality may be questioned or compromised.

Court interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case. Interpreters shall not solicit nor accept any payment, gift, or gratuities in addition to compensation from the court.

Commentary

The interpreter serves as an officer of the court, and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at the government's expense or retained privately at the expense of one of the parties. Although an interpreter must disclose the fact that the interpreter provided services for a party during out-of-court meetings, interviews, or other proceedings in the case at issue, ethical considerations do not preclude the same person from serving as the interpreter for multiple parties or for both the court and one or more parties in that case.

An individual who is, or may become, a witness is not permitted to serve as an interpreter in that same matter. An interpreter who is also an attorney should not serve in both capacities in the same matter.

During the course of the proceedings, the interpreter should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of official functions. Official functions may include an informal pre-appearance assessment to include the following:

1. *Culturally appropriate introductions;*
2. *A determination of variety, mode, or level of communication;*
3. *A determination of potential conflicts of interest; and*
4. *A description of the interpreter's role and function.*

It is especially important that an interpreter, who is often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, refrain from casual and personal conversations with anyone in court which may convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that an LEP individual views the interpreter as having a bias or being biased, the interpreter should disclose that knowledge to the proper judicial authority immediately.

CANON 4 - PERSONAL DEMEANOR

Court interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When interpreting testimony or making comments to be included in the record, interpreters should speak at a rate and volume which enables them to be heard and understood throughout the courtroom. The interpreter's presence should otherwise be as unobtrusive as possible. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court. Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings but should be appropriately positioned to facilitate communication.

Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5 - CONFIDENTIALITY

Court interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of official duties. It is especially important that the interpreter understands and upholds the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. It is equally important for the interpreter to be aware that when the attorney is not present, there is no attorney-client privilege. In that instance, the interpreter may be required to divulge any information gained in the attorney's absence. The interpreter, therefore, must avoid any such situation. This rule also applies to other types of privileged communications.

Interpreters must also refrain from repeating or disclosing information which was obtained by them in the course of their employment and which may be relevant to the legal proceedings.

In the event that an interpreter becomes aware of information which suggests the threat of imminent harm to someone or relates to a crime being committed during the course of the proceedings, the interpreter should immediately disclose the information to an appropriate authority within the judicial system and seek advice with regard to the potential conflict in professional responsibility.

CANON 6 - RESTRICTION OF PUBLIC COMMENT

Court interpreters shall not publicly discuss, report, or offer an opinion concerning a matter in which they are engaged, even when that information is not privileged or required by law to be confidential.

CANON 7 - SCOPE OF PRACTICE

Court interpreters shall limit themselves to interpreting or translating. Court interpreters 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.

Commentary

Since they are responsible only for enabling others to communicate, interpreters should limit themselves to the activity of interpreting or translating. Interpreters should refrain from initiating communications while interpreting at all times except as set out below.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. 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 refer to themselves in the third person as "the interpreter," making it clear and on the record that they are speaking for themselves.

At no time can an interpreter give advice, but an interpreter may interpret legal advice from an attorney to any party while that attorney is giving it. An interpreter should not explain the purpose or content of forms or services, or otherwise act as counselor or advisor. The interpreter may translate language on a form in the presence of an attorney

or authorized legal personnel if the translation will assist the person in filling out the form, but the interpreter may not explain the form or its purpose for such a person.

The interpreter should not personally perform acts which are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation officers, except as required by and in the presence of such officials.

CANON 8 - ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

Court interpreters shall, at all times, assess their ability to deliver interpretive or translating services. When court interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority, even if the proceeding is in progress.

Commentary

If the communication mode, dialect, or speech of the LEP speaker cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any circumstances (environmental or physical limitation) that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the LEP speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret).

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary during trials, complex and technical proceedings, proceedings more than two hours in length, and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). See Comment, Rule 3, Mississippi Standards for Court Interpreters.

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 in which 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, the interpreter should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

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 capabilities. Interpreters should not be hesitant to notify the court if they feel unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant. Court personnel and parties are encouraged to provide interpreters with copies of all documents referred to in a proceeding including, but not limited to, witness lists, indictments, exhibit lists, criminal complaints, investigative reports, tape transcripts, telephone logs, and bank records.

Interpreters should notify the court 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.

CANON 9 - MISCONDUCT

A court interpreter shall not commit any act, including a criminal act, that reflects adversely on the interpreter's honesty, trustworthiness, or fitness as an interpreter. Likewise, a court interpreter shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Commentary

This language is intended to put interpreters on notice that inappropriate conduct before, during, and after successful completion of the credentialing process may have professional ramifications. The conduct at issue includes, but is not limited to, engaging in inappropriate behavior during one or more of the required credentialing examinations.

CANON 10 - DUTY TO REPORT ETHICAL VIOLATIONS

Court interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, provision of this code, or other official policy governing court interpreting and legal translating.

Commentary

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities which are counter to the provisions of this code or other laws, regulations, specific instructions from the bench, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of the interpreter's professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should request the judge, or appropriate official with jurisdiction over interpreter matters, to resolve the situation.

CANON 11 - PROFESSIONAL DEVELOPMENT

Court interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education and through interaction with colleagues and specialists in related fields.

Commentary

Interpreters must continually strive to increase their knowledge of the languages in which they professionally interpret, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed and updated about all statutes, rules of courts, and policies of the judicial system that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession by participating in workshops and professional meetings, interacting with colleagues, and reading current literature in the field.