In the
Indiana Supreme Court

CAUSE NUMBER: 94S00-0810-MS-543

ORDER PROMULGATING INTERPRETER CODE OF CONDUCT AND DISCIPLINARY PROCESS FOR CERTIFIED INTERPRETERS AND CANDIDATES FOR CERTIFICATION

Under the authority vested in this Court to provide rules for procedures employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, the Court hereby establishes and adopts the "Interpreter Code of Conduct and Procedure," attached hereto as Attachment 1, and the "Indiana Supreme Court Disciplinary Process for Certified Court Interpreters and Candidates for Interpreter Certification," attached hereto as Attachment 2, both of which shall take effect immediately. The "Interpreter Code of Conduct and Procedure" shall apply to all individuals providing foreign language interpretive services in Indiana courts during court proceedings. The "Indiana Supreme Court Disciplinary Process for Certified Court Interpreters and Candidates for Interpreter Certification" shall apply to interpreters certified in foreign language interpretation by the Indiana Supreme Court and candidates seeking such certification.

The Clerk of this Court is directed to forward a copy of this Order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Supreme Court Commission on Race and Gender Fairness; and Indiana Judges and Lawyers Assistance Program. The Clerk is also directed to send a copy of this order to Thomson/West for publication in the bound volumes of this Court's decisions, and to post an electronic copy of this order on the Supreme Court's website.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this 24th day of September, 2008.

Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

All Justices concur, except for Dickson, J., who dissents from the adoption of the Interpreter Code of Conduct and Procedure and the Indiana Supreme Court Disciplinary Process for Certified Court Interpreters and Candidates for Interpreter Certification.

Attachment 1

Indiana Supreme Court
Interpreter Code of Conduct and Procedure

I. Preamble

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency. It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier.

As officers of the court, interpreters help ensure that non-English speakers may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

However, the opportunity for any specific interpreter to provide services to the Indiana courts is at the Indiana Supreme Court's complete and continuing discretion because of the critical reliance the trial courts must have on the skills, performance, and integrity of the interpreter in performing duties for the courts. This Code sets forth the minimum standard of conduct the Indiana Supreme Court expects from any interpreter providing services for Indiana courts, but it is not intended to be a vehicle for complaints about interpreting errors made by interpreters during the course of a proceeding, unless there is an allegation of gross incompetence or knowing misinterpretation or misrepresentation. In those circumstances, complaints should be made pursuant to the procedures outlined in the Indiana Supreme Court Disciplinary Process for Certified Court Interpreters and Candidates for Interpreter Certification.

1. Purpose

These Standards seek to:

a) Ensure meaningful access to all trial courts and court services for non-English speakers;

b) Protect the constitutional rights of criminal defendants to the assistance of court interpreters during court proceedings;

c) Ensure due process in all phases of litigation for non-English speakers;

d) Ensure equal protection of the law for non-English speakers;

e) Increase efficiency, quality, and uniformity in handling proceedings which involve a court interpreter;

f) Encourage the broadest use of professional language interpreters by all those in need of such services within the trial courts.

2. Scope

a) These Standards define and govern the practice of court interpretation in Indiana trial courts.

3. Applicability

a) This Code shall guide and be binding upon all persons, agencies and organizations who administer, supervise, use, or deliver spoken foreign language interpreting services to the judicial system.

b) Violations of this Code may result in the interpreter being removed from a case, denied future appointments by the courts or losing credentials if the interpreter has been certified pursuant to the rules of the Indiana Supreme Court.

c) The Standards and any subparts are mandatory requirements for those who are bound by this Code. The commentary is not mandatory and exists to provide guidance in interpreting the Code.

d) These Standards apply to court interpreters appearing:
   1) In any proceeding before any trial court of the state;
   2) Before any attorney, court, or agency in connection with any matter that is, or may be, brought before a court;
   3) In any other activity ordered by the court or conducted under the supervision of a court.

II. Definitions

For the purposes of this Code, the following words shall have the following meaning:

Interpretation
The unrehearsed transmission of the spoken word or message from one language to another.

Translation
The conversion of a written text from one language into written text in another language.

Sight Translation
The reading of written text of one language, translated orally into another language.

Simultaneous Interpretation
The rendering of an interpretation for a party at the same time someone is speaking, usually heard only by the person receiving the interpretation; this form of interpretation may be accomplished using equipment specially designed for the purpose.

Consecutive Interpretation
Relaying a message from one language into another in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his or her statements through the interpreter.

Certified Interpreter
An interpreter who has been duly trained and certified under the direction of the Indiana Supreme Court Division of State Court Administration.

Interpreter
One who is readily able to interpret spoken language, sign language, or written language.

Non-English Speaker
A person who uses only, or primarily, a spoken or signed language other than English.

Cultural Fluency
Awareness and full comprehension of cross-cultural factors including but not limited to expectations, attitudes, values, roles, institutions, and linguistic differences and similarities.

Summarize
Make a summary of the chief points or thoughts of the speaker; *e.g.*, summary interpretation, a non-verbatim account of the statements made by the speaker.

Consortium
The Consortium for State Court Interpreter Certification, operated by the National Center for State Courts, is an organization responsible for facilitating court interpretation test development and administration standards, providing testing materials, developing educational programs and standards, and facilitating communication among member states and entities in order for individual member states and entities to have the necessary tools and guidance to implement certification programs.

III. Standards

1. *Representation of Qualifications*

   a) Interpreters shall accurately and completely represent their certifications, training and pertinent experience.

Commentary 1. 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 interpreters present a complete and truthful account of their training, certification and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.
Commentary 2. 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 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. 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. Interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

2. *Accuracy*

a) Each court interpreter shall faithfully and accurately interpret what is said without embellishment or omission while preserving the language level of the speaker to the best of said interpreter's skill and ability.

b) Each court interpreter shall provide the most accurate form of a word in spite of a possible vulgar meaning. Colloquial, slang, obscene or crude language as well as sophisticated and scholarly language shall be conveyed in accordance with the usage of the speaker. An interpreter is not to tone down, improve, or edit any statements.

c) A court interpreter shall speak in a clear, firm, and well-modulated voice that conveys the inflections, tone, and emotions of the speaker.

d) A court interpreter shall not simplify statements for a non-English speaker even when the interpreter believes the non-English speaker cannot understand the speaker's language level. The non-English speaker may request an explanation or simplification, if necessary, from the court or counsel through the interpreter.

Commentary 1. 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 nonresponsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Commentary 2. 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 re-enacting or mimicking the speaker's emotions or dramatic gestures.

3. *Impartiality*

a) Each court interpreter shall maintain an impartial attitude at all times and avoid unnecessary discussions with counsel, parties, witnesses, and interested parties, either inside or outside the courtroom, to avoid any appearance of partiality.

4. *Confidentiality*

a) Each court interpreter shall guard confidential information and not betray the confidences which may have been entrusted to him or her by any parties concerned.

b) Disclosures made out of court by communication of a non-English speaker through an interpreter to another person shall be privileged communication and said interpreter shall not disclose such communication without permission of said non-English speaker; provided, however, that such non-English speaker had a

reasonable expectation or intent that such communication would not be so disclosed.

Commentary 1. The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his/her 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 and the interpreter may be held to divulge any information gained. The interpreter, therefore, must avoid that situation. This rule also applies to other types of privileged communications such as spousal privilege, clergymen-parishioner privilege, and doctor-patient privilege.
Commentary 2. 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.
Commentary 3. In the event that an interpreter becomes aware of information that 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 in regard to the potential conflict in professional responsibility.

5. *Proficiency*

a) Each court interpreter shall provide professional services only in matters or areas in which the interpreter can perform accurately.

b) Each court interpreter shall continuously improve language skills and cultural fluency and increase knowledge of the various areas within the judiciary which may be encountered in court interpretation. An interpreter should attend workshops, seminars, conferences, or courses to keep current in the changes of the law as well as interpretation and translation theories and techniques, to receive updates to existing glossaries of technical terms, and to exchange information with colleagues.

c) A court interpreter is responsible for having the proper legal and bilingual dictionaries readily available for consultation.

d) A court interpreter shall withdraw from any case in which his/her performance will be adversely affected due to lack of proficiency, preparation or difficulty in understanding the speaker for any reason, including insurmountable linguistic and/or cultural differences or complexity of conceptual or technical terms to be used in the proceedings. Such withdrawal may be made at the time of the pre-appearance interview with the non-English speaker or at any other appropriate time.

6. *Demeanor*

a) Each court interpreter shall maintain a low profile, speak at audible volumes appropriate to the context, and be as unobtrusive as possible. The positioning in the courtroom and the style of work shall contribute to maintaining a natural atmosphere as there would be if no language barrier existed.

b) The court interpreter shall be positioned in full view of the person testifying or specially situated to ensure proper communication but shall not obstruct the view of the judge, jury or counsel. The interpreter shall always be positioned so that the non-English speaker can hear or see everything the court interpreter says or signs and so that the interpreter can hear or see everything that is said or signed during the proceedings.

c) The court interpreter shall be familiar with the courtroom layout, particularly the location of the microphones for the electronic recording of the proceedings.

d) Each court interpreter shall appear on time and report immediately upon arrival to the clerk of the court.

7. *Case Preparation*

a) Each court interpreter shall prepare for the case, whenever possible, and particularly with respect to lengthy and complex criminal and civil trials, by reviewing the case material including the charges, police or other reports, complaints or indictments, transcripts of interviews, motions, or any other documentation to be used in the case. The court interpreter especially should review these items if counsel plans to quote directly from them. Requests for case material shall be made to the attorney processing the case with the awareness and consent of both parties. The information is to be used solely for the technical preparation of the court interpreter.

b) Counsel and/or the court shall interview the non-English speaker prior to the initial court appearance in order to instruct the speaker as to the proper role of the court interpreter during the proceeding.

c) The non-English speaker will be instructed by the court interpreter as follows:
   1) The non-English speaker will be advised that the court interpreter will interpret any statements or comments at all times.
   2) The non-English speaker shall be instructed not to ask direct questions of the court interpreter or initiate any independent dialogue with the interpreter, including legal advice or explanations of any statement made during the proceedings. The non-English speaker shall be instructed to direct all questions to counsel or court when necessary.
   3) The court interpreter shall familiarize himself/herself with the speech pattern or sign language communication, cultural background, and native language level of proficiency of the non-English speaker.
   4) The court interpreter shall familiarize the non-English speaker with the interpretation mode to be used and with the hand technique used in interpretation for segmenting lengthy testimony.
   5) The non-English speaker shall be instructed to wait for the full interpretation of the English before responding to a question.
   6) The non-English speaker shall be instructed not to maintain eye contact with the interpreter except in the case where the non-English speaker is deaf. Eye contact is crucial in this case.

8. *Oath or Affirmation*

a) All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The court shall use the following oath:

Do you solemnly swear (or affirm) that you will justly, truly, and impartially interpret to _____ the oath about to be administered to him (her), and the questions which may be asked him (her), and the answers that he (she) shall give to such questions, relative to the cause now under consideration before this court so help you God (or under the pains and penalties of perjury)?
Ind. Code § 34-45-1-5

b) All interpreters, before commencing their duties in any court proceeding, shall take an oath that they have reviewed and will abide by the Indiana Supreme Court Interpreter Code of Conduct and Procedure.

9. *Modes of Court Interpreting*

a) The simultaneous mode of court interpretation requires the interpreter to speak contemporaneously with the speaker whose statements are being heard. This mode shall be used when a non-English speaker is in the position of a third person vis-à-vis the proceedings; *e.g.*, at counsel table.

b) The consecutive mode of court interpretation requires the interpreter to allow the speaker to complete his/her thought or statement before attempting its interpretation. This mode shall be used when a non-English speaker is giving testimony or when the judge, counsel, or officer of the court is in direct dialogue with the speaker.

c) A court interpreter shall not summarize court proceedings at any time unless instructed to do so by the court (*e.g.*, sidebar conference, jury selection, charge to the jury).

10. *Modes of Address*

a) Each court interpreter shall use the first person singular when interpreting for a non-English speaker giving testimony or in dialogue with another person. Persons addressing the non-English speaker (*e.g.*, attorneys, judges, probation officers, and clerks) shall use the second person.

b) A court interpreter shall address the court and identify himself/herself as the interpreter using the third person singular to protect the record from confusion (*e.g.*, the interpreter requests a break).

11. *Language and/or Hearing Difficulties*

a) Whenever there is a word, phrase or concept that the court interpreter does not understand, the interpreter shall so inform the court so that, at its discretion, it may order an explanation, rephrasing, or repetition of the statement. The interpreter may request time to look up an unfamiliar word in a dictionary.

b) Whenever the court or counsel uses a word, phrase, or concept which the court interpreter finds may confuse the non-English speaker, particularly when a concept has no cultural equivalent in the non-English speaker's language or when it may prove ambiguous in translation, the interpreter shall so inform the court.

c) Whenever a court interpreter has difficulty interpreting for a particular speaker or the proceeding in general due to the noise level in the courtroom, the speaker's voice level, or because there may be more than one person speaking at the same time, the court interpreter shall so inform the court so that the judge, at his/her discretion, may order the speaker to repeat the statement, raise his/her voice, modulate better. The judge, at his/her discretion, also may rectify the situation by ordering the interpreter to change positioning in the courtroom.

12. *Errors*

a) Whenever a court interpreter discovers his/her own error, the interpreter shall, if still at the witness stand, correct the error at once after first identifying himself/herself for the record. If the error is perceived after testimony has been completed, the court interpreter shall request a bench or sidebar conference with judge and counsel, explain the problem, and make the correction on the record.

b) Whenever an alleged error is perceived by someone other than the court interpreter, that person should, if testimony is still being taken from the stand, bring the allegation to the attention of the court. If the error occurs in a jury trial, the allegation should not be brought to the attention of the jury. A sidebar should be requested so that the matter may be brought to the attention of the court. At that time the court will determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial enough to warrant correction. If the court agrees that the error could be prejudicial, then the court shall hear evidence as to what the correct interpretation should be from information submitted by both counsel, from the court interpreter (who is already an expert witness), and from any other experts selected by the judge. The judge shall make a final determination in view of the evidence as to the correct interpretation. If the determination is different from the original interpretation, then the court shall amend the record accordingly and so instruct the jury, if necessary.

13. *Difficulties While Interpreting*

a) Each court interpreter shall interpret the exact response of the witness or speaker even if the answer to a question is nonresponsive, leaving issues of admissibility of the response to the court and counsel.

b) If a witness testifying in a foreign language occasionally uses a few words in English, the court interpreter shall repeat such words for the record so that a

person listening to the recorded proceeding may continue following the interpreter's voice. However, should the witness utter a full English response, the interpreter will not ask the witness to respond in his/her native language. Rather, the interpreter will stand back so that the parties are aware of the English response and await the court's direction.

c) Whenever an objection is made, the court interpreter shall interpret everything that was said up to the objection and instruct the witness by hand gesture not to speak until the court has ruled on the objection.

d) Whenever a serious communication problem arises between the interpreter and the non-English speaker (*e.g.*, person is being disruptive or does not allow the interpreter to speak), or whenever there is a need to instruct the witness as to proper usage of the interpreter by the non-English speaker, the court interpreter shall bring such matter to the immediate attention of the court or counsel so that time may be allowed to solve the problem.

e) A court interpreter shall not characterize or give gratuitous explanation of testimony. The court or counsel will request clarification from the non-English speaker through the interpreter when necessary. Except in the case of certain gestures or grimaces that may have a cultural significance, the interpreter shall not offer an explanation or repeat a speaker's gesture or grimace which has been seen.

f) A court interpreter shall not correct erroneous facts posed in questions to non-English speakers. Similarly, the interpreter shall never correct the testimony of non-English speakers, even if errors are obvious. A response of a non-English speaker shall never be inferred; *e.g.*, if the witness is asked to clarify his/her prior answer regarding direction or place, the interpreter shall pose the question as asked and not volunteer what the interpreter thought the speaker meant.

14. *Fatigue Factor*

a) If a court interpreter believes that the quality of the interpretation is about to falter due to fatigue, the interpreter shall so inform the court.

b) For any proceeding that will require in excess of two hours of continuous simultaneous interpretation, two court interpreters should, when practical, be assigned so that they can relieve each other at periodic intervals and prevent fatigue and delays.

15. *Availability of Court Interpreter*

a) A court interpreter shall not leave the courtroom until the proceedings are terminated or he/she is excused by the presiding judge, magistrate, or their designee. During brief recesses, an interpreter shall be available to court and counsel as necessary.

16. *Conflicts of Interest*

a) A court interpreter shall not engage in nor have any interest, direct or indirect, in any business or transaction, nor incur any obligation which is in conflict with the proper discharge of official duties in the court or which impairs independence of judgment in the discharge of those duties.

b) A court interpreter shall not derive personal profit or advantage from any confidential information acquired while acting in his/her professional capacity.

c) A court interpreter shall not accept money or consideration or favors from anyone other than the court for the performance of an act the interpreter would be required or expected to perform in the regular course of assigned duties. A court interpreter also shall not accept any gifts, gratuities, or favors of any kind that might be construed as an attempt to influence the interpreter's actions with respect to the court.

d) A court interpreter shall not use, for private gain or advantage, the court's time, facilities, equipment, or supplies, nor shall the interpreter use or attempt to use his/her position to secure unwarranted privileges or exemptions for himself/herself or others.

e) A court interpreter shall not serve in any proceeding in which:
   1) The interpreter, his/her spouse or child is a party to the proceeding or has a financial interest or any other interest that would be affected by the outcome of the proceeding; or
   2) The interpreter is an associate, friend or relative of a party, of counsel for a party, or a witness; or
   3) The interpreter has been involved in the selection of counsel; or
   4) The interpreter has any other interest that would prevent him/her from being impartial.

f) Prior to providing services in a proceeding in court, a court interpreter shall disclose on the record any services that the interpreter may have previously provided on a private basis to any of the parties involved in the matter as well as anything else that could be reasonably construed as affecting his/her ability to serve impartially or as constituting a conflict of interest. This disclosure shall not include confidential information.

g) During the course of a trial, a court interpreter shall not discuss the case with parties, jurors, attorneys, or with friends or relatives of any party, except in the discharge of official functions.

Commentary 1. The interpreter acts 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 government expense or retained privately at the expense of one of the parties.

Commentary 2. During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are 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 that may convey an appearance of a special relationship or partiality to any of the court participants.
Commentary 3. The interpreter should strive for professional detachment. Verbal and nonverbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.
Commentary 4. An interpreter who is also an attorney should not serve in both capacities in the same matter.
Commentary 5. A court interpreter may not interpret for any bail bondsman. Not only should the prohibition stand for same case situations but also when the bail bondsman is different than the one whom the defendant is using. The knowledge that a particular person interprets for a bail bondsman may chill a defendant's capacity to alert the court to any improprieties.
Commentary 6. Court interpreters may not leave their business cards in court buildings, police stations, clerks' offices, or jails to solicit business. Indiana courts and other justice system offices are not venues for marketing services.
Commentary 7. Particular attention should be given to interpreters who have knowledge in sensitive criminal cases about codefendants and fail to keep confidentiality. Judicial officers should screen potential conflict of interest cases for relatives interpreting in those cases when conflict of interests would arise. Disqualification should ensue upon the discovery of conflicts.
Commentary 8. A court interpreter may not interpret for the court and interpret privately in the same court. Individuals pose as the "access person" for certain courts in the eyes of particular non-English-speaking communities. The potential problems are the interpreter "explaining the legal process" to unsuspecting individuals and appearing before court to "plead people."
Commentary 9. Court interpreters may not refer cases to any particular attorney.
Commentary 10. Particular attention should be given to actual conflicts of interest or the appearance of conflicts with respect to interpreters employed by law enforcement agencies or prosecutors' offices who are asked to interpret for the official court record in a criminal proceeding. Every effort should be made to ensure that the criminal defendant is aware that the interpreter is employed by a law enforcement agency or a prosecutor's office and waives any potential conflict prior to the interpreter providing interpretation for the court record.

17. *Public Comments*

a) Interpreters shall not publicly discuss, report or offer an opinion concerning a matter in which they are or have been engaged professionally, even when that information is not privileged by law to be confidential.

18. *Legal Advice*

a) A court interpreter shall not give any legal advice of any kind to anyone whether solicited or not. In all instances, the non-English speaker shall be referred to counsel or to the court. An interpreter may give only information to a non-English speaker regarding the time, place, and nature of the court proceedings. All other matters shall be referred to the court or counsel.

b) A court interpreter shall never act as an individual referral service for any attorney. When asked to refer a non-English speaker to an attorney, the interpreter shall refer the individual to the local bar association in civil and criminal matters if the individual indicates that he/she can afford private counsel.

19. *Scope of Practice*

a) While serving in their interpreter capacity, court 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.

Commentary 1. Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation or except as set out below.
Commentary 2. Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of these 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 these instances they should refer to themselves in the third person as "the interpreter," making clear on the record that they are speaking for themselves.
Commentary 3. At no time can an interpreter give legal advice, but an interpreter may interpret legal advice from an attorney to any party only while that attorney is giving it. An interpreter should not explain the purpose of forms, services, or otherwise act as a counselor or advisor unless interpreting for someone who is acting in that official capacity. An interpreter may translate the language on a form for the person who is filling out the form but may not explain the form or its purpose for the person except when interpreting in the presence of an attorney or authorized legal personnel.
Commentary 4. The interpreter should not personally serve to perform acts that are the 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 these officials.

20. *Compliance*

a) A court interpreter who discovers anything which would impede full compliance with this Code shall immediately report the matter to the court.

b) A court interpreter shall immediately report to the presiding judge any solicitations or efforts by another to induce or encourage the interpreter to violate any law, standard of this Code, or any other provision governing interpretation promulgated by the judiciary.

c) A court interpreter may be removed by the court from his/her participation in a particular assignment if that interpreter is unable to interpret the proceedings adequately including an instance when the interpreter self-reports such inability.

d) Should a court interpreter feel harassed or intimidated by an officer of the court, the interpreter shall so inform the presiding judge.

Commentary 1. 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.
Commentary 2. Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties.
Commentary 3. An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

21. *Reporting Impediments to Performance*

a) Interpreters shall assess at all times their ability to deliver their services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority.

Commentary 1. If the communication mode or language of the non-English speaker cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.
Commentary 2. Interpreters should notify the appropriate judicial authority of 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 is speaking at a time, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret). Sign language interpreters must ensure that they can both see and convey the full range of visual language elements that are necessary for communication including facial expressions and body movement as well as hand gestures.
Commentary 3. 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.
Commentary 4. 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 reluctance about notifying the court or presiding officer if they feel unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.
Commentary 5. Interpreters should notify the court or the presiding officer of any personal bias they may have involving any aspect of the proceedings (*e.g.*, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses).
Commentary 6. 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 such as trials, complex and technical proceedings, proceedings over 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).
Commentary 7. Even competent and experienced interpreters may encounter cases when routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (*e.g.*, the unscheduled testimony of an expert witness). When these instances occur, interpreters 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.

Commentary 8. Court personnel and parties are encouraged to provide interpreters with copies of all documents referred to in a proceeding such as witness lists, indictments, exhibit lists, criminal complaints, investigative reports, tape transcripts, telephone logs and bank records.

22. *Duty to Report Ethical Violations*

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

Commentary 1. 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 that run counter to the provisions of this Code or other laws, regulations or policies governing court interpreters. It is incumbent upon the interpreter to inform these persons of the interpreter's professional obligations. If, after having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should turn to a supervisory interpreter, a judge or another official with jurisdiction over interpreter matters to resolve the situation.

IV. Procedures

1. Determining Need for Interpretation

a) Appointing an interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English.

b) An interpreter should be appointed in a ***criminal case*** when the defendant:
   1) Is unable to accurately describe persons, places, and events that affect his or her defense;
   2) Is unable to tell the court "what happened" over a period of time;
   3) Is unable to request clarification when statements are vague or misleading, particularly during cross-examination, to defend his/her position, or otherwise to participate in his/her defense;
   4) Is not on an equal footing with an English-speaking defendant with an equivalent education and background.

c) The court shall use the services of multiple interpreters when necessary to aid interpretation in court proceedings.

Commentary 1. Recognition of the need for an interpreter may arise from: a request by a party or counsel for the services of an interpreter, from the court's own *voir dire* of a party or witness, or from disclosures made to the court by parties, counsel, court employees or other persons familiar with the ability of the person to understand and communicate in English.

Commentary 2. The court may wish to consider using multiple interpreters in legal proceedings when one or more of the following situations exist: (1) For proceedings lasting longer than thirty minutes of continuous interpreting, regular breaks should be allowed every thirty minutes. A

similar standard should be maintained for lengthy or continuous witness interpreting; (2) Legal proceedings lasting more than two hours - generally, in legal proceedings lasting more than two hours, a team of two interpreters should be designated to ensure the accuracy and completeness of the record by allowing interpreters to alternate work and rest in short shifts, thus avoiding fatigue; (3) Multiple defendants - one or more interpreters may be appointed (apart from the interpreter(s) who are interpreting the legal proceedings) in order to provide interpreting services for attorney-client communications during the proceeding.

Commentary 3. The interpreter's role is an exacting one, physically and mentally. There is evidence that an interpreter's performance deteriorates after thirty minutes of continuous interpreting. Studies show that the deterioration is not gradual but a steep plummeting.

Commentary 4. If team interpreting is simply impossible, the court has an obligation to provide regular breaks (every thirty minutes for ten-minute intervals). A qualified interpreter has the obligation to inform the court whenever fatigue is beginning to interfere with the accuracy of the interpretation.

2. Waiver of Interpreter

   a) A non-English speaker may at any point in the proceeding waive the services of an interpreter. The waiver of the interpreter's services must be knowing and voluntary, and with the approval of the court. Granting this waiver is a matter of judicial discretion.
      1) Procedure.
         i) The waiver is approved by the court after explaining in open court to the non-English speaker, through an interpreter, the nature and effect of the waiver; and
         ii) The court determines in open court that the waiver has been made knowingly, intelligently, and voluntarily.
         iii) If the non-English speaker is the defendant in a criminal matter, the court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney.
      2) At any point in any proceeding, for good cause shown, a non-English speaker may retract his/her waiver and request an interpreter.

3. Interpreter Oath

   a) All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. *See* Section III, 8, (a).

4. Audio Recording

   a) All interpreted proceedings shall be recorded to preserve the original source and target language as well as interpretation.

Commentary 1. A proper record of the interpretation will allow for an accurate record in case of appeal. This will also allow interpreters to document their interpretation in the event of any challenges.

V. State Certified Court Interpreters

1. To receive Indiana Court Interpreter Certification status, the candidate shall:

   a) Submit to a criminal background check. Conviction for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if the conviction is ten years old or less.

   b) Attend an approved orientation seminar.

   c) Pass an approved criterion-referenced written examination with at least a 70% score on the multiple-choice portion and a score of "borderline" or better on the translation portion of the examination.

   d) Attend an approved skills building workshop.

   e) Pass all three parts of the oral exam individually with at least a 70% score in each section of the examination.

   f) Complete any required application forms and pay any required fees.

2. Candidates will be granted two years from the skills building program to take and pass the oral exam. If more than two years elapse without the candidate passing the oral exam, the skills building portion must be retaken.

3. Interpreters with certification as a federal court interpreter or certified in another Consortium state shall be certified as an Indiana state court interpreter after completing any required reciprocity application, paying any required fees, and submitting to a criminal background check.

Attachment 2

Indiana Supreme Court Disciplinary Process
for Certified Court Interpreters and Candidates for Interpreter Certification

1. **Purpose**

This policy seeks to:

a) Assure quality interpretation within Indiana courts for non-English speakers by allowing the Division of State Court Administration to control the quality of interpreting services offered in the Indiana courts and probation departments;

b) Assist the Division of State Court Administration with quality control by allowing for discipline, up to and including revocation of certification.

2. **Applicability**

a) This policy applies to interpreters who are certified in foreign language interpretation by the Indiana Supreme Court.

b) This policy applies to interpreter candidates who are seeking to be certified in foreign language interpretation by the Indiana Supreme Court.

3. **Possible Reasons for Discipline**

Disciplinary complaints may be filed against court interpreters who have been certified or are seeking certification by the Indiana Supreme Court for the following reasons:

a) Conviction of a felony or a misdemeanor involving moral turpitude, dishonesty, or false statements;

b) Fraud, dishonesty, or corruption, whether or not related to the functions and duties of a court interpreter;

c) Continued false or deceptive advertising after receipt of notification to discontinue;

d) Knowing and willful disclosure of confidential or privileged information obtained while serving in an official capacity;

e) Gross incompetence;

f) Failing to appear as scheduled without good cause;

g) Noncompliance with any existing continuing education requirements;

h) Nonpayment of any required renewal fees; or

i) Violation of the Indiana Supreme Court Interpreter's Code of Conduct and Procedure or any other judicial department policies or procedures.

4. Complaint Process

a) Any person may initiate a complaint within 180 days of the egregious act by filing it with the Division of State Court Administration. All complaints must be in writing, must be signed, and must describe the alleged inappropriate conduct and the date(s) when the conduct occurred.

b) Upon receipt of a complaint, the Program Manager of the Indiana Court Interpreter Certification Program will review the complaint to determine whether the allegations, if true, would constitute grounds for discipline. If no grounds are found, then the Program Manager will dismiss the complaint with a notification of the reasons for dismissing the complaint and will notify the complainant and interpreter. If the complaint alleges conduct that would constitute grounds for discipline, the interpreter will be provided with written notice of the allegations and asked to provide a written response to the complaint within thirty (30) days of this notification. The Program Manager shall investigate the allegations and may consider information obtained from sources other than the complaint and response. If the Program Manager is unavailable for any reason, the Executive Director of the Division of State Court Administration may designate any attorney within the Division to fulfill any and all of the Program Manager's duties under the Disciplinary Code.

c) If the Program Manager determines that there is probable cause to believe that conduct constituting grounds for discipline occurred, then the Program Manager shall submit a report of findings to the Executive Director for review. If the investigation reveals that there is not probable cause to believe that the conduct occurred, then the complaint will be dismissed and the complainant and interpreter will be so notified.

5. Determination of Need for Discipline

a) If probable cause is found, the Executive Director of the Division of State Court Administration will review the report of the Program Manager and determine what further action is required. The Executive Director may set a hearing to review the complaint or review the matter by considering the information as submitted. If a hearing is set, the interpreter shall be notified by certified mail of the time and date of the hearing, which shall be set no later than thirty (30) days after a determination that probable cause exists.

b) Efforts to resolve the complaint informally may be initiated by any of the parties to the complaint at any time. Any resolution reached must be submitted to the Executive Director of the Division of State Court Administration for approval. Upon approval of any resolution reached informally, or subsequent to any review without a hearing, the Executive Director or the Executive Director's designee will notify the complainant and the court interpreter of the decision in writing.

c) All hearings will be reported or recorded electronically and shall be private and confidential, except upon request of the interpreter facing the allegations. Strict rules of evidence shall not apply. The Program Manager may, in his/her discretion, call witnesses or clarify any evidence presented (including affidavits). The Executive Director or the Executive Director's designee (a person different from the individual presenting the charges) shall preside over the hearing and give all evidence the weight deemed appropriate. The interpreter may be represented by counsel and shall be able to testify, comment on the allegations, and call witnesses. Testimony shall be under oath.

d) If the Executive Director or the Executive Director's designee finds that there is clear and convincing evidence that the court interpreter has violated the Indiana Supreme Court Interpreter Code of Conduct and Procedure or these rules, the Executive Director or his/her designee shall impose such discipline or sanctions as deemed appropriate.

6. Possible Sanctions

a) All disciplinary sanctions imposed shall become public unless dismissed, resolved informally and/or by stipulation, or if the sanction is a private reprimand. The Executive Director of the Division of State Court Administration or his/her designee shall issue his/her decision, including findings and the sanctions to be imposed, if any, within thirty (30) days from the conclusion of the hearing. Time limits may be extended by mutual agreement in writing when an extension is necessary to ensure the fairness and/or sufficiency of the process.

b) Sanctions may consist of but are not limited to one or more of the following:
   1) A private reprimand;
   2) A public reprimand;
   3) Imposition of costs and expenses incurred by the Division of State Court Administration in connection with the proceeding including investigative costs, if any;
   4) Restitution;
   5) Requiring that specified education courses be taken;
   6) Requiring that one or more parts of the interpreter certification examination be retaken;
   7) Modification or suspension from the list of interpreters eligible to work in the courts;
   8) Requiring that work be supervised;
   9) Suspension of certification for a specified period of time;
   10) Revocation of certification;
   11) Requiring a period of probation in which the interpreter will not be eligible to seek certification.

c) The specific disciplinary action and the degree of discipline to be imposed should depend upon factors such as the seriousness of the violation, the intent of the interpreter, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system.

7. Appeal

The interpreter may appeal the decision of the Executive Director of State Court Administration to a three-member panel of the Indiana Supreme Court Interpreter Advisory Board[1] no later than twenty (20) days after the decision is mailed to the interpreter. The appeal shall include the interpreter's written objections to the decision. The three-member panel of the Indiana Supreme Court Advisory Board shall review the record of the hearing to determine whether the decision reached and sanctions imposed were appropriate, or whether the Division of State Court Administration abused its discretion.

[1] The Indiana Supreme Court Interpreter Advisory Board was created by the Commission on Race and Gender Fairness in June 2003. The Board's membership includes judicial officers, attorneys, interpreters, and other public officials. Members serve staggered terms of one (1) to three (3) years.