

CODE OF PROFESSIONAL CONDUCT FOR FOREIGN LANGUAGE COURT INTERPRETERS IN MICHIGAN COURTS

All court foreign language interpreters must understand and abide by the Code of Professional Conduct for Foreign Language Court Interpreters.

The purpose of this Code of Professional Conduct is to establish and maintain high standards of conduct, to preserve the integrity and independence of the adjudicative system, and to promote public confidence in the administration of justice.

PREAMBLE

Many persons who come before the courts are partially or completely excluded from meaningful participation in the proceedings due to limited English proficiency. It is essential that the resulting language barrier be removed, as much as possible, so that these persons are placed in the same position as similarly situated persons for whom there are no such barriers. An interpreter is sworn in. The interpreter helps assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. An interpreter is a highly skilled professional who fulfills an essential role in the administration of justice.

APPLICABILITY

This code shall guide and shall apply to all persons, agencies, and organizations who administer, supervise, use, or deliver interpreting services to the judiciary. Violations of this code must be reported to the Foreign Language Board of Review, which will review the alleged violations and may require certain remedial activities or sanctions.

CANON 1: ACCURACY AND COMPLETENESS

An interpreter shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.

The interpreter has two duties: 1) to ensure that the proceedings reflect in English what the non-English-speaking person said and 2) to place the non-English-speaking person on equal footing with those who understand 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.

Therefore, an interpreter is obligated to apply their best skills and judgment to faithfully preserve 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. Each spoken statement, even if it appears nonresponsive, obscene, rambling, or incoherent, should be interpreted. This includes apparent misstatements.

An interpreter 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 judge's permission to provide an explanation. An interpreter should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

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

CANON 2: REPRESENTATION OF QUALIFICATIONS

An interpreter shall accurately and completely represent their certifications, training, and pertinent experience.

An interpreter must present a complete and truthful account of their training, certification, credentials, and experience prior to appointment, so the court can fairly evaluate their qualifications for delivering interpreting services. On direction of the court, an interpreter should engage in a conversation with the limited English proficient individual, to ensure that the interpreter understands the language and dialect spoken. When an interpreter accepts a case, the interpreter is declaring that he or she is capable to interpret in legal settings.

CANON 3: IMPARTIALITY AND AVOIDANCE OF CONFLICT OF INTEREST

An interpreter shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. An interpreter shall disclose any real or perceived conflict of interest.

The interpreter's duty in a court proceeding is to serve the court and the public. This is true whether the interpreter is publicly retained at government expense or privately retained (e.g., hired and paid by one of the parties).

The interpreter should avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. An interpreter should maintain a professional relationship with their clients.

The interpreter should never accept gratuities or gifts of any kind from a litigant, the family of the litigant, or anyone else for services rendered. If such a gift is offered, the interpreter should politely explain that the interpreter cannot accept gifts, gratuities, or honoraria.

During the course of the proceedings, an interpreter generally should not converse with parties, witnesses, jurors, attorneys, or friends or relatives of any party except in the discharge of their

official functions. 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 that 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 nonverbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

Should an interpreter become aware that a proceeding participant views the interpreter as having a bias, or the interpreter actually becomes biased, the interpreter should disclose that knowledge to the appropriate judicial authority and counsel.

A condition that interferes with the objectivity of an interpreter creates a conflict of interest. Before providing services in a matter, the interpreter must disclose to all parties and the court any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include privileged or confidential information.

Michigan Court Rule 1.111(E)(1) identifies the following situations as creating a potential conflict of interest:

- (a) The interpreter is compensated by a business owned or controlled by a party or a witness;
- (b) The interpreter is a friend, a family member, or a household member of a party or witness;
- (c) The interpreter is a potential witness;
- (d) The interpreter is a law enforcement officer;
- (e) The interpreter has a pecuniary or other interest in the outcome of the case;
- (f) The appointment of the interpreter would not serve to protect a party's rights or ensure the integrity of the proceedings;
- (g) The interpreter does have, or may have, a perceived conflict of interest;

An interpreter must disclose any of these circumstances to the court before accepting any appointment. The court will make a determination about whether the circumstance will prevent the interpreter from serving.

An interpreter should disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

An interpreter should not serve in any matter in which payment for their services is contingent upon the outcome of the case.

An interpreter who is also an attorney should not serve in both capacities in the same case or court proceeding.

CANON 4: PROFESSIONAL Demeanor

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

An interpreter should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, the interpreter should speak at a rate

and volume that enables them to be heard and understood throughout the courtroom, but the interpreter's presence should otherwise be as unobtrusive as possible. An interpreter should work without drawing undue or inappropriate attention to him or herself. An interpreter should dress in a manner that is consistent with the dignity of the proceedings of the court. An interpreter should avoid obstructing the view of individuals involved in the proceedings.

CANON 5: CONFIDENTIALITY

An interpreter shall protect the confidentiality of all privileged and other confidential information.

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of his or her duties. It is especially important that the interpreter understand and uphold the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. This rule also applies to other types of privileged communications.

In the event that an interpreter becomes aware of a party's intent to commit a crime that is likely to result in serious harm to someone, the interpreter may disclose the intention of a party to commit a crime and the information necessary to prevent the crime to the court or the court's language access coordinator.

CANON 6: SCOPE OF PRACTICE

An interpreter 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 while serving as an interpreter.

Since an interpreter is responsible only for enabling others to communicate, he or she should limit themselves to the activity of interpreting or translating. An interpreter should refrain from initiating communications while interpreting unless it is necessary for assuring an accurate and faithful interpretation. An interpreter 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 to repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to competently satisfy an assignment. In such instances, the interpreter should make it clear that they are speaking for themselves.

An interpreter may convey legal advice from an attorney to a person only while the attorney is giving it. An interpreter should not explain the purpose of forms or services or otherwise act as counselors or advisors unless they are interpreting for someone who is acting in that official capacity.

The interpreter may translate language on a form for a person who is filling out the form. The interpreter may also repeat minimal information already provided by the court or facilitate

conversation between the court and the LEP person to explain the form. However, the interpreter may not explain the purpose of the form to such a person.

CANON 7: ASSESSING AND REPORTING IMPEDIMENTS TO PERFORMANCE

An interpreter shall assess at all times their ability to deliver their services. When an interpreter has any reservation about their ability to satisfy an assignment competently, he or she shall immediately convey that reservation to the appropriate judge or language access coordinator.

If the communication mode or language of the non-English-speaking person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

An interpreter should notify the judge or language access coordinator of any environmental or physical limitation that impedes or hinders their ability to adequately deliver interpreting services (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 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).

An interpreter should notify the court of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue.

An interpreter is encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. This enables the interpreter to more closely match their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even a competent and experienced interpreter may encounter cases where 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, an interpreter should request a brief recess to familiarize him or herself with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, the interpreter should inform the court.

An interpreter must refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. An interpreter must notify the court if he or she feels unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

An interpreter must notify the court of any personal bias that may impact their ability to interpret any aspect of the proceedings. For example, an interpreter who has been a victim of a similar crime may ask the court to be excused from interpreting.

CANON 8: DUTY TO REPORT ETHICAL VIOLATIONS

An interpreter 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.

Because consumers 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. The interpreter must 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 seek guidance from the court (if appointed during a case or court proceeding) or the Foreign Language Board of Review.

CANON 9: PROFESSIONAL DEVELOPMENT

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

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

An interpreter should keep informed of all statutes, rules of courts, and policies of the judiciary that relate to the performance of their professional duties. In addition, an interpreter should provide documentation of their certification or credentials upon request.

An interpreter should seek to elevate the standards of their profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field. A certified interpreter and a qualified interpreter must obtain at least the minimum number of hours of continuing education hours (CEHs) as required by SCAO to maintain their certification.