

COURT INTERPRETING WITH ADR SERVICES

1.0 Continuing Legal Education
(CLE) CREDIT

1902828N

ADR: Options and Opportunities

27th Annual Conference

Florida Dispute Resolution Center





Speakers

Todd Tuzzolino – Chief Deputy Court Administrator
Certified Appellate, County, Family, Dependency Mediator

Ana Arias – Supervising Certified Court Interpreter
Certified Spanish Language Court Interpreter

Juan Carlos Villanueva – Certified Court Interpreter
Certified Spanish Language Court Interpreter
Certified County Mediator



MEAC Opinion 2017-021

Conflicts of Interests


Consistent with MEAC Opinion 2017-002, a mediator shall not perform the dual roles of mediator and oral interpreter for a deaf party.



MEAC Opinion 2017-002

Conflict of Interests

Consistent with MEAC Opinions 2011-017 and 2014-004, a mediator shall not perform the dual role of a mediator and translator or interpreter.



MEAC Opinion 2014-004

Procedures

In the scenario presented, if conducting a mediation in a language common to all parties and the mediator, it is inappropriate for a mediator to then memorialize any agreement reached in a language other than the one in which the mediation was conducted.



Rules of Judicial Administration 2.560 (b)

Appointment of Spoken Language Interpreters should be appointed when a fundamental interest is at stake (such as in a civil commitment, termination of parental rights, paternity, or dependency proceeding)



Florida Rules for Certified Regulation of Spoken Language Interpreters

Rule 14.100 (h) Court Related Proceedings Procedures

Florida Rules for Certification and Regulation of Spoken Language Interpreters defines a **court-related proceeding** as “any event”. Including but not limited to, a deposition, **mediation, arbitration...**



Federal Spoken Language Interpreters mandates in Mediation

- Title VI-Civil Rights Act of 1964: Prohibition of discrimination among other things by country of origin
- August 2000 Executive Order by President Clinton
- Guidance Letter from the Department of Justice



Spoken Languages Court Interpreter State Registry Designations

Certified Court Interpreter
Or Language Skilled

Provisionally Approved

Registered

Duly Qualified Interpreter



Spoken Language Court Interpreters State Registrations Testing Steps

Two Day Orientation
Workshop

Written Exam

Oral Exam or Apply for
Registration (after
registration take oral exam)

Renewal and Maintenance of
Registration



Federal Mandates for Sign Interpreters in Mediation

- American with Disabilities Act of 1990 (ADA) or Rehabilitation Act
- Title I and Title II of the ADA Private employers with 15 or more, and governmental entities
- Title II and Title III of the ADA Governmental entities



Registry of Interpreters for the Deaf (RID) Certifications

National Interpreter

Provisional Deaf Interpreter

Certified Deaf Interpreter

Duly Qualified Interpreter

Americans with Disabilities Act- Auxiliary Aids & Services Events

Fifth Judicial Circuit ADA Coordinators

County Local Contact:

Citrus: Kathy Rector

Hernando: Jeremy Moore

Lake: Brandon Roberts

Marion: Kristina Valdez

Sumter: Lorna Barker





Americans with Disabilities Act- Auxiliary Aids & Services Events

- ADA Auxiliary Aids & Services are provided based on the requestor's physical or mental impairment which substantially limits their ability, under Title II of the 1990 American Disabilities Act.
- Aids or services are provided without undue financial or administration burden for any service, program, or activity.

Americans with Disabilities Act- Auxiliary Aids & Services Events



Americans with Disabilities Act- Auxiliary Aids & Services Events

- Close Captioning/
Subtitles for TV or
video encoding devices
are used as an
auxiliary aid.





Americans with Disabilities Act- Auxiliary Aids & Services Events

- CART Communication Access Real-Time Translation (a.k.a. Real Time Court Reporting)
This is for translation only not official record.
Court Reporter has screen as aid. CART is used as auxiliary service to the individual if requested.
- *Braille documents may also be provided if requested.

Americans with Disabilities Act- Auxiliary Aids & Services Events



Americans with Disabilities Act- Auxiliary Aids & Services Events

- Real Time Court Reporting sole function is for the record, **not translation.**



Americans with Disabilities Act- Auxiliary Aids & Services Events

- Assisted Listening Devices for Hearing Impaired Individuals are provided at all local jails and at each courtroom circuit-wide, when requested.



**Hearing Assistance
Available**

This facility is equipped with a
hearing assistance system.
Please ask for a receiver.

Americans with Disabilities Act- Auxiliary Aids & Services Events

- Type of Sign Language
Events:

- American Sign
Language is the most
common service type
used in the Fifth
Judicial Circuit.



Americans with Disabilities Act- Auxiliary Aids & Services Events

- Quebec Sign Language was used in the past in the Fifth Judicial Circuit.
- French Sign Language was also used in the Fifth Judicial Circuit.



Paul Chinn / The Chronicle



Americans with Disabilities Act- Auxiliary Aids & Services Events

- *Team interpreting is commonly used for mediation where two interpreters are used, due to mental fatigue.*
- Sign language interpreters are only a voice to help protect the neutrality and integrity of the court's record.
- Communication with court interpreters is helpful before for feedback.

Americans with Disabilities Act- Auxiliary Aids & Services Events



Americans with Disabilities Act- Auxiliary Aids & Services Events

- Remote Court Interpreting with American Sign Language is an option for short hearings and last minute on-demand events.



Recruitment is needed with new Prospective Court Interpreters





Spoken Language Court Interpreter State Registration Testing Steps

Take Oath to uphold Code of Professional Conduct

Remain impartial and unbiased and refrains from conduct that may give an appearance of bias

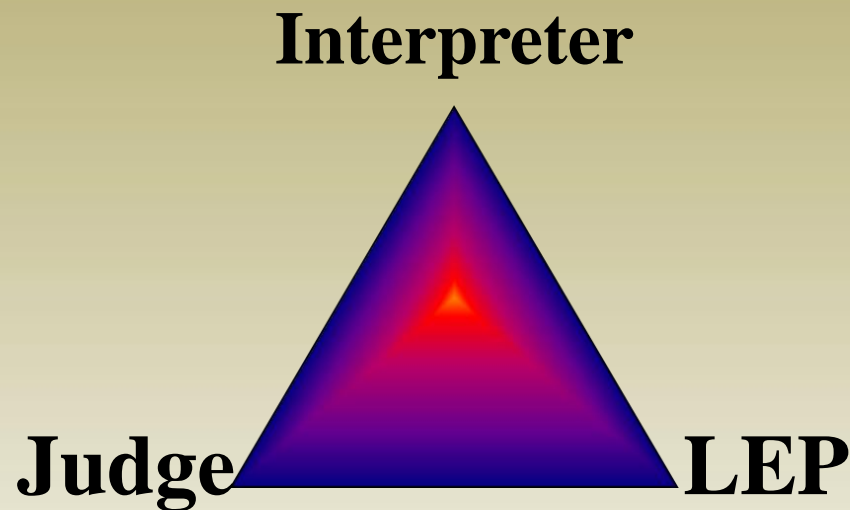
Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible

Interpreters shall disclose any real or perceived conflict of interests

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

Interpreters interpret what is being said and do not alter, amend, omit any statements made on the record even if asked by a court officer or any other party.

Welcome/Overview



*It takes two to tango,
but three to interpret!*

Court Interpreter Roles, Duties & Ethics



- Interpreters are considered officers of the Court (Judicial Branch Employee: mutual court respect for the Judiciary's discretion with individual court processes and the independent court's decorum and procedures)
- They cannot omit, summarize, paraphrase, embellish or explain anything said during a proceeding
- Regulation and discipline



Commonly Used Terminology

- REGISTER-
 - A variety of language for a particular purpose and setting: formal/informal, slang, “street”, academic, scientific, legal terminology
 - Court interpreters must be faithful to the register used by the speaker when rendering their interpretation. No explanation can be given.
 - Slang, idioms and obscenities must be interpreted with the closest equivalent.



Commonly Used Terminology

- LEP –
 - Limited English-Proficient Person
 - The LEP may speak English but still require an interpreter to understand court proceeding fully due to the high register and speed of court proceedings.
 - Rights of LEP to meaningful access to courts are protected by 1964 Civil Rights Act

Commonly Used Terminology

- INTERPRETATION vs. TRANSLATION-



- Translation refers to written material
- To interpret (in the context of language translation) means to translate orally



Commonly Used Terminology

- SIMULTANEOUS INTERPRETING-
 - Not literally simultaneous; there is necessarily a slight delay (*Décalage*)
 - Used for a person who is listening only
 - When LEP is listening only
 - When the judge is addressing the jury, the public, or officers of the court and any other party other than the LEP or witness
 - When the judge is speaking to the LEP without interruption or regular call for response (e.g., advisements of rights, judges' remarks to a defendant at sentencing)



Commonly Used Terminology

- CONSECUTIVE INTERPRETING-
 - Interpreter renders interpretation intermittently after a completed statement in the source language
 - Used when judge or other party is communicating directly with the LEP (with some exceptions)
 - Used for witness testimony (accuracy, the record)
 - Interpreter takes notes as an aid to memory



Commonly Used Terminology

- SIGHT TRANSLATION-
 - A hybrid of interpreting and translating
 - The interpreter reads a document while translating it orally
 - Sometimes called sight interpreting



Commonly Used Terminology

- TRANSCRIPTION-

- The process of preserving audio- or videotaped sound files in written form
- Creates a complete transcript of the original together with its translation into the target language in a side-by-side format
- For court purposes, this is only reliable method to obtain an accurate interpretation of audio- or videotaped speech

Exercises – Simultaneous/Consecutive

- I need 2 volunteers!!!
- One person is “A” and the other one is “B”
- Others observe
- Simultaneous technique: Speaker A will read and B shadow
- Consecutive technique: Speaker B will read and A render



Interpreter Fatigue



- Intense concentration required
- Studies show that significant errors in meaning occur after 30 to 45 minutes of simultaneous interpreting
- Interpreter's ability to self-monitor diminishes with fatigue
- Possible prejudicial consequences

Florida Bench guide, 2017, Ch.7 p.



Interpreter Fatigue

- Fatigue = errors
- Breaks to protect the integrity of the record
- Team interpreting
 - to allow interpreters to take turns and prevent fatigue
 - second interpreter can:
 - research vocabulary
 - help with audibility, comprehension
 - handle equipment set-up and troubleshooting
 - interpret for parties and attorneys during witness interpretation



Cultural and Linguistic Differences

- Interpreter is simultaneously:
 - Processing input from source language, i.e. mentally converting input to target language
 - While storing continuous input in working memory
 - While speaking in target language
- Consecutive technique = No more than 45 minutes
- Fatigue is mental and physical
- Breathing
- Vocal protection – water, breaks, resting voice when out of courtroom
- **Note:** Bailiffs should not communicate with interpreter about other requests while he/she is interpreting

Cultural and Linguistic Differences

SPANISH vs. ENGLISH SYNTAX-

- Spanish word order is the reverse of English word order in some instances.
- The interpreter must often wait for the last word of a phrase to begin his/her interpretation, as it must be the first word in Spanish. This creates a time lag.





Cultural and Linguistic Differences

- E.g., “withhold adjudication” =
suspension de la pena de culpabilidad
- “lesser included offense” =
delito de menor gravedad incluido
- “pre-trial intervention program” =
programa de intervención previo al juicio
- “a sexually violent or sexually motivated offense” =
un delito violento de índole sexual o un delito
con motivo sexual
- “arraignment” = lectura formal de cargos



Cultural and Linguistic Differences

SYLLABLES-

- Spanish words and phrases tend to have more syllables than English words:
 - **Law Enforcement** = 4 syllables
 - **Organismos encargados del orden público** = 14 syllables
 - **D.U.I.** = 3 syllables
 - **Conducir bajo los efectos del alcohol** = 14 syllables
 - **D.U.B.A.L.** = 2 syllables
 - **Conducir con un nivel ilegal de alcohol en la sangre** = 17 syllables



Cultural and Linguistic Differences

IDIOMS-

- Interpreter should find the closest equivalent idiom or if none exists, should render the meaning.
- Literal interpretation or “word for word” interpretation would be meaningless.
 - “Me cae gordo” = literally, “he falls me fat”
 - Correct interpretation would be “He gets on my nerves”
 - “Está lloviendo a cántaros” = literally, “It’s raining pitchers”
 - Correct interpretation = “It’s raining cats and dogs”



Cultural and Linguistic Differences

EYE CONTACT-

- “Traditional or first generation Latinos prefer to have indirect eye contact to show respect, and direct eye contact to show defiance (Rosado & Ligons, 1998). However, this characteristic might not be present in acculturated or second generation Latinos.”

Cross-cultural Communications: A Latino Perspective
Dr. Luis A. Rosado, Univ. of Texas at Arlington



Cultural and Linguistic Differences

- Eliciting loud, concise responses can be a challenge

- DIGRESSION -

“The language logic in Standard English progresses in a linear fashion without the possibility for digressing from the main topic (Escamilla, 1993; Payne, 1995)....

Romance languages in general have a linear structure, but the story grammar allows for a great deal of digression....
(Escamilla, 1993). ”

Cross-cultural Communications: A Latino Perspective

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Cultural and Linguistic Differences

JUDICIAL SYSTEM IN COUNTRY OF ORIGIN-

- Court systems of most Spanish-speaking countries based on Civil Law/Civil Codes, not the Common Law generally in place in English-speaking countries
- Emphasis on written legal codes and not on public proceedings and case law precedent
- May create different expectations and lack of familiarity with concepts familiar to U.S. citizens



Cultural and Linguistic Differences

Mexico:

- No jury trials
- No oral arguments in majority of cases
- Proceedings carried out in written form
- No comprehensive national fingerprint database
- Constitutional amendment to allow oral trials and presumption of innocence beginning in 2016

**Wall Street Journal (online), “Presumption of Guilt”,
David Luhnnow, Oct. 17, 2009**



Interpreter Preparation

- Initial brief conversation with LEP to establish communication
 - Setting up equipment: with LEP and looking for potential obstructions to communication (nervousness, hearing or speech impediments)
 - Equipment: LEP in charge of volume, safe distance from interpreter, allows interpreter freedom to move in courtroom to adjust to speaker and audibility
- Allow for review of documents
 - Terminology, different meanings of words depending on nationality

Florida Bench guide, 2017, Ch.6 (B) p. 36

Appointment of Multiple Interpreters to a Proceeding

- One LEP party and no LEP witnesses = 1 interpreter
- Multiple LEP parties = The court should afford each party a separate interpreter to avoid conflict of interest





Appointment of Multiple Interpreters to a Mediation

- LEP Parties and LEP witnesses = 1 interpreter for parties and 1 separate interpreter for witnesses
- ❖ *If proceedings exceed an hour, 2 interpreters must be assigned for the proceedings and for witness testimony*

Florida Bench guide Ch.7 p.50

Revised 09-12-18

Handling Interpreter Errors & Allegations of Error

- To ensure accurate interpretation on the record:
 - Mediator should accept correction of error offered by interpreter
 - Interpreter will either “stand corrected” or “stand by his/her interpretation”





What should an Mediator expect from a Court Interpreter?

- The court interpreter's syntax will be in the first person (will speak from the point of view of the speaker)
- In addressing the court, the court interpreter will identify himself/herself in the third person for the record
- The interpreter will report, either in open court or by side conference, any impediments to performance (bias, inappropriate behavior by LEP, communication obstacles, distractions)



What should an Mediator expect from a Court Interpreter?

- The court interpreter may also use pen, paper, dictionary in court (book, electronic device, tablet or laptop, etc.) to assist with interpretation of court proceedings
- The court interpreter is unobtrusive and professional and is only a voice to help the court proceeding in front of the judge
- The court interpreter should not have side conversations unrelated to the case with the LEP, as a best practice



What should an Mediator expect from a Court Interpreter?

- The court interpreter does not give legal advice or explain court forms, documents or legal procedures of the court proceeding
- Court interpreters will ask the judge for clarification when needed
- The court interpreter is a neutral party and will report any conflict of interest to the judge



What should an Mediator expect from an Interpreter?

- Not allow two or more parties speak at the same time
- Not ask the interpreter to refrain from interpreting any portion of the proceedings
 - Except: side bars or opposing party attorney-client conferences and other cases unrelated to LEP
 - Interpret what English-speaking persons hear
- Not ask the interpreter to explain or restate anything
- Require courtroom participants to speak audibly



What should an Mediator expect from an Interpreter?

- Speak directly to the party or witness, not the interpreter
 - For instance “ask him...tell her...find out if he” should be avoided as a best practice
- Speak and read slowly enough, but not too slowly as to interfere with interpreter’s accurate rendition. Allow the interpreter to tell you what he/she needs
- Accept interpreter as a linguist and neutral party with credibility in matters of language in case of challenges
- Grant breaks if requested



What should an Mediator expect from an Interpreter?

- Interpreting a recording (video and/or audio) in open court is not permissible by Florida Rule of Judicial Procedures Rule 14.370
 - The interpreter cannot certify the accuracy of interpretation
 - Must be transcribed before proceeding by the corresponding attorney requestor
 - **Example:** DUI videos must be transcribed and translated by a privately hired certified court interpreter by requestor before the hearing/Trial.



What should an Mediator expect from an Interpreter?

- Understand human limits of an interpreter's work
 - Interpreter must consult dictionaries, colleagues, ask for repetitions or clarification
- Everyone except the interpreter and LEP should speak English at all times in the courtroom
 - Spanish-speaking attorneys must not interrupt the interpretation for alleged errors → follow appropriate protocol to challenge.
- Regard the interpreter as part of your team.



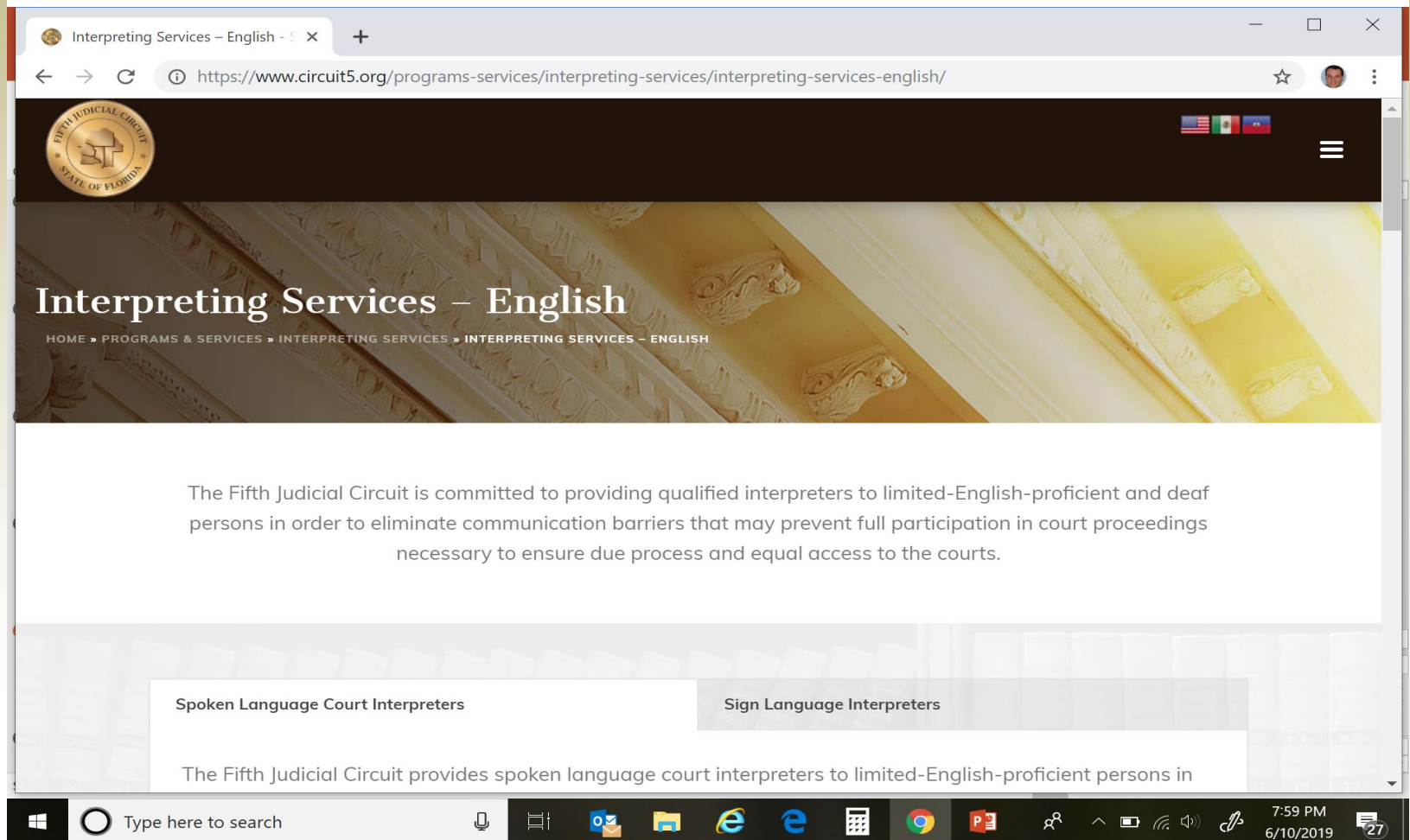
Interpreter Assistance to Mediators, and Pro Se Litigants

- **Pro se Litigants:**

- Interpreter informs LEP that he/she is not an attorney and cannot give legal advice
- Interpreter is only a voice to communicate with Mediator, State and staff during court proceedings
- Any questions are to be directed to Mediator

Scheduling & Requesting Court Interpreters

<<www.circuit5.org>>



The screenshot shows a web browser window displaying the website for the Fifth Judicial Circuit's Interpreting Services - English. The browser's address bar shows the URL <https://www.circuit5.org/programs-services/interpreting-services/interpreting-services-english/>. The website header features the Fifth Judicial Circuit logo on the left and flags for the United States, Mexico, and Puerto Rico on the right. The main heading is "Interpreting Services – English" with a breadcrumb trail: HOME » PROGRAMS & SERVICES » INTERPRETING SERVICES » INTERPRETING SERVICES – ENGLISH. Below the heading, a paragraph states: "The Fifth Judicial Circuit is committed to providing qualified interpreters to limited-English-proficient and deaf persons in order to eliminate communication barriers that may prevent full participation in court proceedings necessary to ensure due process and equal access to the courts." At the bottom of the page, there are two buttons: "Spoken Language Court Interpreters" and "Sign Language Interpreters". The Windows taskbar at the bottom shows the search bar, task view, and various application icons, with the system clock indicating 7:59 PM on 6/10/2019.

