

Supreme Court of Kentucky

2017-16

ORDER

**IN RE: ADMINISTRATIVE PROCEDURES OF THE COURT OF JUSTICE,
PART XVIII, CODE OF PROFESSIONAL CONDUCT FOR SWORN
PROCEEDINGS INTERPRETERS**

Pursuant to Sections 110(5)(b) and 116 of the Constitution of Kentucky and KRS 26A.200, it is HEREBY ORDERED that the Administrative Procedures of the Court of Justice are amended by the addition of the following Part XVIII, Code of Professional Conduct for Sworn Proceedings Interpreters:

APPLICATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY FOR SWORN PROCEEDINGS INTERPRETERS¹

This code shall serve as a guide and shall be binding upon all persons who deliver language access services to the Kentucky Court of Justice as sworn proceedings interpreters as defined by the Kentucky Court of Justice Language Access Plan and Procedures (AP Part IX).

PREAMBLE

Many people who come before the courts are partially or completely excluded from full participation in the proceedings because they are deaf or hard of hearing or otherwise disabled, have limited or no English proficiency, or are unable to speak. It is essential that the communication barrier be removed to the maximum extent reasonably possible so that such individuals are allowed the same opportunity to participate as similarly situated persons for whom no such barrier exists. As impartial officers of the court, sworn proceedings interpreters help assure that such persons enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Sworn proceedings interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. Underlying all these principles is the desire to ensure, for all, the right to communicate effectively with Court of Justice officials, personnel, and programs presiding over, conducting, or involved in all court proceedings and direct services.

¹ The Commentary is a modified version of the 1985 Court Interpretation: Model Guides for Policy and Practice in the State Courts, pp. 195-212, State Justice Institute, National Center for State Courts.

CANON 1: SWORN PROCEEDINGS INTERPRETERS SHALL BE ACCURATE AND COMPLETE.

Sworn proceedings interpreters shall faithfully render a complete and accurate interpretation, translation, or sight translation, always conveying the content and spirit of the speaker without altering, omitting, or adding anything to what has been stated or written, and shall do so without explanation or personal interpretation.

COMMENTARY

The sworn proceedings interpreter has a twofold duty: 1) to ensure the proceedings reflect precisely what was said by an individual with limited English proficiency or who is deaf or hard of hearing or otherwise disabled, and 2) to place the individual with limited English proficiency or who is deaf or hard of hearing or otherwise disabled in an equivalent position as those individuals who can hear or 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.

Sworn proceedings 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.

Sworn proceedings 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 sworn proceedings interpreter can clarify), the sworn proceedings interpreter should ask the court's permission to provide an explanation. Sworn proceedings interpreters should convey the emotional emphasis of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

Sworn proceedings interpreters for the deaf and hard of hearing must employ all the visual cues that the language they are interpreting requires. This includes facial expressions, body language, and hand gestures. Sworn proceedings interpreters for the deaf and hard of hearing should ensure court participants do not confuse these essential elements of the interpreted language with inappropriate interpreter conduct.

The obligation to preserve accuracy includes the sworn proceedings interpreter's duty to correct any error of interpretation he/she discovers during the proceeding. Sworn proceedings interpreters should demonstrate their professionalism by objectively analyzing any challenge to their performance.

CANON 2: SWORN PROCEEDINGS INTERPRETERS SHALL ACCURATELY AND COMPLETELY REPRESENT THEIR CERTIFICATIONS, TRAINING, AND PERTINENT EXPERIENCE.

COMMENTARY

Acceptance of a case by a sworn proceedings interpreter conveys linguistic competency in legal settings. Withdrawing or being asked to withdraw from a case after it begins disrupts court proceedings and wastes scarce public resources. It is therefore essential that sworn proceedings 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.

CANON 3: SWORN PROCEEDINGS INTERPRETERS SHALL MAINTAIN AN IMPARTIAL ATTITUDE WITH ATTORNEYS, WITNESSES, DEFENDANTS, AND RELATIVES. SWORN PROCEEDINGS INTERPRETERS SHALL BE UNBIASED AND SHALL REFRAIN FROM CONDUCT THAT MAY GIVE ANY APPEARANCE OF BIAS. THEY SHALL DISCLOSE TO THE APPROPRIATE AUTHORITY ANY REAL OR PERCEIVED CONFLICT OF INTEREST.

COMMENTARY

Sworn proceedings interpreters are impartial officers of the court. As such, the sworn proceedings interpreter facilitates communication between the Court of Justice and parties with limited English proficiency or who are deaf or hard of hearing or otherwise disabled during court proceedings. Sworn proceedings interpreters may also interpret for Court of Justice entities providing direct services as defined in the Kentucky Court of Justice Language Access Plan and Procedures (AP Part IX).

The sworn proceedings interpreter shall avoid any conduct or behavior that presents the appearance of favoritism toward any of the parties. Sworn proceedings interpreters shall maintain a professional relationship with all individuals for whom interpreting services have been ordered and shall not take an active part in any of the proceedings. The sworn proceedings interpreter should discourage a party's personal dependence.

During the course of the proceedings, sworn proceedings interpreters shall not have contact with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official duties. This includes contact with an attorney to facilitate confidential, privileged, or otherwise private communication between the attorney and the individual requiring interpreting services during the court proceeding. It is especially important that sworn proceedings interpreters, who are often familiar with attorneys or other individuals in the courtroom, refrain from casual and personal conversations as this familiarity may convey the appearance of a special relationship or partiality to the court participants.

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

If the sworn proceedings interpreter becomes aware that a participant in the proceeding views the sworn proceedings interpreter as having a bias or being biased, the sworn proceedings interpreter shall disclose that knowledge to the appropriate judicial authority and counsel.

Any condition interfering with the objectivity of a sworn proceedings interpreter constitutes a conflict of interest. Before providing services, sworn proceedings interpreters must disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. This disclosure should not include confidential, privileged, or otherwise private information. The following circumstances are presumed to create actual or apparent conflicts of interest for sworn proceedings interpreters. Sworn proceedings interpreters should not serve where:

1. The sworn proceedings interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;
2. The sworn proceedings interpreter has provided services to any party involved in the case either before, during the course of, or prior to any court proceeding in the immediate or any other related matter;
3. The sworn proceedings interpreter has previously been retained by a law enforcement agency to assist in the preparation of the criminal case at issue;
4. The sworn proceedings interpreter has previously been retained by counsel for one of the parties to assist in the preparation of the case at issue;
5. The sworn proceedings interpreter or the sworn proceedings interpreter's spouse or child has a financial interest in the subject matter in

controversy or in a party to the proceeding, or any other interest that would be affected by the outcome of the case; or,

6. The sworn proceedings interpreter has been involved in the choice of counsel or law firm for that case.

Sworn proceedings interpreters shall disclose to the court and other parties when they have previously been retained for private employment by one of the parties in the case.

Sworn proceedings interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

A sworn proceedings interpreter who is also an attorney shall not serve in both capacities in the same matter.

CANON 4: SWORN PROCEEDINGS INTERPRETERS SHALL CONDUCT THEMSELVES IN A MANNER CONSISTENT WITH THE DIGNITY OF THE COURT, OBSERVING ESTABLISHED PROTOCOL, RULES, AND PROCEDURES OF INTERPRETING, AND OF THE COURT. SWORN PROCEEDINGS INTERPRETERS SHALL BE AS UNOBTRUSIVE AS POSSIBLE DURING ANY COURT PROCEEDING.

COMMENTARY

Sworn proceedings interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When speaking in English, sworn proceedings interpreters should speak at a pace and volume that enables them to be heard and understood throughout the courtroom. The sworn proceedings interpreter's presence should be as unobtrusive as possible. Sworn proceedings interpreters should work without drawing undue or inappropriate attention to themselves. Sworn proceedings interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court.

Sworn proceedings interpreters should avoid obstructing the view of any of the individuals involved in the proceedings. Sworn proceedings interpreters who use sign language or other visual modes of communication must, however, be positioned so that hand gestures, facial expressions, and whole body movement are visible to the person for whom they are interpreting.

Sworn proceedings interpreters are encouraged to avoid personal or professional conduct that could discredit the court.

CANON 5: SWORN PROCEEDINGS INTERPRETERS SHALL PROTECT AND UPHOLD ALL CONFIDENTIAL, PRIVILEGED, OR OTHERWISE PRIVATE INFORMATION OBTAINED DURING THE COURSE OF THEIR OFFICIAL DUTIES. SWORN PROCEEDINGS INTERPRETERS SHALL NOT DERIVE PERSONAL PROFIT OR ADVANTAGE FROM ANY SUCH INFORMATION ACQUIRED WHILE ACTING IN A PROFESSIONAL CAPACITY.

COMMENTARY

Sworn proceedings interpreters must refrain from repeating or disclosing confidential, privileged, or otherwise private information obtained during the course of their official duties with the Court of Justice. Facilitating confidential, privileged, or otherwise private communication between attorneys and their clients is not considered an official duty of the sworn proceedings interpreter. All such communication must take place through the use of a private linguistic expert as defined in the Kentucky Court of Justice Language Access Plan and Procedures (AP Part IX).

In the event a sworn proceedings interpreter becomes aware of information that suggests imminent harm to someone or relates to a crime being committed during the course of the proceedings, the sworn proceedings interpreter should immediately disclose the information to an appropriate authority within the judiciary who is not involved in the proceeding and seek advice in regard to the potential conflict in professional responsibility.

CANON 6: SWORN PROCEEDINGS INTERPRETERS SHALL NOT PUBLICLY DISCUSS, REPORT, OR OFFER AN OPINION CONCERNING A MATTER IN WHICH THEY ARE OR HAVE BEEN ENGAGED, EVEN WHEN THAT INFORMATION IS NOT DEEMED BY LAW TO BE CONFIDENTIAL.

CANON 7: SWORN PROCEEDINGS INTERPRETERS SHALL LIMIT THEMSELVES TO INTERPRETING OR TRANSLATING. THEY SHALL NOT GIVE LEGAL ADVICE, GIVE COUNSEL, OR EXPRESS PERSONAL OPINIONS TO INDIVIDUALS FOR WHOM THEY ARE INTERPRETING. SWORN PROCEEDINGS INTERPRETERS SHALL NOT ENGAGE IN ANY OTHER ACTIVITIES THAT MAY BE CONSTRUED TO CONSTITUTE A SERVICE OTHER THAN INTERPRETING OR TRANSLATING WHILE SERVING AS A SWORN PROCEEDINGS INTERPRETER.

COMMENTARY

Since sworn proceedings interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating. Sworn proceedings interpreters should refrain from

initiating communications while interpreting unless it is necessary to ensure an accurate and faithful interpretation. Sworn proceedings interpreters may be required to initiate communications during a proceeding if 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 pace of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances, they should make it clear that they are speaking for themselves.

A sworn proceedings interpreter shall not give legal advice. A sworn proceedings interpreter shall 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 sworn proceedings interpreter may translate the language on a form for a person who is filling out the form, but may not explain the form or its purpose for such a person.

The sworn proceedings interpreter should not personally serve to perform official duties that are the responsibility of other court officials including, but not limited to, court clerks, court administrators, pretrial officers, court designated workers, or specialty court staff.

CANON 8: AT ALL TIMES, SWORN PROCEEDINGS INTERPRETERS SHALL ASSESS THEIR ABILITY TO DELIVER THEIR SERVICES. WHEN SWORN PROCEEDINGS INTERPRETERS HAVE ANY RESERVATION ABOUT THEIR ABILITY TO SATISFY AN ASSIGNMENT COMPETENTLY, THEY SHALL IMMEDIATELY CONVEY THAT RESERVATION TO THE APPROPRIATE JUDICIAL AUTHORITY. SWORN PROCEEDINGS INTERPRETERS SHOULD ONLY PROVIDE PROFESSIONAL SERVICES IN MATTERS IN WHICH THEY ARE CONFIDENT OF THEIR ABILITY TO PERFORM ACCURATELY. THEY SHOULD NOT HESITATE TO WITHDRAW FROM A CASE IN WHICH THEY FEEL THEY WILL BE UNABLE TO FUNCTION EFFECTIVELY DUE TO LACK OF PROFICIENCY, PREPARATION, OR DIFFICULTY IN UNDERSTANDING A WITNESS OR DEFENDANT.

COMMENTARY

If the communication mode of the deaf, hard of hearing, or otherwise disabled person, or language of the person with limited English proficiency, cannot be readily interpreted, the sworn proceedings interpreter shall notify the appropriate judicial authority.

Sworn proceedings interpreters shall notify the appropriate judicial authority of any environmental or physical limitation that hinders their ability

to deliver interpreting services adequately, e.g., the court room is not quiet enough for the sworn proceedings interpreter to concentrate, hear, or be heard; 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 sworn proceedings interpreter to adequately interpret. Sworn proceedings interpreters for the deaf or hard of hearing must also 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.

Sworn proceedings interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Sworn proceedings interpreters should recommend and encourage the use of team interpreting whenever necessary.

Whenever possible, sworn proceedings interpreters are encouraged to make inquiries as to the nature of a case before accepting an assignment. This enables sworn proceedings interpreters to match their professional qualifications, skills, and experience to potential assignments, and more accurately assess their ability to satisfy those assignments competently.

Sworn proceedings interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the sworn proceedings interpreter. When such instances occur, sworn proceedings interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or intensive research, sworn proceedings interpreters shall inform the presiding officer.

Sworn proceedings interpreters shall refrain from accepting a case if the language and subject matter of that case is likely to exceed their skills or capacities. Sworn proceedings interpreters shall notify the presiding officer if they are unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant.

Sworn proceedings interpreters shall notify the presiding officer of any personal bias they may have involving any aspect of the proceedings. For example, a sworn proceedings interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9: SWORN PROCEEDINGS 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

Because the users of interpreting services frequently misunderstand the proper role of the sworn proceedings interpreter, they may ask or expect the sworn proceedings interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, or policies governing sworn proceedings interpreters. It is incumbent upon the sworn proceedings interpreter to inform such persons of his or her professional obligations. If, having been apprised of these obligations, the person persists in demanding that the sworn proceedings interpreter violate them, the sworn proceedings interpreter should consult with the Manager of the Office of Language Access, a language access liaison, a judge, or another official with authority over language access matters to resolve the situation.

It is crucial that judges understand and support the unique role that sworn proceedings interpreters play in the judicial process, including the sworn proceedings interpreter's obligation to deny the facilitation of confidential, privileged, or otherwise private communication between attorneys and their clients based on the issues and concerns outlined herein and in the Kentucky Court of Justice Language Access Plan and Procedures (AP Part IX). Judges should take all appropriate steps to protect the integrity of the judicial process by fully supporting the sworn proceedings interpreter's ethical and legal responsibilities to maintain impartiality throughout all stages of the proceedings. Sworn proceedings interpreters should only provide language access services in court proceedings and during direct services as outlined and defined within the Kentucky Court of Justice Language Access Plan (AP Part IX).

If, having been apprised of the role of the sworn proceedings interpreter, a judge orders the sworn proceedings interpreter to violate his/her ethical and legal obligations, the sworn proceedings interpreter should obey the judge's order and report the incident to the Manager of the Office of Language Access for resolution as soon as feasible.

CANON 10: SWORN PROCEEDINGS INTERPRETERS SHALL CONTINUALLY IMPROVE THEIR SKILLS AND KNOWLEDGE AND ADVANCE THE PROFESSION THROUGH SUCH ACTIVITIES AS PROFESSIONAL TRAINING AND EDUCATION, AND INTERACTION WITH COLLEAGUES AND SPECIALISTS IN RELATED FIELDS.

COMMENTARY

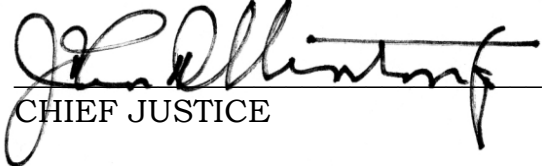
Sworn proceedings interpreters should continually strive to increase their knowledge of the languages they work in professionally, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Sworn proceedings interpreters should keep informed of all statutes, rules of courts, and policies of the judiciary that relate to the performance of their professional duties.

A sworn proceedings 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.

This Order shall be effective January 1, 2018, and until further Order of this Court.

Entered this 6th day of November 2017.


CHIEF JUSTICE