

## **Directive #3-04**

Questions or comments may be  
directed to (609) 984-3150  
or (609) 984-5024

**To: Assignment Judges**

**From: Richard J. Williams**

**Subject: Interpreting Standards**

**Date: March 22, 2004**

On February 26, 2004, the Judicial Council approved the attached Standards for Delivering Interpreting Services in the New Jersey Judiciary. For the most part, the Interpreting Standards incorporate practices presently in use in most of the Vicinages.

The Standards are grounded in four basic tenets: (1) that people who are limited in their ability to speak and understand English or who are deaf or hard of hearing should have the same access to the courts as those who are neither; (2) that only qualified interpreters may ordinarily interpret; (3) that all costs for interpreting are to be borne by the Judiciary except in very limited instances; and (4) that team interpreting should be used for events of more than two hours. The Standards address as well the use of deaf jurors and also incorporate by reference the previously issued Operational Standards for Telephone Interpreting (which were promulgated by Directive #14-01).

As noted, for the most part the Standards formalize existing practice. In a few Vicinages, some changes will be required, particularly in the areas of team interpreting (using two interpreters for proceedings of more than two hours) and proceedings interpreting (providing an interpreter in non-criminal as well as criminal cases to sit with a party at counsel table and interpret what is being said in the courtroom). Therefore, some Vicinages will already be operating under these Standards, while others may have to develop an implementation plan.

I would ask that by May 1, 2004, you advise me in writing whether your Vicinage is in compliance with the Interpreting Standards. If not, please identify

the elements with which the Vicinage is not in compliance and provide a plan for implementation, including the date by which the Vicinage will be in compliance with every Standard.

Thank you for your efforts on implementing this program and your continued support of the Judiciary's standardization efforts. Any questions or comments about the Interpreting Standards may be directed to Patricia Shukis Fraser, Assistant Director, Programs and Procedures, at (609) 984-3150 or Robert Joe Lee, Language Services Section, at (609) 985-5024.

R.J.W.

attachment

cc: Chief Justice Deborah T. Poritz  
Hon. Joseph B. Small, Tax Court Presiding Judge  
Presiding Judges (Civil, Criminal, Family, General Equity)  
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# **Standards for Delivering Interpreting Services In the New Jersey Judiciary<sup>1</sup>**

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## **Preface:**

New Jersey is a rich tapestry of languages and cultural backgrounds that makes it one of the most linguistically and ethnically diverse states in the nation. With approximately one in four residents over the age of five speaking a language other than English at home and almost three-quarters of a million residents being either deaf or hard of hearing, the demand on the judiciary to meet the linguistic needs of all court users adequately is great and still growing. Yet meet the needs it must, for one fundamental precept of our justice system is that no person be denied access to the courts because of ethnicity or physical impairment. These standards set clear direction to judiciary staff for the delivery of interpreting services to the many state trial court users who have no, or limited, proficiency in understanding or speaking English, whether that lack of proficiency stems from having a different mother tongue or a hearing loss.

The standards govern cases in Superior Court and Tax Court, although they may be adapted to all courts. Justice should not be compromised because someone is unable to speak or understand English.

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<sup>1</sup> Approved by the Judicial Council on February 26, 2004 and promulgated per Directive #3-04 on March 22, 2004.

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**SECTION 1.**  
**INTERPRETING FOR PERSONS WITH LIMITED PROFICIENCY IN ENGLISH**  
**OTHER THAN THOSE WHO ARE DEAF OR HARD OF HEARING**

**Standard 1.1. Access to the courts.**

**All people, including persons with limited proficiency in English, should have equal access to court proceedings, programs and services.**

Comment:

An interpreter should ordinarily be presumed necessary for any person covered by Standard 1.2 when either that person or that person's attorney represents that such person is unable to understand or communicate readily in the English language. That presumption, however, may be rebutted by a showing of substantial evidence to the contrary made to the presiding judge of the appropriate division or that judge's designee. As a practical matter, requests for interpreting services are denied infrequently.

**Standard 1.2. Who should be assigned an interpreter.**

**The judiciary should generally assign interpreters to interpret all phases of court-connected proceedings for any person with limited proficiency in English who is a named party in the proceeding or who, in Family Part, is a parent or guardian of a juvenile who is a named party, as well as for witnesses during their testimony. Such phases include, most critically, those proceedings for which a transcript may be made, but also, when necessary, court-ordered arbitration and mediation and delivery of services involving court personnel, particularly in criminal and quasi-criminal cases. Interpreters should be provided whenever a failure of communication may have significant negative repercussions.**

Comment:

A basic tenet of justice is equal access. There can be no equal access if the ability to comprehend is compromised by language barriers. At any proceeding on the record before a judge or hearing officer, interpreters must be used if a language barrier exists. This ensures a consistent and high level of interpretation services for the most critical phases of a case.

In instances in which certain direct services are rendered by paid or volunteer staff, qualified bilingual staff, if available, should provide the service in lieu of an interpreter. If no qualified bilingual staff is available, an interpreter should be assigned. In appropriate cases, telephone interpreting may also be a logical, cost-effective, and efficient alternative. (See Standard 1.6.) Examples of such direct services are mediations, arbitrations, first contacts with probationers, Child Placement Review Boards, Juvenile Conference Committees, and contacts that could result in a violation of probation. In general, the services rendered are those in which a failure of communication may have significant negative repercussions.

In direct service situations that are less likely to have significant negative repercussions in a case (like routine probation reporting and intake at Civil Division counters), the convening authority should weigh the equities in deciding whether, in the absence of qualified bilingual staff, a court-assigned interpreter is required or whether adult family or friends of parties may instead be used. (Using minors to communicate with limited-English proficiency adults is fraught with obvious perils and should be avoided except to gather ancillary or basic information, like addresses and phone numbers. Juveniles should not be used for substantive matters that would put undue pressure on them to secure a “favorable” outcome for their parents.)

In the absence of qualified bilingual staff, the nature of the particular direct service event is crucial to determining whether to assign an interpreter. Doubts should always be resolved in favor of assigning an interpreter, even if doing so requires rescheduling the event. The ideal of justice dictates that, as resources become available, all direct service rendered to limited-English proficient persons should be provided either by qualified bilingual staff or with the assistance of a court-assigned interpreter.

This standard implicitly excludes provision of court-assigned interpreters for depositions and private alternative dispute resolution and, more generally, for contacts between the party needing an interpreter and a person who is not connected with the judiciary, except as these standards may otherwise provide.

The judiciary will provide and bear the costs of interpreting services in contested probate matters handled in the Superior Court. It may also provide interpreting services in matters involving the Surrogate if the county reimburses the State for the costs of the interpreter.

### **Standard 1.3. Who may interpret.**

**The judiciary should use only interpreters registered with the New Jersey Administrative Office of Courts. In the unusual case in which any other interpreter is required, the judge or hearing officer should conduct a *voir dire* consistent with *New Jersey Rule of Evidence 604* and administer the interpreter’s oath. (See Standard 3.1.) The use of family members and friends as interpreters should be avoided.**

#### **Comment:**

The Administrative Office of the Courts maintains a registry of interpreters that is regularly updated and available on both the judiciary’s external ([www.njcourtsonline.com](http://www.njcourtsonline.com)) and internal websites. Interpreters designated as “Conditionally Approved” or “Eligible Unapproved” should be used only when there are no approved interpreters for the particular language or when substantial effort has failed to locate an approved interpreter. “Conditionally Approved” interpreters should receive preference over “Eligible Unapproved” interpreters.

Interpreters obtained through agencies must meet the same standards as interpreters who are registered with the judiciary. On rare occasions, it may be necessary to use interpreters who do not meet judiciary standards. Such interpreters might be obtained through an agency or contracted on an individual basis. The key to the adequate delivery

of services is the use of an interpreter who is both competent and impartial. For this reason, the use of family members and friends is an unacceptable solution for all but the most limited of services. The only exception to the prohibition on using friends and family members as interpreters is for events with little potential to prejudice a case, such as conversations at Civil Division counters. See Standard 1.2.

These standards should not be construed to limit the authority of a court to determine the qualifications of a person testifying as an interpreter under *New Jersey Rule of Evidence* 604.

#### **Standard 1.4. Reimbursement of expenses for interpreting services.**

**The judiciary may seek reimbursement when it incurs actual expense for interpreting services:**

- 1. that could have been avoided but for the failure of a party or an attorney to give reasonable attention to the matter; or**
- 2. that an attorney or a pro se litigant requests but fails to use during a court event.**

Comment:

This standard has already become a de facto standard in many vicinages and points out the need for attorneys and litigants to be responsible in their use of public funds expended for interpreting services. In its use of the criterion, “failure . . . to give reasonable attention,” the standard parallels the language of *New Jersey Court Rule* 1:2-4, which delineates sanctions for attorneys who fail to appear for a court proceeding.

Examples of the types of events that might trigger a shifting of incurred interpreting costs to a party:

- requesting an interpreter, then not giving the judiciary sufficient advance notice that the interpreter is no longer needed, despite having such advance notice, or
- requesting an interpreter, then failing to appear with no legitimate excuse for such failure to appear.

#### **Standard 1.5. Responsibility for interpreting expenses in civil commitment hearings and court-annexed arbitration.**

**The vicinage that has been assigned the responsibility of providing the judge for a civil commitment hearing should pay the expenses for supplying any needed interpreting services for that hearing. The costs of supplying interpreting services for court-annexed arbitration should be paid out of trial *de novo* funds.**

**Standard 1.6. Operational standards for telephone interpreting.**

**Interpreting services provided over the telephone shall conform to the Operational Standards for Telephone Interpreting issued as Directive #14-01, dated August 29, 2001.**

Comment:

Clearly the goal of both in-person and telephone interpreting is the same: accurate communication; however, the delivery methods are, just as clearly, different. In recognition of this, the Judicial Council adopted operational standards for telephone interpreting, which were formally promulgated as Directive #14-01. Attached to that directive and incorporated by reference into it are manuals for judges and others who receive the service, managers who coordinate the service, and interpreters who provide the service.

## SECTION 2. INTERPRETING FOR PERSONS WHO ARE DEAF OR HARD OF HEARING

### Standard 2.1. Access to the courts.

**All people, including those who are deaf or hard of hearing, should have equal access to court proceedings, programs, and services.**

Comment:

This section of the standards is intended to ensure compliance with the statutory requirements for aiding people who are deaf or hard of hearing as set forth in *N.J.S.A. 34:1-69.1 et seq.*, under which a person whose hearing is so impaired as to prohibit the person from understanding oral communication may request or require assistance in understanding a legal proceeding. In such circumstances, the court will give the individual an opportunity to ask for the auxiliary aid desired and will honor the type of aid requested unless it can provide an equally effective means of communication or the requested means would fundamentally change the nature of the proceeding or otherwise result in an undue financial or administrative burden. Costs for interpreting services for such persons will be borne by the judiciary. See Standard 2.6.

Requests for assistance can vary according to the communication needs of the person with a disability; however, American Sign Language interpreters are the aid most commonly requested.

### Standard 2.2. Who may interpret.

**The judiciary shall use only sign language interpreters who have been certified by the National Registry of Interpreters for the Deaf, Inc., and listed by the State Division of the Deaf and Hard of Hearing in the Department of Human Services or the New Jersey Registry of Interpreters for the Deaf.**

Comment:

New Jersey statutes define who may be used by government entities for interpreting for persons who are deaf or hard of hearing. See, *N.J.S.A. 34:1-69.10*.

### Standard 2.3. Use of intermediary sign language interpreters in Superior Court.

**If either a sign language interpreter meeting the requirements of Standard 2.2 or a person who is deaf or hard of hearing states that the interpretation is not satisfactory and that an intermediary would improve the quality of interpretation, an intermediary interpreter shall be assigned to assist the original interpreter. Any such interpreter must take the same oath that all interpreters take. If an intermediary interpreter is used who does not meet the requirements of Standard 2.2, the judge or hearing officer should also consider conducting a *voir dire* consistent with *New Jersey Rule of Evidence 604*.**

Comment:

Some deaf or hard of hearing people do not understand or communicate in American Sign Language. Some use a personal signing system or a sign language of another country. In such cases, an intermediary like a Certified Deaf Interpreter may be required to facilitate communication between the deaf or hard of hearing person and the court interpreter. Such intermediaries should be used whenever a failure to use them would cause communication problems. Staff should also be mindful of the judiciary's "Guidelines for Proceedings that Involve Deaf Persons Who Do Not Communicate Competently in American Sign Language."

This standard, which follows the language of *N.J.S.A. 34:1-69.9*, should not be construed to limit the authority of a court to determine the qualifications of a person testifying as an interpreter under *New Jersey Rule of Evidence 604*.

#### **Standard 2.4. Who should be assigned a sign language interpreter.**

**As needed, the judiciary shall assign a sign language interpreter to assist a deaf or hard of hearing person throughout the proceedings and in communications with counsel immediately before, during, and immediately after a proceeding, in instances in which the deaf or hard of hearing person is a named party of the proceeding, a complainant, a witness, a juror, or the parent of a juvenile who is a named party of the proceeding, a complainant, or a witness.**

Comment:

New Jersey statutes define the categories of people who must be provided with a qualified interpreter. See, *N.J.S.A. 34:1-69.10*.

#### **Standard 2.5. Events for which a sign language interpreter must be provided.**

**The judiciary shall assign a sign language interpreter in the following circumstances:**

- 1. at all stages in any judicial or quasi-judicial proceeding, including civil commitment proceedings;**
- 2. during any court-connected proceedings in any Family Part docket type, in arbitration, and in mediation;**
- 3. during any public exchange in a courtroom proceeding whether or not it is on the record;**
- 4. during delivery of in-court services involving court personnel or court-ordered outside services when purchased by the judiciary, such as diagnostic evaluations;**

5. **during preparation with counsel immediately before, during, and after a court event, as required by *N.J.S.A. 34:1-69.10*.**

Comment:

The judiciary is obligated to pay for interpreting services during court-ordered outside services paid for by the judiciary. However, if such services are not paid for by the judiciary (for example, supervised visitation by outside agencies), the judiciary must still try to ensure that the providers of such services comply with the spirit of these standards.

#### **Standard 2.6. Responsibility for the costs of sign language interpreting.**

**The judiciary shall bear the costs of providing all necessary sign language interpreting services to a person covered by Standard 2.4 for the court events listed in Standard 2.5.**

**The costs of supplying any necessary sign language interpreting services for a civil commitment hearing should be borne by the vicinage that has been assigned the responsibility of providing the judge for that hearing under the annual rotation schedule issued by the Chief Justice.**

**As an exception to the general rule that the judiciary should bear all costs of sign language interpreting, a judge may choose to pass some or all costs on to an attorney whose failure to give reasonable attention to the matter has caused the court to incur expenses for an interpreter who is not needed. In such situations, the attorney may not pass any costs on to the client. The judiciary ordinarily will not seek reimbursement in such instances from a *pro se* litigant.**

Comment:

The judiciary is required by statute to pay for assistance given to the deaf and hard of hearing under state law (*N.J.S.A. 34:1-69.7 et seq.*). Indeed, Directives #10-84 and #6-87 acknowledge that requirement. The New Jersey Judiciary is committed to providing its services, programs, and activities in a manner that assures accessibility for all users of the courts, including individuals with disabilities, in a way that comports with state law.

Although the judiciary is obligated to pay for all reasonable interpreting assistance to a deaf or hard of hearing person, the law is not clear with respect to whether such costs may be recouped when incurred because of the inaction or lack of adequate attention of a *pro se* litigant. While such situations are infrequent, such costs might be incurred, for example, when the court has not been notified of a settlement in time to cancel a sign language interpreter's assignment, even though ample notification time was available.

#### **Standard 2.7. Positioning of sign language interpreter.**

**No proceeding shall begin until the sign language interpreter has been positioned in full view of the deaf or hard of hearing person for whom he or she is interpreting.**

Comment:

See *N.J.S.A.* 34:1-69.11.

**Standard 2.8. Waiver of right to a sign language interpreter.**

**A waiver of the right to a sign language interpreter shall not be approved by the court unless it in writing, signed by the person to whom the right is accorded, and agreed to in writing by that person’s attorney, if any.**

Comment:

Waivers of sign language interpreters are covered by statute. See *N.J.S.A.* 34:1-69.16.

**Standard 2.9. Deaf or hard of hearing jurors.**

**As with any other potential juror, the trial judge should determine whether a deaf or hard of hearing person is able to serve as a juror in a particular case. *N.J.S.A.* 2B:20-1 requires that every person summoned to be a juror “shall be able to read and understand the English language” and “shall not have any mental or physical disability which will prevent the person from properly serving as a juror.” A potential juror who indicates that he or she meets these qualifications, even if deaf or hard of hearing, should not be automatically disqualified.**

Comment:

If a deaf or hard of hearing person needing a sign language interpreter is selected to be a juror, the court should refer to the “Guidelines for Trials Involving Deaf Jurors Who Serve with the Assistance of Sign Language Interpreters.”

### SECTION 3. INTERPRETING GENERALLY

#### **Standard 3.1 Interpreter's oath.**

**All interpreters shall take the following written or oral oath at each proceeding of record for which they interpret: "Do you solemnly swear or affirm that you will interpret accurately and impartially, follow all guidelines for court interpreting that are binding on you, and discharge all of the solemn duties and obligations of an official interpreter?" No unsworn interpreter shall be permitted to interpret.**

Comment:

This standard sets out uniform language for the oath that the evidence rule pertaining to interpreters, *N.J.R.E.* 604, requires be administered to all interpreters, a uniformity that did not exist prior to these standards. That evidence rule simply provides that a "judge shall determine the qualifications of a person testifying as an interpreter. An interpreter shall be subject to all provisions of [the evidence] rules relating to witnesses and shall take an oath or make an affirmation or declaration to interpret accurately."

The use of a uniform oath lends consistency to the procedure required by the evidence rule and underlines the importance of the oath and the concomitant responsibility it places on an interpreter to give accurate and impartial interpretations.

This requirement is viable only for proceedings placed on the record, but, at such proceedings, oaths should be administered both to those interpreters interpreting for the record and those who may be doing proceedings interpreting, *i.e.*, interpreting what is going on for a party at counsel table.

#### **Standard 3.2. Putting interpreters' names on the record.**

**In any proceeding in which an interpreter is used, the judge or hearing officer conducting that proceeding shall have the interpreter state on the record his or her name and status as an official interpreter before beginning to interpret.**

#### **Standard 3.3. Speaking on the record to those needing interpreting services.**

**The judge or hearing officer conducting a proceeding on the record in which an interpreter is used should ensure that the person with limited proficiency in English or who is deaf or hard of hearing is addressed in his or her own language only by the official interpreter.**

### **Standard 3.4. Team interpreting.**

**A team of two interpreters should be provided by the vicinage for proceedings if they are projected to last more than two hours.**

Comment:

When a team of interpreters works together, one interprets while the other monitors the accuracy of the interpretation. Team interpreting is the industry standard for sign language interpreters. In fact, no sign language interpreter will work for the judiciary if a team is not present for proceedings that last more than two hours. The same industry standard is emerging among professionals in spoken language interpreting. Team interpreting is now widely used for spoken language interpreters in most vicinages, and implementing the standard should not result in any substantial increase in cost. While exceptions can be made when necessary to the team interpreting standard for spoken language interpreters, any such exceptions should be rare and the decision to make them carefully assessed.

### **Standard 3.5. Handling interpreter error and allegation of interpreter error.**

**If an interpreter reports having made an interpreting error or someone alleges such an error, the judge or hearing officer should use the detailed procedures set forth in the “Comments” portion of this standard for dealing with such errors or allegations of error.**

Comment:

Correction of errors caught by the interpreter. In order to ensure the most accurate possible interpretation on the record, judges and hearing officers should accept the correction of errors when offered by the interpreter. In a jury trial, this should generally be done during a sidebar conference. In a non-jury proceeding, this should be done by permitting the record interpreter, if still interpreting, to correct the error at once, first identifying him/herself in the third person (e.g., “The interpreter wishes to correct an error”) for the record and then proceeding to make the correction. If the interpreter becomes aware of an error after the testimony has been completed, the judge or hearing officer should determine whether the error should be corrected on the record. If a jury is present, this should be done in a sidebar conference.

Handling of allegations of errors. When anyone other than the interpreter (including the team interpreter) alleges that an interpreting error has been made, the judge or hearing officer should handle resolution of the allegation outside the presence of the jury, if any. If there is a team of interpreters, the team should first confer and try to reach an agreement and the judge or hearing officer should accept any such agreed-upon correction by the team. Notwithstanding an allegation of error, the interpreter or interpreting team should be presumed to have interpreted correctly, unless the interpreter agrees that he or she made a mistake; the burden of proof in any such situation should be on the person challenging the interpretation.

If the interpreter stands by the interpretation that is alleged to have been incorrect, then the judge or hearing officer should determine whether the issue surrounding the allegedly

inaccurate interpretation is so substantial or potentially prejudicial as to warrant further attention. If it is not, the allegation of error should not be pursued further. If, however, the issue is substantial or potentially prejudicial, then the judge or hearing officer should:

- (1) ask the person whose speech was allegedly misinterpreted to clarify the term or terms in question. If that does not resolve the allegation of interpreter error, the judge or hearing officer should then hear evidence as to the correct interpretation from experts submitted by attorneys for all parties if they so wish, from the interpreter who made the alleged error, and from any other linguistic expert the judge or hearing officer may select or allow. In some situations, it may be advisable or necessary to play back the recording of what a witness has said since many perceived interpreting errors are a function of what was said in a foreign language rather than its interpretation; and
- (2) make a final determination as to the correct interpretation in view of the evidence. If the determination is different from the original interpretation, then the judge or hearing officer should amend the record accordingly and, if applicable, so advise the jury.

### **Standard 3.6. Reporting of any policy violations by interpreters.**

**If a judge or staff person believes that an interpreter engaged in conduct that violates either the Code of Professional Conduct for Interpreters, Transliterateds and Translators or any other judiciary policy, he or she should so advise the vicinage coordinator of interpreting services.**

**Comment:**

While judges or staff may form such a belief either through first-hand knowledge or otherwise (such as a complaint from an attorney), they should reasonably believe that a violation of policy has been committed before proceeding in accordance with this standard.