

GUIDELINES FOR TRIALS INVOLVING DEAF JURORS WHO SERVE WITH THE ASSISTANCE OF SIGN LANGUAGE INTERPRETERS

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1. Introduction

These guidelines have been prepared to assist judges when prospective jurors who have indicated that they require a sign language or oral interpreter in order to serve as a juror, whether that need is noted on the Juror Qualification Questionnaire or communicated in some other way to court personnel. All other accommodation requests for communication assistance (e.g., assistive listening devices, real-time transcription) should be referred to and handled by the Vicinage Americans with Disabilities Act Coordinator.

2. Legal Background

- A. Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, prohibits discrimination against persons with hearing loss in "any program or activity receiving federal financial assistance."
- B. The Americans with Disabilities Act (ADA) of 1990 extended the prohibition of discrimination against persons with hearing loss to all government entities and requires them to make all their services, programs, and activities available to "qualified individuals" with disabilities. Section 202 of the ADA (42 U.S.C. §12132).
- C. Deaf persons have successfully served as jurors on numerous occasions in New Jersey and elsewhere nationwide. The Administrative Director of the Courts issued an advisory memorandum to the Assignment Judges shortly after the first service in New Jersey by a Deaf juror ("Service by Deaf Jurors," October 1, 1984). It stated that deafness is not necessarily a limitation of the requirement to be able to read, write, and understand English and that a trial judge could find that a Deaf juror meets the statutory qualifications for jurors.

3. Scheduling the Interpreter(s)

- A. Consideration of the Complex Factors
The Jury Manager, Vicinage Coordinator of Interpreting Services, and other court personnel should review all relevant factors prior to scheduling a Deaf or hard-of-hearing juror for jury service. Factors relevant to scheduling in this circumstance include the following:
 - i. the type of jury service (petit or grand);
 - ii. the length of scheduled service (petit jury terms range from one day/one trial to four days; grand jury terms generally require sixteen days of service although the number of weeks to complete service may vary);
 - iii. the possibility that a day's service will be called off (scheduled trials may be settled or not proceed and jurors are notified by recorded telephone messages the night before service);
 - iv. the presumption that a team of two interpreters will be required (this is mandatory when there is a need for continuous interpreting for more than two hours); and
 - v. the possibility of selection to a lengthy trial.

- B. **Jury Orientation and *Voir Dire***
A team of two interpreters should be scheduled for the week of scheduled jury service. A team will provide interpretation for jury orientation and *voir dire* (note: frequently there are multiple voir dires throughout a day).

4. Interpreter's Positioning in the Jury Assembly Room

- A. **Sign Language Interpreter**
The ideal location for the sign language interpreter is next to the person who addresses the jurors. This is so that the Deaf or hard-of-hearing person can view the speaker peripherally while following the interpretation.
- B. **Oral Interpreters**
Oral interpreters may need to sit directly in front of the Deaf or hard-of-hearing person in order to facilitate easy lipreading.
- C. **Videotaped Presentations**
Most jury orientations that are presented by means of videotape are available in a captioned format, either closed or open captioning. The orientation videotape jointly prepared by the Judiciary and the New Jersey State Bar Foundation is available in a closed captioned format and can be obtained either at the county or through the Administrative Office of the Courts.

The Deaf juror may choose to rely on the captions or ask the interpreter to interpret the video. For interpretation, the sign language interpreter should be positioned next to the video monitor while the oral interpreter may remain seated in front of the juror.

If the assembly room lighting is customarily lowered for the showing of the video, lighting adjustments may need to be made to make sure the interpreter is visible to the juror.

5. Qualification and Challenges of Jurors Who Require an Interpreter to Serve

- A. **No Presumption of Automatic Disqualification**
The fact that a juror is Deaf or hard of hearing and requires an interpreter in order to understand the proceedings or communicate with the court is an insufficient grounds, by itself, to disqualify that juror.
- B. ***Voir Dire* of Jurors Who Are Deaf or Hard of Hearing**
As is done for every juror, the trial Judge should conduct a *voir dire* of a Deaf or hard-of-hearing juror and decide whether the juror meets the statutory qualifications for jury service. Neither deafness nor restricted hearing necessarily limits the ability to read or understand English.

The ADA prohibits direct questioning of an individual regarding the Deaf or hard-of-

hearing person's disability. Judges should focus on the skills required to adequately perform the duties of a juror, such as the ability to attend for long periods of time, the ability to weigh evidence, and the ability to deliberate.

It is appropriate to inquire if the juror can understand the interpreter that has been provided and if she or he has any suggestions for further facilitating successful communication in the courtroom.

C. **Challenges of Jurors Who Are Deaf and Hard of Hearing**

Once determined by the judge to possess the required qualifications the juror requiring interpreting services, like any other juror, can be removed from the trial panel by successful challenge, whether for cause or by means of a peremptory challenge.

6. The Interpreter During *Voir Dire*

The interpreter will most likely interpret in the simultaneous mode when the judge is addressing all jurors or during the questioning of the other prospective jurors. However, when the Deaf or hard-of-hearing prospective juror is directly being questioned or answering, the interpreter will most likely interpret in the consecutive mode.

7. Positioning of Deaf Jurors

While sitting in the gallery, the Deaf or hard-of-hearing juror should be in the front row or at the end of any row.

If empaneled, the Deaf or hard-of-hearing juror should be assigned a seat that will ensure a direct line of sight to the interpreters. This can best be determined by having the interpreter negotiate a location with the Deaf person directly.

8. Positioning of Interpreters in the Courtroom

A. **Sign Language Interpreters**

Positioning of a sign language interpreter for voir dire and trial will vary depending on the configuration of the particular courtroom. While the jurors remain in the gallery, the sign language interpreter should sit just inside the well of the courtroom with his or her back to the judge. If the Deaf juror is seated on the end of a row, the interpreter should be seated in the aisle of the gallery with her back to the proceedings.

When a Deaf juror moves to the jury box, the interpreter should stand or sit so as to allow the juror to view the judge peripherally while following the interpretation. This could mean the interpreter sits in the witness stand or pulls a chair up alongside the jury box. Deaf jurors are often seated in the first row of the jury box.

During witness testimony, the interpreter will need to be as close as possible to the witness without blocking the view of other jurors. Sometimes this involves sitting

between the jury box and the witness stand. Other times, it might be better for the interpreter to sit or stand slightly behind and to the side of the witness.

During opening statements and closing arguments, the interpreter should stand in front of the jury box adjusting his or her position as the attorney paces or displays visual aids.

B. Oral Interpreters

Oral interpreters will need to maintain close proximity to the Deaf or hard-of-hearing juror and may not vary position throughout the trial. The oral interpreter should be seated in front of the Deaf or hard-of-hearing juror. If the Deaf or hard-of-hearing juror is in the front row of the jury box, the interpreter may pull a chair up to the box and allow the attorneys to pace and put up displays behind the interpreter. Under no circumstances should the positioning of the interpreter force the Deaf or hard-of-hearing juror to look away from the speaker.

C. Positioning of the Team Interpreter

Court proceedings lasting longer than two hours require a team of two interpreters. The positions outlined above are for the primary interpreter who is actually signing or rendering the oral interpretation. The team interpreter needs to face the primary interpreter in order to provide support and assistance as needed.

In the gallery, the team interpreter can sit among the jurors. Once the Deaf or hard-of-hearing juror is selected, the team interpreter may sit to the side of the jury box. During a trial, the team interpreter may vary position in accordance with the positional changes made by the primary interpreter. The two interpreters will periodically switch their positions. This will be done during natural breaks in the proceeding or as inconspicuously as possible during the proceeding.

9. Assistance from the Judge

Judges should try to help interpreters particularly by paying special attention to names. A long series of names can be challenging to the interpreter if spoken too quickly. Unusual names of witnesses or law firms may be difficult to finger spell and should be provided to the interpreter in writing or spelled by the judge. If the witness list is lengthy, the Deaf or hard-of-hearing juror should be allowed to read it to assess familiarity with any of the parties involved in the suit.

10. Instructions to the Parties

The court should remind the parties that the interpreters will assist the Deaf or hard-of-hearing juror throughout all phases of the trial, including jury deliberations, and are sworn to keep confidential everything they hear during the deliberations.

11. Instructions to the Parties and Jurors About Interpreter's Role

Once a Deaf or hard-of-hearing juror is empaneled, the judge should instruct the jury with reference to the interpreters' role. The instructions should include as many of the following points as the judge deems appropriate:

- A. Do not allow yourselves to be distracted by the interpretation.
- B. The novelty of having interpreters present will wear off.
- C. The interpreter's role is to enable the Deaf or hard-of-hearing juror to participate fully as a juror by giving him or her full access to everything being said.
- D. The interpreter is required to abide by the Code of Professional Conduct approved by the Supreme Court and the Code of Ethics promulgated by the Registry of Interpreters for the Deaf, Inc., the professional association of sign language interpreters. Among other things, the interpreter is required to:
 - i. Interpret everything accurately and never leave out, add, or change anything being said.
 - ii. Keep confidential everything that is ever said during the jury's conversations and deliberations.
 - iii. Be unbiased and free of conflicts of interest.
- E. A second interpreter will be joining the original interpreter to make a team. The two interpreters will be switching between roles as the primary and the supporting interpreter every twenty to thirty minutes or whenever natural breaks in the proceedings allow them to do so.
- F. When you are talking among yourselves outside the courtroom, do not talk to or try to involve the interpreter directly. The interpreter is not allowed to participate in your conversations or subsequent deliberations in any way.
- G. The interpreter's sole function is to make possible full communication between the Deaf or hard-of-hearing juror and the other jurors. The hearing jurors should talk directly to the Deaf or hard-of-hearing juror as if no interpreter were present.

12. Charge to the Jury

- A. **Remind Jurors of Interpreter's Role**
The judge should remind the jury of the interpreter's role, using as many of the points in section 11, *supra*, as the Judge deems appropriate.
- B. **Give Suggestions to the Jurors for Successful Deliberations**
Judges should instruct jurors to speak one at a time as much as possible during deliberations. Judges should consider assigning the jury foreperson the responsibility of seeing that turn taking is observed during deliberations so that the Deaf or hard-of-hearing juror may fully participate with the assistance of interpreters.
- C. **Administer Another Oath to the Interpreters**
In the presence of the jury and before the jury is released to commence deliberations, the judge should administer another oath to the interpreters which includes anything the judge believes should be included and as many of the following points as the judge deems appropriate:
 - i. To refrain from participating in any part of the deliberations in any way;
 - ii. To refrain from any and all conversations with individual jurors;
 - iii. To keep confidential everything that is said during the jury's deliberations and to disclose nothing about the jury's deliberations to anyone.