

GUIDELINES FOR PROCEEDINGS
THAT INVOLVE DEAF PERSONS
WHO DO NOT COMMUNICATE COMPETENTLY
IN AMERICAN SIGN LANGUAGE

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May 2000
(Revised February 2004)

1. Introduction

These Guidelines are designed to help judges, lawyers, and others involved in the New Jersey Judiciary (1) understand the unique communication needs of Deaf people who use a sign language of another country (i.e., not American Sign Language [ASL]) or who are not able to communicate successfully in ASL and (2) provide guidance for improving the odds of successfully accommodating those needs. These are Deaf persons who have little or no mastery of American Sign Language and for whom the traditional accommodation of providing the services of American Sign Language interpreters alone is insufficient for ensuring equal access to court and other judicial proceedings and services, or satisfying ADA requirements for accommodating disabilities.

2. Background on Two Classes of Deaf Persons Having Special Needs

There are two classes of Deaf persons generally considered to need the kinds of special accommodations to be discussed in these Guidelines. The first consists of those who are *immigrants, migrants, or refugees* who have come to this country from abroad and are fluent in their native sign language (e.g., British, Polish, or Spanish Sign Language), but who have acquired little or no American Sign Language. Thus the use of an American Sign Language (ASL) interpreter is not a sufficient accommodation to secure satisfactory communication.

The second class consists of Deaf persons who, due to numerous environmental factors combined with physiological deafness, can result in a juvenile or adult who has limited communication skills and has either limited or no facility communicating in ASL. These factors include:

- A. Limited opportunities for acquisition of ASL. Some Deaf people do not interact with the signing community and this inhibits their exposure to and acquisition of ASL.
- B. A bilingual home/school environment, e.g., deaf children born into Spanish-speaking homes who lip-read and hear Spanish until entering public school where they are exposed to lip-reading and hearing English accompanied by signs.
- C. The presence of a secondary handicapping condition such as mental retardation, a learning disability, or mental illness.
- D. A lack of natural language development during the crucial ages of 0-5 years, e.g., a deaf child born into a hearing family in which no one signs.
- E. Limited or no formal education.
- F. Social isolation. Some Deaf people lead their lives isolated from both the hearing and Deaf worlds. They may lack the general social and cultural knowledge necessary for communication in any language.

3. Deaf-Hearing Interpreter Team Required

A team of interpreters should be formed which includes one or more of each of two kinds of certified interpreters. First, one or more certified interpreters of American Sign Language (ASL) is essential. These are persons who meet requirements established in New Jersey law and the *Standards for Using Interpreters in the New Jersey Judiciary* (see section 2) and who provide the link between what speakers say in English and the Deaf interpreter.

Second, one or more Certified Deaf Interpreters (CDI) is required. The CDI is a Deaf person who holds a valid Certified Deaf Interpreter (CDI) certificate from the National Registry of Interpreters for the Deaf, Inc. and who brings to this challenging interpreting situation native ASL fluency, professional training as an interpreter, and a lifetime of personal experiences as a Deaf person. CDIs share with Deaf individuals the experience of sometimes having to mime and gesture their way through life with the non-signing public. This professional interpreter provides the link between the ASL interpreter and the Deaf party or witness who has limited or no ability to communicate in ASL.

4. Consecutive Mode Required

Working with a Deaf-Hearing interpreting team requires the strict use of the consecutive mode in all situations. This means the ASL interpreter begins interpreting into ASL only after the English speaker has completed an utterance. Once that interpretation is completed, the CDI then begins interpreting to the Deaf person using a variety of visual/gestural communication techniques. The process will be repeated in the reverse when the Deaf person is the source of the message to be interpreted. This means that simultaneous interpretation is not viable in this context.

5. Understanding Silent Communication

The process of communication in these situations will not always be as linear as the description in §4 suggests. Persons who communicate in ASL continuously exchange signed and non-verbal feedback in order to monitor the success of the communication. To the inexperienced observer, these exchanges could appear to be inconsistent with the unbiased role of the interpreter; however, they are in fact essential for successful communication in visual languages.

- A. The feedback exchanged between the ASL and Deaf interpreters occurs primarily to clarify a source message. For example, the ASL interpreter may ask the CDI for verification or clarification before rendering an interpretation into English.
- B. The feedback that occurs between the CDI and the Deaf party may include not only similar attempts to verify and clarify, but also a variety of strategies described in §7 to convey the message and fully ascertain the response.

6. Tolerating Silent Communication

There will be periods of silence throughout this process. These periods of silent communication may make the court and the attorneys uncomfortable or frustrated. Judges and attorneys should be understanding and patient since this signing is related to communicating the question to the witness and ascertaining the witness' response, nothing more and nothing less.

7. Use of Alternate Forms of Communication

The interpreters should be given wide latitude in using alternative forms of communication between themselves and the Deaf persons they are assisting who are not competent in ASL.

- A. The interpreters may need to use concrete objects such as paper and pencil for drawing, calendars, clocks, pictures, and dolls to supplement their gestures and signs.¹
- B. Additional space may be needed to allow the Deaf person to physically pantomime what happened.

8. General Guidelines for Cases Involving Deaf Persons with Limited or No Ability to Communicate in ASL

The following suggestions are offered to increase the likelihood that an environment for successful communication will occur:

- A. Increase the amount of time scheduled for each phase of the case.
- B. Make every effort to use the same interpreting team throughout the case.

9. Guidelines for Asking Questions to Deaf Persons with Limited or No Ability to Communicate in ASL

The normal process by which attorneys and judges ask questions in a court of law will not usually work successfully with either of these types of Deaf persons. The following suggestions are designed to help attorneys or judges adapt their styles of asking questions to have the best likelihood of succeeding in eliciting successful answers from these types of Deaf parties and witnesses::

- A. Keep questions brief and as specific as possible.

¹For example, the Deaf person may not recognize or use any of the conventional ASL signs for the word detective. However, when permitted to act out the story of his arrest, the CDI may gesture the officer flashing his badge out from under his shirt.

- B. Avoid vague or abstract questions.
- C. Avoid double negatives.
- D. Present questions in sequential time order of the actual series of events in question. Note: Switching back and forth between or among verb tenses can hamper communication.
- E. When the Deaf party or witness is unable to answer any other form of a question, the court should consider allowing leading questions.
- F. The court should be prepared for and permit the interpreters to request clarification from counsel periodically throughout questioning. The interpreters may need to know what the situation looked like visually in order to communicate the concept to the witness.² This may necessitate sidebar discussions or can be part of the open court record at the discretion of the trial judge.
- G. The court should be prepared for the hearing interpreter to use a variety of vocal intonations when rendering the witness' response in English. These inflections will correspond precisely to the tone and affect of the witness' signed response.³

10. Positioning of the Interpreters in the Courtroom

- A. When the Deaf Person Is Seated at Counsel Table
The CDI should sit across from the Deaf person with his or her back to the judge. The ASL interpreter should sit slightly behind and to one side of the Deaf person facing the CDI.
- B. When the Deaf Person Is on the Witness Stand
The ASL interpreter should stand slightly behind and to the side of the Deaf person,

²For example, take the question, "Do you remember when the DYFS worker came to your house after school?" The interpreters may request to know the gender of the DYFS worker in order to focus the witness back in time to the day "the woman or the man" stopped by her house after school. Similarly the phrase "threaten with a weapon" may need clarification as to the type of weapon and the exact nature of the threatening gesture.

³In at least one case involving a Deaf witness, the defense attorney filed a motion asking the court to order the interpreter to render the interpretation in a monotone. The attorney argued that the jury should be allowed to decide the witness' emotional state through observations of the witness' signing and that the spoken interpretation resulted in a prejudicial repetition of information to the jury. The motion failed when the interpreter successfully argued that deleting the emotional affect of the message violated the Code of Professional Conduct for Interpreters, Transliterators, and Translators.

facing the attorneys. The CDI should stand in front of the Deaf witness with his or her back to the attorneys. In trials involving a jury, the CDI should take care not to block the jury's view of the witness.

**11. Instructions to the Jury When a Deaf Witness
Who Has Limited or No Ability to Communicate in ASL Testifies**

One characteristic of the communication style of these types of Deaf persons, i.e., nodding throughout any conversation, warrants special attention by the court. Judges should advise juries of the following:

- A. When the Deaf witness nods, it is in no way an indication that he or she understands what is being communicated. It may merely indicate a willingness to continue the conversation.
- B. Similarly, nodding is no way an indication that the Deaf person is answering "Yes" or "No."
- C. Ignore the nods and wait for the interpreters to render the complete response - before drawing any inferences about what the witness said.