

ELIMINATING BARRIERS TO JUSTICE CLE III  
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GSU College of Law

# HOW TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO LEP AND DHH CLIENTS

THE LAW OFFICES OF BRUCE S. HARVEY  
146 NASSAU ST SW  
ATLANTA GA 30303  
404.659-4628  
[BRUCE@BHARVEYLAWFIRM.COM](mailto:BRUCE@BHARVEYLAWFIRM.COM)

COUNSEL HAS AN ETHICAL RESPONSIBILITY TO SECURE THEIR CLIENT'S CONSTITUTIONAL RIGHTS AND TO COMMUNICATE WITH THE CLIENT. AN OTHERWISE COMPETENT ATTORNEY CAN BE LINGUISTICALLY INCOMPETENT.

# NEED FOR INTERPRETER OR DHH SERVICES

# RIGHT TO INTERPRETER OR DHH SERVICES

*THE COURT INTERPRETERS ACT,*  
28 USC 1827

# FRE 604

“An interpreter must be qualified and must give an oath or affirmation to make a true translation.”

# DUE PROCESS

*Ramos v. Terry*, 279 GA 889 (2005)

*Puga-Cervantes v. State*, 281 GA 78 (2006)

*US v. Joshi*, 896 F3d 1303 (11<sup>th</sup> Cir 1990)

*Valladares v. US*, 871 F3d 1564 (11<sup>th</sup> Cir 1989)

# CONFRONTATION

*US ex rel. Negron v. New York*, 434 F2d 386 (2<sup>nd</sup> Cir 1970)

*Giraldo-Rincon v. Dugger*, 707 F. Supp 504 (M.D. Fla. 1989)



# 5<sup>TH</sup> AMENDMENT

## RIGHT TO TESTIFY

*US v. Mayans*, 17 F3d 1174 (9<sup>th</sup> Cir 1994)

# GA RULES, OCGA 15-1-14

- Courts should make a diligent effort to appoint a Certified Interpreter.
- Georgia Commission on Interpreters
- Certification Program
- Oath required

# APPENDIX A

## UNIFORM RULE FOR INTERPRETER PROGRAMS

An interpreter is needed and an interpreter shall be appointed when the decision maker, which would include the judge, magistrate, special master, commissioner, hearing officer, arbitrator, neutral, or mediator, determines, after an examination of a party or witness, that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury.

# INDIVIDUAL INTERPRETER

## THREE ROLES

1. COURT INTERPRETATION –  
WITNESSES/JURY
2. ACCURACY OF RECORD
3. COMMUNICATION WITH COUNSEL

# MULTI-DEFENDANT CASES

*US v. Bennett*, 848 F2d 1134 (11<sup>th</sup> Cir 1988)

*US v. Sanchez*, 928 F2d 1450 (6<sup>th</sup> Cir 1991)

(Conflict between defendants)

# ATTORNEY AS INTERPRETER

- 67 Fed Reg No 117 41461
- Briones v. Texas, 595 SW2d 546 (1980)  
(Bilingual attorney makes interpreter unnecessary)
- Ohio v. Razo, 157 Ohio App 3d 578
- State v. Counsels, 258 NJ Super 420 (1992)  
But see:
- Giraldo-Rincon v. Dugger, *supra*  
(Habeas granted where defendant had bilingual attorneys)
- US v. Bailon-Santana, 429 F3d 1258 (9<sup>th</sup> Cir 2005)

# INTERPRETING V. TRANSLATION

- Translation is the general process of transferring meaning from one language to another.
  - Translation = written form
  - Interpretation = oral form
- Consecutive Interpreting
- Simultaneous Interpreting

# INTERPRETER AS AN OFFICER OF THE COURT

Loyalty to:

- Legal process
- Court
- Individual for whom he/she is interpreting  
*KO v. US*, 694 A 2d 73 (DC 1997)  
*Ledezma v. Iowa*, 626 NW 2d 134 (2001)



# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

1. TRY TO ALWAYS USE A CERTIFIED AND EXPERIENCED INTERPRETER.
2. MAKE SURE THE INTERPRETER DOES NOT:
  - GIVE LEGAL ADVICE
  - PERSONAL OPINIONS
  - PROVIDE EXPLANATIONS OF THE CASE WITHOUT YOU

# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

3. PROVIDE THE INTERPRETER BACKGROUND INFORMATION ABOUT THE CLIENT AND FAMILY AND THE CASE.
4. MAKE SURE THE INTERPRETER AND CLIENT SPEAK THE SAME DIALECT AND LEVEL OF LANGUAGE USE. OR THAT THEY BOTH ACKNOWLEDGE AND CAN WORK THROUGH ANY DIFFERENCES IN PRONUNCIATION, GRAMMAR, AND VOCABULARY.

# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

5. PREPARE INTERPRETER FOR ANY POTENTIAL  
EXPERT TESTIMONY — TERMINOLOGY AND OTHER  
“TERMS OF AP.”
6. BE ALERT FOR INTERPRETER FATIGUE.

# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

7. COUNSEL SHOULD ALWAYS ADDRESS A NON-ENGLISH-SPEAKING WITNESS OR DEFENDANT DIRECTLY — NOT “TELL HER THAT” OR “ASK HER IF,” BUT “DO YOU” OR “WERE YOU.”
8. BE MINDFUL OF YOUR PACE AND SYNTAX WHEN ADDRESSING THOSE WHO DO NOT SPEAK ENGLISH.

# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

## 9. THAT IS:

- DEFINE LEGAL CONCEPTS AND PROCEEDINGS AS OUR COMMON LAW SYSTEM OF JUSTICE IS NOT USED AROUND THE WORLD.
- IF AN INTERPRETER IS BEING USED THE CLIENT SHOULD NOT ANSWER IN ENGLISH, BUT ONLY IN HIS OR HER NATIVE TONGUE.
- AVOID DOUBLE NEGATIVES (YOU SHOULD DO THIS ANYHOW, RIGHT?)
- AVOID ACRONYMS LIKE DUI, PSR, ETC.
- SPORTS METAPHORS SHOULD BE AVOIDED.
- AVOID BARE PRONOUNS WITHOUT REFERENCE. “YOU” IN ENGLISH IS BOTH SINGULAR AND PLURAL — GIVE CONTEXT TO THE “YOU.”

# STRATEGIES FOR ETHICALLY WORKING WITH INTERPRETERS

## 10. BE ALERT FOR:

- PERIODS OF SILENCE DURING OR AFTER A SPEAKER IS TALKING.
- EXTENDED CONVERSATIONS BETWEEN WITNESS/DEFENDANT AND INTERPRETER.
- EXCESSIVE REQUESTS FOR REPETITION AND CLARIFICATION.