

10



Georgia Bar Journal

February 2013 ■ Volume 18 ■ Number 5



18

GBJ Legal

10

The Criminalization of Georgia's Youth
by J. Tom Morgan

GBJ Features

18

Working with an Interpreter:
Providing Effective
Communication and Ensuring
Limited English Proficient Clients
Have Meaningful Access
to Justice
by Jana J. Edmondson

24

Diversity Program Celebrates
its 25th Anniversary
by Marian Cover Dockery

28

Cubbedge Snow Jr. and
J. Douglas Stewart Win
James M. Collier Award
by Len Horton

Departments

4 From the President

8 From the YLD President

30 Bench & Bar

36 Office of the General
Counsel

38 Lawyer Discipline

40 Law Practice Management

42 South Georgia Office

44 Pro Bono

48 Section News

52 Member Benefits

54 Writing Matters

56 Professionalism Page

60 In Memoriam

64 Book Review

66 CLE Calendar

70 Notice

71 Classified Resources

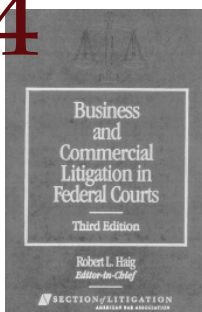
72 Advertisers Index

36



44

64



Cover Photo: State Bar President Robin Frazer Clark pictured with lawyer-legislators in the Georgia General Assembly

(Bottom) Speaker of the House Rep. David Ralston. (Left to right, first row) Rep. Regina Quick; Rep. LaDawn Jones; Sen. Jesse Stone, Chairman, Judiciary Non-Civil; Rep. Rich Golick, Chairman, Judiciary Non-Civil; Rep. Wendell Willard, Chairman, Judiciary; Rep. Edward Lindsey, Majority Whip. (Second row) Sen. Ronald B. Ramsey Sr., Chairman, Urban Affairs; Rep. Johnnie Caldwell Jr.; Rep. Stacey Evans; Rep. Mike Jacobs, Chairman, MARTOC; Rep. Mary Margaret Oliver; Robin Frazer Clark, President, State Bar of Georgia. (Third row) Rep. Scott Holcomb; Rep. Pam Stephenson; Rep. Ronnie Mabra; Sen. Bill Cowsert, Chairman, Higher Education; Rep. Dustin Hightower; Rep. Stephen Allison; Rep. Dar'shun Kendrick. (Fourth row) Rep. Matt Ramsey; Sen. Lindsey Tippins, Chairman, Education and Youth; Rep. Alex Atwood; Sen. Judson Hill, Chairman, Finance; Sen. Curt Thompson, Chairman, Special Judiciary. (Fifth row) Rep. Barry Fleming; Sen. Charlie Bethel, Governor's Floor Leader; Sen. Joshua McKoon, Chairman, Judiciary; Rep. Tom Weldon, Chairman, Juvenile Justice. (Sixth row) Sen. William T. Ligon Jr., Chairman, State and Local Governmental Operations; Rep. B.J. Pak; Rep. Stacey Abrams, Minority Leader; Rep. Larry O'Neal, Majority Leader; Rep. Brian Strickland. (Seventh row) Rep. Jay Powell, Chairman, Appropriations Subcommittee on Public Safety; Sen. John Crosby, Chairman, Banking and Financial Institutions; Sen. Jason Carter; Rep. Andy Welch. **Not pictured:** Rep. Christian Coomer.

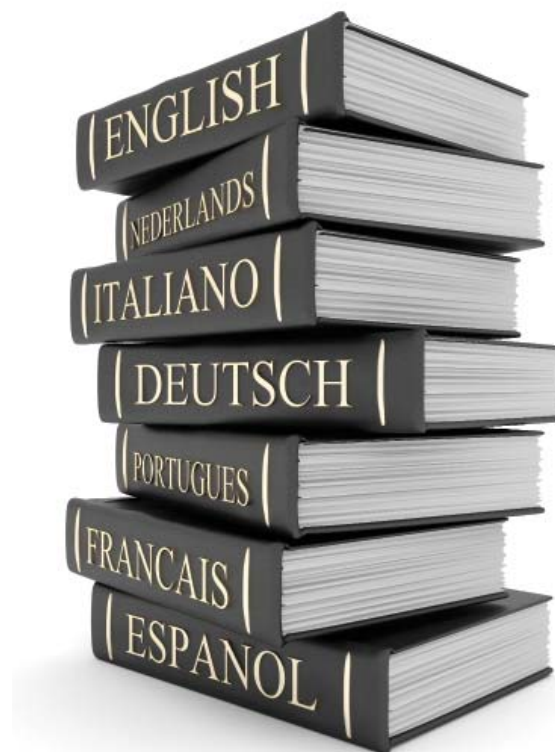
Working with an Interpreter

Providing Effective Communication and Ensuring Limited English Proficient Clients Have Meaningful Access to Justice

by Jana J. Edmondson

Legal malpractice experts and Georgia ethical rules counsel Georgia lawyers to communicate effectively with their clients.¹ Communication can be difficult with any client, but what if the client cannot communicate with you in English? Imagine this: Maria has been covering up bruises for the past 35 years of her marriage. She finally took the first step to end the abuse and has filed for divorce. Although Maria speaks some English, she is not fluent. Her first language is Italian. Maria has lived in Georgia for more than 40 years. She is a retired factory worker and often finds it difficult to communicate because of her limited English proficiency.

She contacts you, and you agree to represent her. Perhaps you grew up speaking Italian with your own grandparents or studied it in college; nonetheless, you have no problem understanding her. She seems to understand you pretty well, too. During various conversations, you observe that this situation is very



hard on her, as she frequently begins to cry and gets easily flustered when answering your questions. You spend extra time translating court documents for her and explaining what she should expect during the process. In further preparation for the Rule Nisi, you ask Maria whether she would like an interpreter at the hearing to help her communicate. She tells you no. She says that she trusts you and prefers for you

to communicate for her, not some stranger. You decide to oblige her wish and do not request an interpreter for the Rule Nisi.

STOP. Was that in the best interest of your client? Before you make that decision, consider the following.

What is LEP?

A limited English proficient (LEP) person is one who speaks a language other than English as her primary language and/or who has a limited ability to read, speak, write or understand English. The term LEP includes individuals who are hearing impaired as well. As an attorney, you may find yourself representing clients who are LEP. Their limited English proficiency will add an additional layer of responsibility to you as their advocate. It is your duty to protect their meaningful access to the judicial system. You will need to ensure that your clients are able to communicate effectively with you, the court and any other relevant parties.

Why Use an Interpreter?

As an attorney, you first need to be able to focus solely on providing effective advocacy of the issues and not on the language barriers that exist. Second, using an interpreter ensures that a client understands the information that you provide to her as you intend for her to receive it. Third, using the interpreter will ensure that the client is able to communicate her questions and/or concerns to you effectively. Using an interpreter will help you adhere to your ethical obligation to communicate effectively with clients.

Use of an Interpreter/ Ethical Considerations and Attorney-Client Privilege

The Georgia Rules of Professional Conduct specifically require an attorney to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representa-

ARTHUR T. ANTHONY

Certified Forensic Handwriting and Document Examiner

(770) 338-1938

Diplomate-American Board of Forensic Document Examiners
American Society of Questioned Document Examiners
American Academy of Forensic Sciences

P.O. Box 620420
Atlanta, Georgia 30362

Practice Limited to Civil Matters

Vote Electronically in 2013 and Opt Out of Paper Ballots

The State Bar now offers the option to vote electronically in Bar elections, in lieu of receiving a paper ballot.

Contact the State Bar’s Membership Department at membership@gabar.org by **Friday, March 1**, to opt in to electronic voting. (If you don’t opt in, you will continue to receive a paper ballot.)

When the voting site opens this spring, all active members who have opted to vote electronically will receive an email which explains how to log in and vote. Easy step-by-step instructions will help you complete your ballot online.



tion.”² Failing to secure an interpreter for an LEP client prevents an attorney from fulfilling that ethical obligation of effective communication. Failing to do so may also affect a client’s right to due process, right to be present and right to effective assistance of counsel. For bilingual attorneys, it may also prove to be in the best interest of the client to employ an interpreter when the attorney needs to ensure that the client understands a very complex issue or a settlement agreement. Using an interpreter during preparation for a hearing or trial also allows the client the opportunity to get accustomed to communicating with an interpreter before the first day of court. An in-person interpreter is always preferred over a telephonic interpreter because communication is more effective when it can be provided face-to-face.

Bilingual attorneys should be aware that it is very unwise to wear the hats of both advocate and interpreter for a hearing or trial. Wearing both hats often presents an ethical conflict of interest.³

Communications between attorney and client are privileged if the interpreter is acting as the agent of the attorney.⁴ Specifically, the content of attorney-client communications where an interpreter is present is just as privileged as if the interpreter is not present. Attorneys should be aware, however, that if the interpreter intentionally or accidentally reveals privileged information to a third party, the privilege will be waived.⁵ For example, suppose that your interpreter also works in another occupation, which classifies her as a mandatory reporter under Georgia law.⁶ If information regarding child abuse is discussed during a client meeting, the interpreter’s statutory duty to reveal that information to a third party overcomes the fact that the information was obtained from a privileged communication.⁷ It is important that the attorney discover this type of conflict *before* using the particular interpreter.

Appointment and Compensation of the Interpreter

The Supreme Court of Georgia Rules on Use of Interpreters for Non-English Speaking and Hearing Impaired Persons in Georgia (Interpreter Rules) make it clear that the responsibility of finding and appointing an interpreter, in applicable cases, falls on the court and not on litigants or attorneys.⁸ In its March 8, 2012, letter to the North Carolina Administrative Office of the Courts (AOC), the U.S. Department of Justice (DOJ) concluded that budget constraints do not excuse a federal funding recipient’s failure to provide LEP individuals with meaningful access to court operations in a case.⁹

Specifically, Assistant Attorney General Thomas E. Perez stated that

any focus only on the financial costs of providing additional interpreter services ignores the significant fiscal and other costs of *non-compliance* with the AOC’s obligation to take reasonable steps to ensure access to court operations for LEP individuals. It costs money and time to handle appeals and reversals based on the failure to ensure proper interpretation and effective communication. Similarly, delays in providing interpreters often result in multiple continuances, which needlessly waste the time and resources of court staff. And ineffective communication deprives judges and juries of the ability to make reliable decisions; renders victims, witnesses and defendants effectively absent from proceedings that affect their rights; and causes other significant costs in terms of public safety, child welfare, and confidence in the judicial system.¹⁰

Although Georgia currently does not have a unified, statewide compensation system, the Interpreter Rules state that the

local courts shall be responsible for developing and testing various approaches of compensation that are consistent with guidelines set by the Georgia Commission on Interpreters (Commission) and Georgia law, until such time as the Commission implements a unified, statewide system.¹¹ Attorneys at Georgia Legal Services Program have developed a set of standard pleadings, including a Motion for Interpreter and a supporting brief.¹² These pleadings formalize the request for an interpreter and are often helpful in educating the court on current federal and state laws requiring that LEP clients have meaningful access to the courts.

Legal Background

Title VI of the Civil Rights Act of 1964 requires that all recipients of federal funding make reasonable efforts to provide LEP persons with meaningful access to their programs and services at no cost. This includes federal and state courts of law as well as administrative forums.¹³ Ten years after enactment of Title VI, the U.S. Supreme Court interpreted Title VI by holding that failure to provide instruction in Chinese to a group of 1,800 non-English speaking students of Chinese national origin violated Title VI’s ban on discrimination based upon national origin.¹⁴

It was not until 2000 that federal agencies and federal financial recipients seriously began to address LEP compliance. On Aug. 11, 2000, President Clinton issued Executive Order 13,166,¹⁵ which had two main purposes. First, the Executive Order provides guidance to all recipients of federal funds administered by the respective agency. Second, the Executive Order requires federal agencies to develop an internal LEP policy compliant with Title VI and the Executive Order. The latter did not create any new obligations or duties; rather, it was a mechanism for enforcing pre-existing obligations.

Find people worthy of the name on the door. That was my mentor's advice. But the landscape has changed over the last few years. Profits are harder earned and have to be more wisely spent. So I'm getting help to keep our practice healthy enough to attract and retain top talent. After all, it might as well be my name on the door.

*WE SHINE WHEN WE
HOLD OURSELVES TO
A HIGHER STANDARD.*



HOW CAN WE HELP YOU SHINE TODAY?™

Our Legal Specialty Group provides a dedicated team with tailored solutions to meet the unique financial needs of attorneys and their firms. Visit suntrust.com/law

Securities and Insurance Products and Services: Are not FDIC or any other Government Agency Insured • Are not Bank Guaranteed • May Lose Value. SunTrust Private Wealth Management Legal Specialty Group is a marketing name used by SunTrust Banks, Inc., and the following affiliates: Banking and trust products and services, including investment advisory products and services, are provided by SunTrust Bank. Securities, insurance (including annuities) and other investment products and services are offered by SunTrust Investment Services, Inc., an SEC registered investment adviser and broker-dealer, member FINRA, SIPC, and a licensed insurance agency. SunTrust Bank, Member FDIC. © 2012 SunTrust Banks, Inc. SunTrust is a federally registered service mark of SunTrust Banks, Inc. How Can We Help You Shine Today? is a service mark of SunTrust Banks, Inc.

The Supreme Court of Georgia has held that an interpreter must be appointed for those who cannot communicate effectively in English in criminal cases.¹⁶ In *Ling v. State*, the Court also strongly stated that meaningful access to justice must be provided in *all* Georgia courts, including civil courts, for persons who are limited English proficient in order to comply with federal law. Specifically, the Court's opinion states that "vigilance in protecting the rights of non-English speakers is required in all of our courts."¹⁷

In February 2012, the American Bar Association (ABA) adopted Standards for Language Access in Courts.¹⁸ The purpose of the ABA Standards, which are not binding on state courts, is to assist state courts in designing, implementing and enforcing a comprehensive system of language access services that is suited to the needs of the communities that they serve.

Georgia attorneys have had guidance on language access and interpreter use since 2001, by virtue of the Interpreter Rules cited earlier. In 2003, the Court created the Georgia Commission on Interpreters, whose mission is to provide interpreter licensing and regulatory and education services for Georgia courts so they can ensure the rights of non-English-speaking persons. The Commission has since amended the Interpreter Rules, with the Supreme Court adopting the latest amendments in May 2011. Specifically, the May 2011 amendments resulted in the following general rule:

The following rules apply to all criminal and civil proceedings in Georgia where there are non-English speaking persons in need of interpreters. See also *Ling v. State*, 288 Ga. 299 (702 SE2d 881) (2010). All other court-managed functions, including information counters, intake or filing offices, cashiers, records rooms, sheriff's offices, probation and parole offices, alter-

native dispute resolution programs, *pro se* clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, shall comply with Title VI of the Civil Rights Act of 1964.¹⁹

Additionally, Georgia has two statutes creating rights to interpreters. In domestic violence cases brought under Chapter 13 of Title 19 of the Georgia code, LEP litigants and witnesses have a statutory right to a free court-appointed foreign language or sign language interpreter.²⁰ The statute mandates that the court-appointed interpreter be compensated out of the local victims' assistance fund.²¹ Likewise, hearing impaired litigants and witnesses have a statutory right to an interpreter.²²

Recognizing that mere bilingualism does not qualify an individual to be an efficient interpreter, the Interpreter Rules further state that interpreters should be appointed or hired with preference for a "Certified" interpreter. If a "Certified" interpreter is unavailable, then an interpreter who is recognized by the Commission as "Registered" or "Conditionally Approved" should be used. As a last resort, a telephonic or other less qualified interpreter should be used.²³ To find a qualified interpreter in Georgia, please visit the "Locate an Interpreter" section found on the homepage of the Commission's website.²⁴

In the March 8, 2012, letter discussed earlier,²⁵ the DOJ issued the following statement on the competency of interpreters:

It is critically important to ensure that interpreters are competent and not merely bilingual. A bilingual person may inaccurately interpret or roughly interpret a summary of communications between the court and an LEP person, they may have a conflict of interest, or they may even be adverse. Under these

circumstances, an LEP person is denied meaningful access to court operations in a way that a fluent English speaker is not. The DOJ Guidance emphasizes the importance of interpreter competency and states: "Competency requires more than self-identification as bilingual. Some bilingual staff and community volunteers, for instance, may be able to communicate effectively in a different language when communicating information directly in that language, but not be competent to interpret in and out of English." DOJ Guidance, 67 Fed. Reg. at 41,461.²⁶

Practice Tips for Working with an Interpreter

Before the Client Meeting

- Discuss confidentiality – explain to the interpreter that she is prohibited from sharing the content of conversations with a third party
- Proper positioning (varies depending on forum)
 - Attorney should face the client
 - Interpreter generally sits next to or behind the client

During the Meeting

- Allow for introductions between the client and interpreter
- You and the interpreter should greet the client together
 - Remember, the interpreter works for the attorney
- Speak directly to the client in the *first* person (*do not* say "Ask her to tell me . . .")
- *Do not* address the interpreter
- Discuss confidentiality – explain to the client that the interpreter's presence does not destroy attorney-client privilege
- Ensure that everything is interpreted
- Be clear
 - Use concise, simple sentences
 - Ask one question at a time
 - Avoid using slang or jargon

- Explain legal terms in plain language
- Check for understanding (Nodding from your client is not a guarantee that she understands)

During a Hearing/Trial

- Follow all of the suggestions above
- Attempt to arrive early to the courtroom to show your client where she will stand and where the interpreter will probably be standing
- Ask the judge whether she has a place that she prefers for the interpreter to stand in her courtroom

Remember . . .

- Using a qualified interpreter provides you the opportunity to *focus on the issues* and not the language barrier
- Interpreters and translators *interpret/translate ideas*, not just mere words
- Fluency in a language *does not equal* competency in the *terms of art* for your field/practice area
- Title VI and the Supreme Court of Georgia Rules governing interpreter use in Georgia require an interpreter, as needed, in all court proceedings – *criminal and civil*
- This includes all “critical phases” of the entire litigation process
- O.C.G.A § 15-6-77(e)(4) – Right to interpreter in Title 19 domestic violence cases
- O.C.G.A §§ 24-6-652, -654 – Right to interpreter for the hearing-impaired
- When an interpreter is working as an agent of the attorney, the presence of the interpreter does not automatically waive the attorney-client privilege²⁷

For more information on working with interpreters, attorneys may also view “Working with Interpreters: An Effective Method for Providing LEP Advocacy” at <http://media.gls.org/podcasts/71-working-with-an-interpreter>.

The webinar is approved by ICLE for one hour of general CLE credit for Georgia attorneys. 



Jana J. Edmondson is a bilingual staff attorney with Georgia Legal Services Program, Inc., providing legal

counsel and representation to individuals in federal and state administrative forums as well as courts of law. Edmondson was recognized in 2012 by The Latino American *Who’s Who* and in 2011 as a “Trailblazing Lawyer for Justice.” Prior to practicing law, Edmondson worked part-time for four years as a professional interpreter/translator (English/Spanish). She is a member of several professional organizations including the Georgia Association of Black Women Attorneys where she currently serves as regional vice president, the State Bar of Georgia’s Access to Justice Committee and the YLD Executive Council. Edmondson is a graduate of Mississippi College School of Law and Spelman College and may be contacted at jedmondson@glsp.org.

Endnotes

1. Ga. R. of Prof’l Conduct R. 1.4.
2. *Id.* R. 1.4(b).
3. *See id.* R. 1.7(a) & cmt. 11 (providing additional guidance regarding non-litigation conflicts).
4. GA. SUP. CT. R. ON USE OF INTERPRETERS FOR NON-ENGLISH SPEAKING AND HEARING IMPAIRED PERSONS IN GA. [hereinafter INTERPRETER RULES], APP’X C, GA. CODE OF RESPONSIBILITY FOR INTERPRETERS, STANDARD X, available at http://www.georgiacourts.org/files/INTERPRETERS%20RULES_FINAL_07_03_12.pdf. Before the most recent revisions, effective Jan. 13, 2013, the INTERPRETER RULES were called GA. SUP. CT. R. ON USE OF INTERPRETERS FOR NON-ENGLISH SPEAKING PERSONS IN GEORGIA.
5. Protecting Privilege: Using Interpreters Responsibly, available

at http://www.americanbar.org/content/dam/aba/migrated/domviol/pdfs/protecting_privilege.authcheckdam.pdf.

6. *See* O.C.G.A. § 19-7-5(c) (2012).
7. *See id.* § 19-7-5(g).
8. INTERPRETER RULES, APP’X A, UNIF. R. FOR INTERPRETER PROGRAMS, § VII.
9. DOJ Letter to NC Admin. Office of the Courts, at 3 (Mar. 8, 2012), available at http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf.
10. *Id.*
11. INTERPRETER RULES § V.
12. Private attorneys volunteering with the Georgia Legal Services Program may access these pleadings by visiting georgiaadvocates.org.
13. *See* 42 U.S.C. § 2000d (“No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”).
14. *Lau v. Nichols*, 414 U.S. 563, 568-69 (1974).
15. Exec. Order No. 13,166, 65 Fed. Reg. 50,121 (Aug. 11, 2000).
16. *Ling v. State*, 288 Ga. 299, 300-01, 702 S.E.2d 881, 883 (2010).
17. *Id.* at 302, 702 S.E.2d at 884.
18. Available at <http://www.abanow.org/2012/01/2012mm113>.
19. INTERPRETER RULES, App’x A, § II (emphasis added).
20. *See* O.C.G.A. § 15-6-77(e)(4) (2012).
21. *Id.*
22. *Id.* §§ 24-6-652, -654 (2013).
23. INTERPRETER RULES, App’x B.
24. GEORGIA COMMISSION ON INTERPRETERS, <http://w2.georgiacourts.org/coi> (last visited Nov. 8, 2012).
25. *See supra* text accompanying notes 9-10.
26. DOJ Letter to NC Admin. Office of the Courts, Report of Findings, at 9 (Mar. 8, 2012), available at http://www.justice.gov/crt/about/cor/TitleVI/030812_DOJ_Letter_to_NC_AOC.pdf.
27. GEORGIA CODE OF RESPONSIBILITY FOR INTERPRETERS, Standard X, available at http://www.georgiacourts.org/files/INTERPRETERS%20RULES_FINAL_07_03_12.pdf.