

承受  
Sostenido

被授予的行動

Movimiento concedido

陪審員將忽視

El jurado desatenderá

反對  
Objeción

我可以接近長凳？

¿Puedo acercarme al banco?

這個法院現在會議上

Esta corte ahora esta en la sesion

否決 Invalidado

所有上升

Todos se levantan

令在法院 Orden en la corte

被駁回的案件 El caso despido

Sustained

Motion Granted

The jury will disregard

Objection

May I approach the bench?

This court is now in session

Overruled

All rise

Order in the court

Case dismissed



# South Carolina Court Interpreters and the Rules of Professional Conduct

By Tammy Besherse and Dr. Virginia Benmaman

Imagine this scenario. Someone raped you. Since the assault you have had many tearful, sleepless nights. You want the man who did this punished, so you muster up the courage to testify in court about the horrible ordeal you went through. During your testimony you state you had “forced intercourse.” It took a great deal of effort and energy for you to get on the stand and testify to that. The interpreter, appointed to the case, states you “made love” to the defendant. Unfortunately, this situation is real and happened to a woman in Virginia in 1978. Mollie M. Pawlosky, Note, *When Justice is Lost in the “Translation”: Gonzalez v. United States, an “Interpretation” of the Court Interpreters Act of 1978*, 45 De Paul L. Rev. 435, 443 (1996). (Note that the actual case was unpublished.)

This example demonstrates that for non-English speaking (individuals unable to communicate in English or who have a limited ability to do so, including hearing-impaired persons) participants, skilled, competent interpreters are

necessary. Interpreters protect peoples’ rights. They facilitate the cross-cultural communication that enables Limited English Proficient persons (LEP)—who have a limited ability to read, write and/or speak English—to fully participate in court proceedings. Interpreters must completely understand the subject matter in which they work to competently convert information from one language into another. Interpreters must also have an excellent command of at least two languages, as well as good memory and notetaking skills. In addition, they must possess strong analytical skills. Finally, it is essential that interpreters use and abide by the Rules of Professional Conduct for Court Interpreters to accomplish their role. The S.C. Code of Laws articulates the requirements necessary to interpret in a South Carolina court. See §§ 15-27-15, 15-27-155 and 17-1-50 (1976).

## Rules of Professional Conduct

The S.C. Rules of Professional Conduct for Court Interpreters (RPCCI) became law on June 21,

2006, and plays an important role. See South Carolina Appellate Rule 511. The RPCCI aids interpreters in recognizing and avoiding unethical behavior. Offering legal advice is improper. Interpreters who did not know this behavior was improper are now on notice. Also, the RPCCI makes it clear to the interpreter that he or she must act as an interpreter, and not an advocate. In addition, the RPCCI helps judges ascertain the qualifications of an interpreter based on the interpreter’s knowledge of the RPCCI. Finally, interpreters can cite the RPCCI if asked to perform a task or action that is unethical. All court interpreters should know and abide by the precepts in the RPCCI. Judges and attorneys should also learn the RPCCI and expect compatible conduct from interpreters.

The following canons are part of the RPCCI. This article will discuss each one, but not necessarily in this order.

**Rule 1** Accuracy and Completeness of Interpretation

**Rule 2** Representation of

Qualifications

**Rule 3** Impartiality and Avoidance of Conflict of Interest

**Rule 4** Professional Demeanor

**Rule 5** Confidentiality

**Rule 6** Restriction of Public Comment

**Rule 7** Scope of Practice

**Rule 8** Assessing and Reporting Impediments to Performance

**Rule 9** Duty to Report Ethical Violations

**Rule 10** Professional Development

Many times people presuppose that the interpreter is an advocate for the party for whom they interpret. Therefore, it is imperative that court interpreters remain neutral, objective, unbiased and disclose all real and perceived conflicts of interest. Rule 3, RPCCI, 511 SCACR (2007). Conflicts of interest could include close relationships with one of the parties, whether it is an attorney, witness or juror. If an interpreter was involved in choosing legal counsel, this also merits a potential conflict. Interpreters who have been victims of the alleged

offense that is the subject of the proceeding may have biases that prevent them from remaining neutral and objective. It is imperative that interpreters disclose to the court prior involvement on the case that has the appearance of bias. For example, an interpreter who worked closely with law enforcement to prepare the case for trial should disclose this if asked to interpret for the defendant in court. Another issue that could raise a conflict is financial gain. If the interpreter has a financial stake in the outcome of the case, this would raise doubts regarding his or her impartiality. Interpreters must disclose all conflicts or perceived conflicts of interest to the judge. Attorneys who have reason to believe the interpreter is not objective should convey this to the judge. Following disclosure, the judge determines whether the interpreter remains on the case. It is important that judges err on the side of caution in ruling on conflicts. Otherwise, similar results to *State v. Heck Van Tran*, 864 S.W. 2d

465 (Tenn. 1993) might occur. .

The State of Tennessee charged Heck Van Tran with three murders. During Heck Van Tran's trial, the judge claimed he could find no competent disinterested interpreter for the rare Chinese dialect Heck Van Tran spoke and therefore used an audience member as an interpreter. This audience member disclosed that he was the brother of one of the victims and the grandson of the key witness. The judge used him as an interpreter despite this conflict, stating that he was satisfied the interpreter was competent and unbiased. Heck Van Tran received two death sentences.

To maintain an appearance of impartiality, interpreters must avoid conversations in the courtroom not related to their official role. This effort could include something as simple as refraining from interacting with anyone in the courtroom, even an individual unrelated to his or her case. The interpreter must avoid any display of body language that could reflect that he or she favors a party, lawyer or witness involved in the

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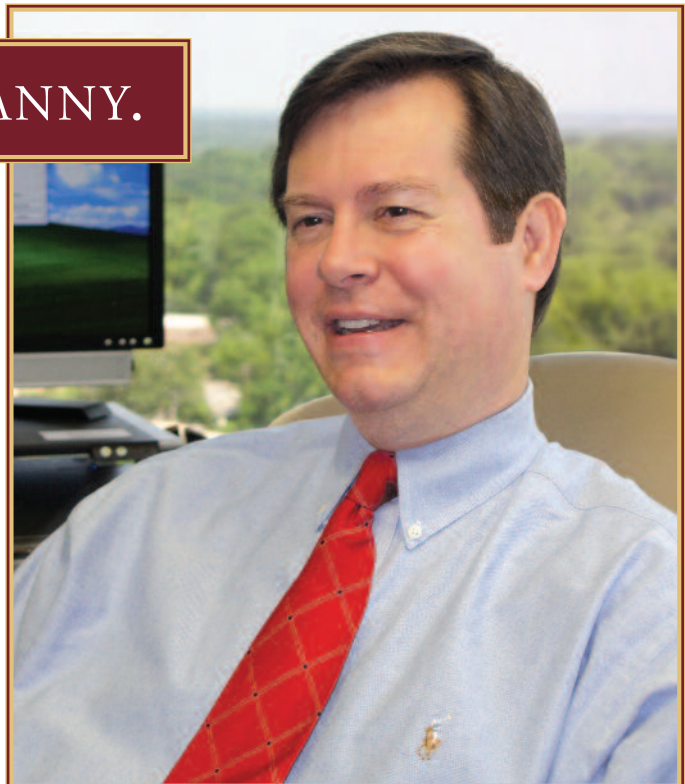
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proceedings.

Just like an attorney, an interpreter must uphold complete confidentiality. Rule 5, RPCCI, 511 SCACR. Interpreters cannot disclose information they learn in the course of their duties, including information in medical records, police records or the like. One exception to this rule allows interpreters to share the interpreting experience to train and educate other interpreters and students. Rule 6, RPCCI, 511 SCACR. Even then, the interpreter must not reveal names, personal information or anything confidential or privileged. Another exception mandates that court interpreters alert the appropriate court official about information they receive while performing their duties that indicates imminent harm is about to occur to someone, or that a crime is being committed during the course of the proceedings. Rule 5, RPCCI, 511 SCACR.

Most judges administer an oath to interpreters requesting and instructing them to interpret to the best of their ability, as it is essential that interpreters render complete and accurate interpretations. Rule 1, RPCCI, 511 SCACR. Interpreters cannot add, alter, summarize or omit anything stated without permission from the court. They must also try to retain the elements of style, syntax, grammar, tone of voice and intonation expressed in the original message. By conveying everything in the manner stated, the interpreter preserves the court's record and assists in the administration of justice.

It is crucial that any errors or suspected interpreter errors be pointed out immediately. Interpreters who realize they have made an error must notify the judge. Interpreters can do this by telling the judge from where they stand or by requesting a side-bar conference to inform the judge. Roseann D. González et al., *Fundamentals of Court Interpretation: Theory, Policy, and Practice* 156 (1991). The judge must determine if asking the question again, with a correct interpretation, can remedy

the error. State of Colo. Judicial Dep't, *Court Interpretation: Guide for Practice and Policy in State Courts* 15-16 (1999). If this is the case, the judge would need to instruct the jury to disregard the first interpretation. *Id.*

If an attorney believes an error occurred, it should be called to the judge's attention outside the presence of the jury. *Id.* Once notified of an alleged error, the judge must determine whether the potential error materially affects the understanding of the words or phrases interpreted. *Id.* If the answer is yes, then the following procedure should be implemented. See the 1988 Draft Regulations to the Court Interpreter Amendments Act. These were not adopted, but the method was strongly encouraged to handle interpreter error. <http://tinyurl.com/2xuvcn> (Web site last visited April 26, 2007). The judge should:

- (1) request that the question and answer at issue be read back;
- (2) obtain from the person questioning the interpretation a specification of the alleged error and what he or she believes the correct interpretation is; and
- (3) ask the interpreter if the alternative interpretation proposed by the challenger is acceptable to him.

Interim Regs. of the Director of the Admin. Office of the U.S. Courts Implementing the Court Interpreters Amendments Act of 1998, Part II, *reprinted in* González et al., *supra*, app. B. The judge has to decide after hearing both sides of the argument which interpretation is correct. *Id.* The party challenging the interpretation bears the burden of proof. González et al., *supra*, at 161-2. These regulations were not adopted, but the method was strongly encouraged to handle interpreter error. 28 U.S.C. § 1827 (2000).

A judge in Kansas instituted a similar method to the example shown above to manage alleged interpreter error in a multi-defendant trial. *State v. Van Pham*, 675 P.2d 848, 234 Kan. 649 (1984).

During the trial, the judge stated the following:

I am going to issue an order that in the event any of your interpreters disagree either among yourselves or disagree with what the Court's interpreter interprets the testimony of any Vietnamese witness, then no counsel is to stand up and relate that fact to the jury. What I want to happen is the attorney can make objection—we'll stop the proceeding—to approach the bar and advise me in a voice that cannot be overheard by the jury that we have a dispute over what is said by one of the witnesses. At that time I will excuse the jury to go back to the jury room and we will get to the bottom of it. *Id.* at 858.

If there is an error in any translation, I'm also going to tape record the testimony given by the Vietnamese. That testimony will not be preserved, please understand, on the tape recording. It will merely be preserved for short durations at a time being the time limit on each side of the tape cassettes. The reason for that being that if there is a disagreement on what a Vietnamese witness testified to, including the defendants, then I would have the actual recording of what was said so that it could be played back. Obviously my Court Reporter can't take down Vietnamese or at least I don't think she's that talented; she's quite talented, but I don't think she's reached that stage yet. And in this way it would preserve that testimony so that should a conflict arise as to the proper translation it could be played back until we could arrive at what the proper translation was. *Id.*

Even though Judge Hodge confused the term "translate" with "interpret" ("interpret" refers to spoken communication, while "translate" refers to written communication), his system was effective in handling errors

during the trial, and other judges have adopted his system. Other courts have addressed interpreter error by asking the LEP individual a clarifying question outside the presence of the jury. Proceedings and findings related to potential interpreter error must be on the record.

Minor errors are inevitable. Dr. Virginia Benmaman, *Interpreter Issues on Appeal*, Proteus (Newsletter of the Nat'l Ass'n of Judiciary Interpreters and Translators), Vol. IX, No. 4, Fall 2000. Many courts will not bother with errors not affecting material matters or issues central to the case. *Id.*

To further ensure that interpretations are accurate, interpreters must refrain from inserting personal explanations or clarifications and instruct the non-English speaking person to refer questions to the appropriate court professional. Court interpreters must be clear that their only role is to interpret and thereby enable others to communicate with one another. They cannot give legal advice or express opinions to those for whom they interpret. Rule 7, RPCCI, 511 SCACR. Also, they must only initiate conversations if necessary to perform their duties. For example, an interpreter must initiate a communication if he needs to point out that he cannot hear or understand the speaker, to correct errors or to report an inability to competently perform the job.

Interpreters are required to assess their ability to deliver services. Rule 8, RPCCI, 511 SCACR. Interpreters should evaluate their linguistic abilities before accepting a case. It is good practice for the court interpreter to speak to the attorney requiring his services before the proceeding. This allows the interpreter to become familiar with the case, any special vernacular and the subject matter of the proceeding. The interpreter should also meet briefly with the LEP person to determine the source language, dialect, idioms and the like that the person may make use of. Taking the time to do this before the proceedings begin will let the interpreter know if there will be any communication problems. It is best to take these precau-

tions to prevent errors. The case below illustrates this point.

In a workers' compensation case for a back injury, a Salvadoran interpreter interpreted for a Mexican-dialect worker. Due to differences in language, the interpreter stated the Mexican worker hurt his waist rather than his lower back. When the judge asked the worker if he had any other injuries, he said no. The worker lost his hearing because his statements were inconsistent. Pawlosky, *supra*, at 435, 464.

Interpreters should be aware of factors that could impede their ability to deliver services, such as the room being too loud and people speaking too rapidly. Interpreters should inform the judge that such dynamics are interfering with their ability to deliver effective interpreting services.

Interpreters must also monitor their job performance while working. If an interpreter believes the subject matter exceeds his skill level, he must report this to the judge. Interpreters also have a duty to accurately report their training and experience. Rule 2, RPCCI, 511 SCACR. They should notify the judge to biases regarding the proceedings and errors made while interpreting.

Court interpreters should also demonstrate decorum in the courtroom by conducting themselves in an appropriate manner and following all court procedures and policies. Rule 4, RPCCI, 511 SCACR. Interpreters should not draw any unnecessary attention to themselves due to their behavior or style of dress and be as unobtrusive as possible.

Not unlike attorneys, court interpreters must report ethical violations. Rule 9, RPCCI, 511 SCACR. If an individual asks an interpreter to act unethically, the interpreter must inform the person of their obligations under the RPCCI and point out such behavior would be inappropriate. After this, if the person still insists the interpreter violate the rules, the interpreter must report that individual to the judge or other appropriate court official. Interpreters should also report other interpreters they observe improperly performing their judicial duties.

One last rule interpreters need to follow relates to professional development. Interpreters must continually improve their skills and education to fulfill their judicial obligations. Rule 10, RPCCI, 511 SCACR. This includes keeping up with technical and regional terminology, as well as staying informed of all court policies and rules. Interpreters should attend workshops and read literature in their field to improve their skills and abilities.

## Conclusion

Court interpretation is a highly specialized profession that requires expert training and skill. Court interpreters must be able to preserve "legal equivalence" while interpreting. Moreover, they have to remain detached from the content of their work and recognize and understand their own motives, limitations and prejudices. Interpreters are obliged to understand and interpret all legal, medical and colloquial language in proceedings. Court interpreters must do this under the pressures of time constraints, adversarial settings and in emotionally-charged circumstances.

Finally, interpreters must abide by the RPCCI. The A serves as a standard for all judiciary interpreters and helps prevent unethical behavior. It can also serve as a basis for educating and training interpreters and other legal professionals.

Interpreters serve an important judicial function. They place LEP persons on equal footing with those who speak and understand English. This is an essential role that allows non-English speakers to participate meaningfully in court proceedings. Interpreters aid courts in protecting non-English speaking parties' rights. Interpreters are essential to the judicial process; therefore, it is imperative that lawyers, judges and other legal professionals utilize only the most skilled and ethical interpreters.

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