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**Toward Effective
Practice:
Specialist
Competencies of
the Interpreter
Practicing within
Court and Legal
Settings**

*NCIEC Legal Interpreting
Work Team Working
Document*



National Consortium of Interpreter Education Centers

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Introduction

In the United States, court and legal interpretation has long been recognized as an area of specialist practice in interpreting. The complicated structure and meaning of legal language, as well as, the substantive and procedural processes encountered in courtrooms and through various legal proceedings serve to create challenges for practitioners. Possessing the knowledge and skills to mediate language and culture within court and legal settings requires curriculum, instruction and practice beyond that of the generalist interpreter.

According to Kasher, *“Specialization is the intentional narrowing of practice requiring didactic and experiential preparation that provides the basis for competent service delivery with respect to patterns of practice in essential domains.”* (Witter-Merithew, 2010) In the last decade, research has emerged leading to the identification of generalist competencies necessary for entry-level interpreting practitioners. (Witter-Merithew, Johnson, & Taylor, 2004) With the entry-to-practice competencies as a foundation, the National Consortium of Interpreter Education Centers (NCIEC) has undertaken efforts to probe for competencies in various areas of specialist practice, including the practice of court and legal interpreting.

The National Consortium of Interpreter Education Centers (NCIEC) established the Legal Interpreter Work Group in 2005. This group was comprised of a diverse group of practitioners with expertise in the field of court and legal interpreting. They began efforts to identify the requisite competencies critical to those practitioners who desire to specialize in this work, culminating in the development of this document.

Purpose

The purpose of this document is to establish industry-recognized, competence-based standards for specialist interpreters practicing within court and legal settings. The establishment of these competencies will also provide a foundation upon which to create or influence curriculum design and development, in an effort to foster educational opportunities for practicing generalist interpreters who desire or need to develop specialist competence in interpreting within the various complex court, law enforcement and legal settings.

Entry-To-Practice Generalist Competence as Foundational to Specialist Competence

In many professions, entry-to-practice competencies establish a foundational standard of practice for entry-level and progressing practitioners. A generalist interpreter has been defined as a, “...practitioner who has more than superficial knowledge and competence to accurately and reliably interpret a wide range of low-risk communication interactions.” (Witter-Merithew, A., Johnson, L. & Taylor, M., 2004) Within the field of interpreting, generalist competencies are described in *Entry-To-Practice Competencies for ASL-English Interpreters* (Witter-Merithew, A., Johnson, L., 2005) The competencies are grouped within five (5) domains:

Theory and Knowledge: *Embodies the academic foundation and world knowledge essential to effective interpreting.*

Human Relations: *Fosters effective communication and productive collaboration with colleagues, consumers, and employers.*

Language Skills: *Relates to the use of American Sign Language and English.*

Interpreting Skills: *Technical competencies related to effective ASL – English interpretation of a range of subject matter in a variety of settings.*

Professionalism: *Associated with professional standards and practices.*

The specialist competencies outlined in this document assume that court and legal interpreting practitioners have acquired a foundation as a generalist interpreter first, and possess the competencies that have been determined necessary for effective generalist practice. A link to the Entry-To-Practice Competencies document: http://www.unco.edu/doit/Competencies_brochure_handout.pdf

Document Organization

The competencies identified within this document are organized into five (5) domains:

Court and Legal Systems Knowledge: Demonstrate broad knowledge of various court and legal systems.

General Legal Theory: Demonstrates knowledge of general legal theory.

- Court and Legal Interpreter Protocol:** Demonstrates broad understanding of general Court and Legal Protocol.
- Interpreting Knowledge and Skills:** Demonstrates knowledge and skills critical to effective decision-making and interpreting within court and legal settings.
- Professional Development:** Demonstrates competencies critical to on-going professional development within court and legal settings.

Each domain encompasses a set of competencies deemed essential for interpreters specializing in court and legal interpreting. Some domains have competencies that include examples of the knowledge and/or skills intended for that domain. For example, in the first domain, *General Court and Legal Systems Knowledge*, each of these sections is accompanied by examples of the types of court and legal systems knowledge that experts in the field have deemed necessary for specialist practitioners to attain.

These examples are not intended to be exhaustive. Rather, their purpose is to assist in further defining the parameters of those competencies, as well as, guiding curriculum and professional development opportunities designed for attaining specialist recognition.

Specialty Area Competencies of the Interpreter Working in Court and Legal Settings

General Court and Legal Systems Knowledge Competencies

The interpreter working within the specialty area of Court and Legal Interpreting exhibits the following systems knowledge competencies critical to effectively working within the courtroom or in legal settings:

- 1. Demonstrates a general understanding of the complex American Judicial System at the federal, state, local, and appellate levels, including but not limited to the following examples:**
 - a. *The differences between the criminal justice system, juvenile justice system, civil system and other legal and/or miscellaneous court-related proceedings.*
 - b. *Various differences in court jurisdictions at the federal, state and appellate levels.*
 - c. *The power dynamics inherent among various courts.*
 - d. *The general rules of evidence governing court proceedings, such as hearsay, relevance, foundation, etc.*

- 2. Demonstrates an understanding of the criminal justice system and various proceedings, both procedural and substantive, including but not limited to the following examples:**
 - a. *General differences between misdemeanor and felony crimes resulting in court cases encountered in the criminal justice system. (i.e. arson, degrees of assault, sexual assault, degrees of burglary, larceny, and robbery, extortion, conspiracy, embezzlement, possession and distribution of controlled substances, alcohol-related crimes, child abuse, prostitution, indecent exposure, hate crimes, manslaughter, homicide, degrees of murder, etc.)*
 - b. *General proceedings encountered in the criminal justice system. (i.e. various types of hearings, Grand Jury proceedings, habeas corpus hearings, procedures for obtaining subpoenas, arraignments, pre-trial processes, motions, trial, jury selection, pleas, change of pleas, sentencing, violation of probation, revocation of probation, etc.)*
 - c. *Jury selection processes and preparation for juror's voir dire.*
 - d. *The importance of the record for permanency, as well as how the record is used to define future case law.*

- e. *The legal implications of privileged communications in general and as related to interpreting in privileged settings.*
- 3. Demonstrates an understanding of the civil justice system and various processes, both procedural and substantive, including but not limited to the following examples:**
- a. *General civil actions encountered in the civil justice system. (i.e. breach of contract, consumer protection, fraud, malpractice, wrongful death, negligence, trespassing, defamation, invasion of privacy, etc.)*
 - b. *General processes encountered in the civil justice system. (i.e. discovery and disclosure, depositions, interrogatories, motions, pretrial, jury selection, trial, alternative dispute resolution, mediation, arbitration, appellate processes, etc.)*
 - c. *Jury selection processes and preparation for juror's voir dire.*
 - d. *The importance of the record for permanency, as well as how the record is used to define future case law.*
- 4. Demonstrates a general understanding of various specialized court systems and proceedings, both procedural and substantive, including but not limited to the following examples:**
- a. *General knowledge related to court systems adjudicating cases involving juvenile justice, divorce, paternity, adoption, domestic violence, traffic court, drug and mental health court, probate, landlord/tenant disputes, property claims, small claims, and other correctional facility proceedings, immigration and naturalization proceedings, psychiatric and mental health proceedings, etc.*
 - b. *General processes encountered in specialized court systems. (i.e. restraining orders, termination of parental rights, child support, alimony, division of property, neglect and abuse, conservatorship, wills and estates, deportation processes, psychiatric and mental health testing and evaluation, competency proceedings, parole proceedings, deportation, psychiatric and mental health involuntary commitment hearings, etc.)*
- 5. Demonstrates a general understanding of the law enforcement system and procedures, including but not limited to the following examples:**
- a. *General knowledge of methods of reporting and investigating crimes, arrests and detentions, booking, interrogations, waivers, filing criminal charges, sexual assault procedures, DUI evaluation protocols, medical examiner procedures, evidence collection, etc.*

- b. *General knowledge of the Fifth Amendment right to refuse to incriminate oneself, including Supreme Court precedent such as Miranda v. Arizona and the legal ramifications of obtaining waivers of the Fifth Amendment rights during police detainments, arrests and interrogations.*
- c. *Knowledge of when it is necessary to staff law enforcement assignments with separate interpreters for suspects and for witnesses.*
- d. *Ability to recognize when a law enforcement interview of a witness becomes an interrogation and possess the knowledge of whether a different interpreter should be assigned to interpret the interrogation.*
- e. *Knowledge and understanding of the influence of language and discourse on interpreting within law enforcement situations, including but not limited to:*
 - i. *The effects of powerful and powerless language and its implications in witness credibility, etc.*
 - ii. *The perception and meaning assigned to a “head nod” indicating agreement when it can have a different meaning in ASL and Deaf Culture.*
- f. *Knowledge regarding the legal implications of privileged communications, or lack thereof, in law enforcement situations and the implications for the law enforcement interpreter called to testify about a prior interpreted assignment whether to establish qualifications or to defend the interpretation.*
- g. *Exhibits the ability to accurately and effectively interpret simultaneously and consecutively during law enforcement situations.*
- h. *Ability to present a compelling argument in support of the need for a Deaf Interpreter Specialist critical for effective interpreting in law enforcement situations.*
- i. *Ability to advocate for and work cooperatively with a team interpreter in a manner that enhances the effectiveness of the interpreting process in law enforcement settings.*
- j. *Ability to present a compelling argument in support of videotaping interpretations associated with law enforcement procedures, including but not limited to:*
 - i. *Reading of the Miranda Warning*
 - ii. *Interrogations*
 - iii. *Victim and/or witness interviews*
 - iv. *Taking a victim and/or witnesses’ statement*

Knowledge of General Legal Theory Competencies

The interpreter working within the specialty area of interpreting exhibits knowledge of the following general legal theory critical to effectively working within the courtroom or in legal settings:

- 1. General knowledge of various state and federal legislation and/or regulations informing the use of interpreters in various court and/or legal proceedings.**
- 2. General knowledge of legal theory regarding privileged communications, admission of interpreted statements and subpoenas to testify.**
- 3. General knowledge of the rules of evidence as they implicate and affect the work of the interpreter (i.e. taking an oath, qualifications as an expert, etc.)**
- 4. General knowledge of the standards used by experts in looking objectively at the quality of an interpretation such as that of a reasonably competent interpreter.**
- 5. Knowledge of the tests for determining whether an interpretation violates due process.**
- 6. Knowledge of theories of immunity for interpreters functioning within the role of Proceedings Interpreter.**

Court and Legal Interpreter Protocol Competencies

The interpreter working within the specialty area of Court Interpreting exhibits the following knowledge competencies related to court and legal proceedings protocol critical to effectively interpreting within the courtroom or legal settings:

- 1. An understanding of the relationships the court defines as an impermissible conflicts of interest and the appropriate manner of disclosing those relationships on the record for a court determination.**
- 2. Exhibits knowledge of the duties and obligations of the interpreter as an officer of the court and when that principle duty or obligation does not apply (such as a law office or law enforcement settings where the work does not impute officer of the court status.**

3. **Understands the impact that interpreting in a prior case has or can have on subsequent interpreting in that same case or a related case.**
4. **Ability to present interpreting qualifications for the record in an accurate, honest and credible manner.**
5. **Knowledge of specific protocols associated with interpreting witness testimony in various different types of proceedings.**
6. **Knowledge of and ability to follow expected court and legal protocol when interacting with the court, including but not limited to, the following examples:**
 - a. *The need to interrupt or inform the court of the need to resolve an issue associated with the effectiveness of the legal interpretation.*
 - b. *The need to make a request of the court.*
7. **Knowledge of specific courtroom protocols associated with each role an interpreter may fulfill, such as the role of the proceedings interpreter, table interpreter, interpreter for a deaf juror, etc.**
8. **Knowledge of appropriate interpreter conduct and protocol when interpreting for jury deliberations.**
9. **Knowledge of the protocol for properly responding to a subpoena to testify and recognition of when testifying is appropriate in many cases.**
10. **Knowledge of the issues associated with the interpreter(s) placement within a courtroom, including but not limited to the following examples:**
 - a. *Ensuring that the judge and/or jury's view of the witness stand is not blocked.*
 - b. *Ensuring the visual interpreting issues associated with privileged communication is maintained when interpreting between a deaf defendant and his or her attorney in open court.*
11. **General knowledge of court security protocols for specific courtrooms and/or cases involving heightened security.**
12. **Understands the interpreter's liability when interpreting in some legal proceedings.**

Court and Legal Interpreting Knowledge and Skills Competencies

The specialist interpreter working within the area of court and legal interpreting demonstrates the following knowledge and skill competencies critical to effective interpreting and decision-making for the diverse range of consumers, as well as situations, encountered within court and legal settings:

- 1. Exhibits an understanding of the historical legal basis supporting a court and legal interpreters' role and function and an ability to clearly and logically articulate the role and function of the court and legal interpreter.**
- 2. Knowledge and understanding of the influence of language and discourse tendencies that can have an effect on interpreting within court and legal situations, including but not limited to:**
 - a. Interpreting for witness testimony and lines of questioning in direct and cross examination.
 - b. The effects of powerful and powerless language and its implications in witness credibility, etc.
 - c. The perception and meaning assigned to a "head nod" indicating agreement when it can have a different meaning in ASL and Deaf Culture.
- 3. Ability to determine and assess skills necessary when working with diverse groups of deaf consumers.**
- 4. Exhibits the ability to accurately and effectively interpret legal concepts, terminology and other court and legal-related language between ASL and English reflecting an appropriate register and meaning consistent with the interpreter's oath and obligations as an officer of the court.**
- 5. Ability to present a compelling argument in support of the need for a Deaf Interpreter Specialist critical for effective court and legal interpreting.**
- 6. Ability to advocate for and work cooperatively with a team interpreter in a manner that enhances the effectiveness of the interpreting process in court and legal proceedings or settings.**
- 7. Ability to present compelling arguments for requisite and appropriate hiring practices to ensure deaf defendants, witnesses, plaintiffs, etc., have access to the court or legal proceedings and related communication.**
- 8. Ability to obtain salient case-related documents and information necessary for effective preparation.**

- 9. Exhibits ethical decision-making knowledge and skills that reflect an understanding of the legal ramifications for interpreting-related decisions.**
- 10. Exhibits the ability to accurately and effectively interpret consecutively in a court or legal proceeding consistent with the interpreter's oath and obligation as an officer of the court.**
- 11. Exhibits the ability to accurately and effectively interpret simultaneously in a court or legal proceeding consistent with the interpreter's oath and obligation as an officer of the court.**
- 12. Exhibits the ability to engage in note-taking techniques during consecutive interpreting with the understanding that any notes taken may become part of the court record.**
- 13. Exhibits the ability to accurately produce sight translations of court and legal documents.**
- 14. Exhibits an ability to determine appropriate placement of court and legal interpreters in the courtroom taking into consideration the following, including but not limited to:**
 - a. The judge's, juries, and attorneys' line of sight.*
 - b. The line of sight for deaf individuals seated in the courtroom gallery.*
 - c. Issues associated with privileged communication at counsel table.*
 - d. The impact of videotaping court or legal proceedings.*
- 15. An understanding of the need for consistency in the provision of interpreting services within court cases and the effect that consistent interpreting services have on the process, as well as, an understanding of when court rules prohibit consistency in interpreting services and the effect that disjointed interpreting services will have on the process.¹**
- 16. Knowledge of particular hiring and business practices among various courts and/or court and legal personnel that reflect appropriate standards of practice, including but not limited to:**
 - a. The development of written contracts for services when required.*
 - b. Understanding the appointment process within various courts.*
 - c. Adhering to standard practices with regard to cancellation policies, fees, other hiring practices, etc.*

¹ Consistency in the interpreting services is defined as the use of the same interpreters in a consistent manner throughout a particular case.

Professional Development Competencies

The specialist interpreter working within the area of court and legal interpreting demonstrates the following competencies critical to on-going professional development within the court and legal setting:

- 1. Exhibits a strong commitment to on-going, advanced knowledge and interpreting skill development to enhance the interpreter's effectiveness when interpreting within the complex court and legal setting.**
- 2. Exhibits a commitment to life-long-learning in the pursuit of knowledge and effective practice within court and legal interpreting.**

References

Mathers, C. M. (2009, March). The deaf interpreter in court: An accommodation that is more than reasonable. *Document Prepared for the National Consortium of Interpreter Education Centers*. Retrieved online from:

http://www.interpretereducation.org/wp-content/uploads/2011/06/Deaf-Interpreter-in-Court_NCIEC2009.pdf

National Consortium of Interpreter Education Centers (NCIEC). (2009). Best Practices; American Sign Language and English Interpretation within Legal Settings. Retrieved online from: http://www.interpretereducation.org/wp-content/uploads/2011/06/LegalBestPractices_NCIEC2009.pdf

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: American Sign Language Interpreter Teams. Retrieved online from: <http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetASLInterpreterTeams.pdf>

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: Linguistic Considerations of Deaf Litigants. Retrieved online from: <http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetLinguisticConsiderations.pdf>

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: Deaf Interpreters as Reasonable Accommodation. Retrieved online from:

<http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetDisReasonableAccommodations.pdf>

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: Placement of Sign Language Interpreters in Court. Retrieved online from: <http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetPlacementIncourt.pdf>

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: Tips for Sign Language Interpreted Proceedings. Retrieved online from: <http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetTipsInterpretedProceedings.pdf>

National Consortium of Interpreter Education Centers (NCIEC). (2010). Fact Sheet: Working with Sign Language Interpreters in Court. Retrieved online from: <http://www.interpretereducation.org/wp-content/uploads/2011/07/Legal-FactsheetWorkingWithInterpreters.pdf>

Witter-Merithew, A. (2010). Conceptualizing a framework for specialization in ASL-English Interpreting: a report of project findings and recommendations. Mid-America Regional Interpreter Education Center (MARIE).

Witter-Merithew, A., Johnson, L. & Taylor, M. (2004). A national perspective on entry-to-practice competencies. E. Maroney (ed), *Proceedings of the 15th National Convention of the Conference of Interpreter Trainers*. CIT Publications: <http://www.cit-asl.org>

Witter-Merithew, A., & Johnson, L. (2005). *Toward competent practice: Conversations with stakeholders*. Alexandria, VA: RID Publications.