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Basic Immigration Law 2005

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GUIDELINES FOR IMMIGRATION
LAWYERS WORKING WITH
INTERPRETERS:
EXTENDING LEGAL ASSISTANCE
ACROSS LANGUAGE BARRIERS

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The experience of working with an interpreter through the many different facets of client counseling is new to many lawyers. Training in this particular aspect of attorney/client communication has not been generally available. Yet, since often attorneys will not be fluent in all the languages represented among immigration clients, access to counsel for a substantial segment of the population will depend largely on the availability of competent interpreters and of professionals willing and able to work with them.

Working through an interpreter brings added complexities to the services provided by lawyers. The question of professional role boundaries is likely to arise and cannot be ignored. When working through an interpreter, attorneys should take care not to relinquish any part of the assessment and counseling responsibilities which are appropriate to their role. They should be conscious that the same professional standards and rules of conduct that apply to services rendered without interpreters continue to apply when interpreters are used. Consequently, it is in the best interest of attorneys to work with interpreters who are not only competent to communicate across language barriers, but also capable of abiding by professional standards and ethical practices. By the same token, providing legal services through untrained individuals carries clear risks for the attorney and should be avoided whenever possible. Preferably, family members or friends of the client should not be used as interpreters, because they lack the appropriate training and, most importantly, the objectivity needed to perform the interpretive tasks without interfering in the assessment or counseling process.

Scarce resources, however, may nevertheless lead to a less than optimal selection of individuals who can take on the role of interpreter. In such cases, it becomes crucial for the professional to have some knowledge about the tasks of the interpreter and how they should be performed. The step-by-step procedures offered below can be implemented in a variety of situations involving both trained and untrained interpreters. It should be recognized, of course, that issues of interpreter competencies and role responsibilities require less attention when dealing with trained interpreters.

Before the session:

1. Meet with a novice interpreter separately and review in detail the requirements of the interpreting task, the expectations placed on him/her, and the problems that could arise. This will serve to elicit the person's cooperation and to give helpful guidelines on how to provide accurate interpretation.

2. Determine the interpreter's level of language sophistication, sensitivity to immigration and/or refugee issues, and general disposition for the task(s) to be performed.

What is his/her level of education in each language? How well does s/he speak each language?

Has s/he trained to do interpreting? Has s/he interpreted before?

Does s/he know anything about immigration issues? Has s/he interpreted for immigrants before? This may be particularly significant if your client is a refugee, because of the especially sensitive issues and personal histories involved.

3. Determine if the interpreter is a "good match" for your client.

Consider age, sex, country of origin, cultural background, personal maturity, etc.

Keep in mind possible language/dialect variations (e.g. Arabic as spoken in Algeria can differ significantly from Arabic as spoken in Lebanon). This is particularly important with regard to issues of client credibility if the session will become part of a written record directly relevant to immigration proceedings. Your client may think s/he is saying something different from what the interpreter is translating, which may later lead to apparent contradictions in testimony.

Consider also issues of trust. The interpreter, though speaking the same language as your client, may come from a country, ethnic or social group, etc. which your client may have reason to fear or mistrust.

Consider the interpreter's level of maturity and personal history. The interpreter should be capable of dealing with sensitive, often emotional material seriously and competently. For example, if the interpreter is or has been a refugee in the past, it may be difficult for him/her to be confronted with stories which evoke his/her own traumatic experiences.

When counseling involves regular contact with your client over a number of sessions, it may be useful to use the same interpreter each time. The degree to which your client trusts the interpreter will typically increase over time, and familiarity with the interpreter's personality may facilitate your client's task when relating traumatic or emotionally loaded events. Bear in mind, however, that a different institutional interpreter will be used in official proceedings. This may cause your client unexpected difficulties if s/he has been accustomed to dealing with a familiar interpreter for some time. For this reason, you should prevent your client from relying too much on your interpreter, and not allow improvements in their relationship to interfere with your client's independent ability to tell his/her story clearly and in full detail.

4. Establish role guidelines and responsibilities.

Discuss confidentiality and the ethical guidelines that apply in the professional relationship with the client. Emphasize the confidential nature of the interview, and make sure the interpreter understands and is prepared to comply with the requirements of the client's privacy.

Instruct the interpreter to translate everything the client says, no matter how irrelevant, nonsensical, emotional or embarrassing. Alert the interpreter to the possibility of being confronted with sensitive material during the course of the interview. Ask him/her to translate what the client says as accurately as possible, including slang, obscenities, and unusual speech patterns.

Ask the interpreter not to screen the client's comments or messages for fear of offending you, or because they may reflect poorly on the client or the immigrant community.

Instruct the interpreter to ask for clarification immediately should s/he not understand either you or your client.

Make clear that the function of the interpreter is to guarantee the right of the client to consult with you (the attorney) in as direct a manner as possible.

5. Plan for the tasks to be accomplished during the session.

Discuss the purpose of the session, your plans, goals and expectations.

Address potential areas of difficulty.

Decide upon the mode of interpreting, seating arrangements and introductions.

During the session:

1. Establish trust. Having endured past persecution, refugees are often justifiably wary or afraid of telling their stories to strangers. Explain the role of the interpreter to your client, and reassure him/her in the interpreter's presence of the absolute confidentiality of the encounter.

2. Talk directly to the client and make sure the interpreter speaks for you and the client in the first rather than the third person (Good: "How are you feeling today?" Poor: "How is she feeling today?" or "Ask her how she is feeling today").

3. Use language that is within the ability or knowledge level of the interpreter.

Avoid using technical terms/jargon. (Good: "Have you ever been arrested by the police?" Poor: "Have you ever been convicted of a crime involving moral turpitude?")

Avoid obscure or ambiguous words. For example, the Spanish word "hermanos" can mean either "siblings" or "brothers". When asked "¿Cuántos hermanos tiene?" [How many brothers do you have?], a client may include the number of his/her sisters in his/her response.

Avoid idioms/slang.

4. Regulate the pace of the interview.

Establish a reasonable pace to avoid taxing the interpreter. As they become involved in telling their stories, refugees may often forget to give interpreters enough time to translate, or may make additional or indirect commentaries to the interpreter. Such commentaries may sometimes uncover crucial details, so make sure to have the interpreter translate everything.

Keep sentences brief and concise.

Avoid chained questions (Good: "Are you religious?" Poor: "Are you religious, or do you belong to a particular minority group?")

5. Do not exploit the language barrier to talk about clients in their presence.

If you have some understanding of the client's language, acknowledge this at the outset.

If you must consult with the interpreter on a technical point, explain to the client what you will be doing.

6. Be sure to allow sufficient time for the session. Particularly at first, the use of an interpreter can slow down considerably the pace of an interview. Your client should not be made to feel that time is running out, however, as this may damage the trust placed upon you or greatly impair his/her ability to tell you crucial details of his/her story.

After the session:

1. Discuss questions or concerns that emerged during the session.

Bring out for discussion any communication problems you or the interpreter noted. Discuss cultural issues and the interpreter's impressions of the client's use of language.

2. Debrief interpreter carefully, particularly if the session was emotionally charged.

3. Make any necessary arrangements/plans for future sessions.

Asylum Process Flowchart

Key

- IJ = Immigration Judge
- VWP = Visa Waiver Program
- CFI = Credible Fear Interview

In red (Inspections) = Bureau of Customs and Border Protection, DHS

In green (Asylum Office) = U.S. Citizenship and Immigration Services, DHS

In blue = Executive Office for Immigration Review, Department of Justice

In black (Detention and Removal) = Bureau of Immigration and Customs Enforcement, DHS

