

CARMEN MAQUILON

**LANGUAGE ACCESS IN
IMMIGRATION COURT
(EOIR)**

Immigration Court Practice

- NYC IMMIGRATION COURT FOR NON-DETAINED INDIVIDUALS:
- Interpretation is provided during proceedings only (merits hearing a/k/a individual hearing).
- Executive Office for Immigration Review (EOIR) employs interpreters, most are Spanish speaking, but Mandarin and Creole interpreters are also available

IMMIGRATION COURT

EOIR has a contract with a private company (Lionbridge Technologies) to provide interpreter assistance in other languages as needed at any of its immigration courts.

- ⦿ Alternatively, if an interpreter is needed immediately, EOIR also contracts with telephonic interpreter services.
- ⦿ Interpretation during Master Calendar hearings is usually waived for respondents that appear with a representative and is not always provided when respondent does not have a representative.
- ⦿ Interpretation is done consecutively, without equipment and selectively.

CONSECUTIVE MODE INTERPRETATION

- Consecutive Mode Interpretation: The interpreter allows the speaker (Respondent, Judge or Attorneys/Representatives) to complete the statement before giving the interpretation. This practice is used during hearing when respondent is giving testimony or when in direct dialogue with Judge, Counsel/Representative or Government Attorney.

SIMULTANEOUS MODE INTERPRETATION

The interpreter speaks contemporaneously with the speaker whose statements are being interpreted. It is mostly used during all parts of the court proceedings that are not direct testimony or dialogue.

SELECTIVE INTERPRETATION

- Interprets only parts of the court proceedings in which the Judge and/or attorneys addresses the respondent directly.
- Dialogue is not interpreted between other parties, (judge and attorney; judge and counsel; counsel and attorney) even when it directly impacts the client.

WHO REQUESTS THE INTERPRETER?

- The Judge requests the interpreter during the initial hearing (Master Calendar); it is very important during this hearing for counsel to clarify any special request (Language, Country, level of education).
- For LEP respondents who appear without counsel, the Judge will make the request.

INTERPRETATION OUTSIDE OF THE COURTROOM

- When dealing with the clerks or other court personnel, interpretation is not provided; however, some employees speak Spanish and will give information directly in Spanish, LEP respondents who are not Spanish speakers will need to request interpretation.

WHO ARE THE INTERPRETERS

- Contrary to other Federal courts or even NYS courts, interpreters for EOIR are not required to be certified. They must be competent and pass a skills test with a score higher than 3+ on the Interagency Language Roundtable Scale; however, the same is not necessarily a requirement for interpreters provided by contractors.

NEW RULES

- Following the EOIR Language Access Plan dated May 2012 effective May 2013 the EOIR has ordered all court proceedings to be interpreted Fully and Completely using simultaneous and consecutive mode interpretation. In addition all courts rooms are equipped with Digital Audio Recording Systems to aid with interpretation.

NEW RULES

- NY Immigration courts are also equipped with wall/ceiling mounted infrared equipment that records everything said and interpreted during proceedings.

CONCERNS

- During AILA Conference July 2013:
- Some judges, for their own reasons, insist on full and complete, while others consider it a waste of time as some respondents, with little or no education, are not interested in legalese and the chatter taking place in the courtroom.

CONCERNS

- The National Association of Immigration Judges “NAIJ” expressed concern about this implementation based on the following:
 - 1. Equipment failure
 - 2. Interference with the process
 - 3. Physical position of the interpreter
 - 4. Lack of regular scheduled breaks and team interpreting
- Please note that attorneys could waive the right of their client(s) to full and complete at any time as provided in the notice of implementation

CONCERNS of COURT INTERPRETERS

- Points to consider for a proper implementation:
 - 1. Courtroom suitability
 - 2. Less complicated and more reliable equipment
 - 3. Clearer operating instructions
 - 4. Hygiene and Equipment Sanitation
 - 5. Resolving the issue of remote interpreting through telephonic and tele-video hearings
 - 6. Team Interpreting

OTHER CONCERNS

- Will Full and Complete interpretation add to the length of proceedings?
- Will Attorneys and Representatives be forced to increase the cost of representations?
- Will Attorneys and Representatives in the essence of time and pressured by the speed of proceedings be inclined to waive Full and Complete Interpretation?

Immigration Attorneys and Representatives

- ◎ EOIR added a requirement in its professional conduct rules for practitioners that requires the following: “It is the obligation of the practitioner to take reasonable steps to communicate with clients in a language that the client understands.” 8 C.F.R. § 1003.102(r). The regulation allows EOIR to impose disciplinary sanctions on anyone who violates the rule.

Complaints Against Interpreters

- The EOIR has created a webpage that allows the public to file a complaint against an interpreter or to write their concerns in regards to interpretation.

NY IMMIGRATION COURTS

- New rules have not yet been noticed.
- There is at least one judge at 26 Federal Plaza that is insisting on Full and Complete interpretation.
- There has been no noticeable change during the Master Calendar hearings.

GOOD NEWS

- LEP Respondents will have a better understanding of what is taking place during court proceedings.

PRESENTER

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