

People Who Work in Glass Houses: Disciplinary Policies Across Member States of the Consortium for State Court Interpreter Certification

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An examination of the existing disciplinary policies across states that are members of the Consortium for State Court Interpreter Certification reveals that there are some similarities, as well as some important differences, among these states' policies. In most states, the disciplinary policies relate solely to freelance or "per diem" court interpreters. Interpreters hired as staff within the courthouse are subject to organizational human resource policies and disciplinary actions.

Virtually all Consortium member states have either already developed and adopted a disciplinary policy, or are in the process of designing such a policy. At the 28th annual conference of the National Association for Judiciary Interpreters and Translators (NAJIT, www.najit.com) in May 2007, the authors discussed this trend and described some existing policies. Many of the examples and references made in this article were collected from the audience during that presentation.

What is the Consortium for State Court Interpreter Certification?

Founded as a result of research¹ conducted by the National Center for State Courts between 1992 and 1995, the Consortium is a multi-state partnership dedicated to developing court interpreter proficiency tests, making tests available to member states, and regulating the administration and use of those tests. Consortium resources achieve economies of scale across jurisdictional and organizational boundaries by sharing ideas, theories, resources, and manuals.

The Consortium addresses resource shortages by defining and implementing standards for identifying qualified interpreters that can be followed by all member states. Without standards, state courts risk employing unqualified interpreters, leaving equal access to justice by linguistic minorities an unfulfilled obligation. To date, there are 39 member states representing over three-quarters of the nation's non-English-speaking population. For current membership and services information, please visit

www.ncsconline.org/D_Research/CourtInterp/CICourtConsort.html.

Why Establish Disciplinary Policies?

Why *do* states need disciplinary policies for freelance court interpreters, especially since most states have adopted a code of ethics² by which all interpreters are expected to abide? In a perfect world there would be no need to even ask this question. In the real world, however, *and keeping in mind that this is only one*

called for an investigation, and the word of the observing interpreter was taken over that of the courtroom interpreter (reportedly without substantiation), resulting in the courtroom interpreter being removed from the certified list. The interpreter is required to retake the oral performance examination in order to be reinstated.

States have begun to realize that professional interpreters need, just as

- Knowingly and willfully breaking confidentiality;
- Gross incompetence;
- Noncompliance with recertification requirements; and
- Nonpayment of renewal fees.

The single biggest difference among existing disciplinary policies is in the enforcement or lack thereof. For example, Nevada's Revised Statute, 1.540 states that the deliberate misrepresentation of interpreter qualifications is considered an unlawful act. However, it goes on to say, "*No civil action may be instituted nor recovery therein be had for a violation of the provision of this section [...]*,"³ thus rendering it virtually unenforceable, except by charging the interpreter with a crime. Can you picture the following conversation taking place in Las Vegas?

"You can't say you're a certified interpreter when you're not. It's illegal!"
"So, sue me."
*"Um... I can't."*⁴

Now, turn 180 degrees and you come face-to-face with an example of another state's approach to the issue of misrepresentation of interpreter qualifications. The Supreme Court of Georgia and Georgia's Commission on Interpreters has determined that the appropriateness of disciplinary action and the degree of discipline to be imposed should depend upon the seriousness of the violation, the intent of the interpreter, whether there is a pattern of improper activity, and the effect of the improper activity on others or on the judicial system. In Georgia, fraud, dishonesty (in this example, deliberate misrepresentation of qualifications), or corruption that is related to the functions and duties of a court inter- ➡

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side of the story, it is crucial for states to establish such policies. Here are two real-world examples, as related by participants during the authors' session at the NAJIT conference:

- One participant described a situation wherein an interpreter paid bail for a limited-English-proficient (LEP) defendant (an obvious violation of the Code of Professional Responsibility). When another interpreter became aware of the situation and filed a complaint alleging the violation, the *complainant* got into trouble and the interpreter who paid the bail did not.
- Another participant described a situation wherein an observing interpreter, watching proceedings in the courtroom, reported to the judge later that the working interpreter had "made mistakes." The judge

members of other professions do, guidelines and rules that govern behavior and provide clear, concise procedures to be followed when violations are alleged. Interpreters are learning that program managers and state officials, as illustrated in the examples above, must learn what behavior *should be* expected from professional interpreters and their peers and establish fair policy accordingly.

Similarities and Differences Between Member State Processes

Consortium member states' disciplinary processes are similar in the method by which they decide what actions constitute an actionable violation. For most disciplinary policies, actionable violations are described as follows:

- Felony convictions involving moral turpitude;
- Misrepresentation or fraud;

preter would require the following step-by-step disciplinary process:

1. A complaint is filed in standard form;
2. Two panels review the complaint (a probable cause panel and a disciplinary hearing panel);
3. If the complaint is upheld, a decision about appropriate disposition is made; and
4. A notice of a right to appeal is issued, which is limited to a review of the process.

After these steps, the final decision is then made public.

Future Trends

Consortium member states certify a number of interpreters who work across state lines. The members have devised a method by which states may report disciplinary actions taken against in-state certified or qualified interpreters using a standard form. The form reports the violation information, including a description of the violation(s) that resulted in sanctions or other formal consequence. Examples of violation descriptions are listed below:

- Actions in violation of the Code of Professional Responsibility, or other codes, rules, or statutes governing the ethical and professional conduct of court interpreters, specifically:
 - Misrepresentation with intent to deceive;
 - Fraud in the examination or recertification process;
 - Actions that discredit the interpreting profession; and
 - Conviction of a crime of a type that would preclude certification/qualification (not disclosed

previously or occurring after certification).⁵

It is important to note that the reporting form also requires a verification process confirming the accuracy and completeness of the information. The report is reviewed by an official in the reporting state's Administrative Office of the Courts or other court interpreting program office or division, which dates and signs it once a finding

the NAJIT conference, interpreters were asked who they thought should be allowed to report ethical violations and file complaints. The responses included such persons as judges, attorneys, interpreter program managers, LEP parties, and colleagues. In general, the comments indicated that:

- Interpreters are in favor of states having a formal, documented disciplinary process in place.

Interpreters need, just as members of other professions do, guidelines and rules that govern behavior and provide clear, concise procedures to be followed when violations are alleged.

is reached. The form provides for documenting the disposition as follows:

“The disciplinary action or sanction that was imposed is described below (include information about decertification or loss of standing as a qualified interpreter, and whether and how the interpreter may be reinstated, if appropriate).”⁶

Once the violation has been confirmed and a disposition documented and reported, then and only then will the information be made available to other Consortium member state program managers. The reports are submitted and filed at the National Center for State Courts, where the Consortium's official information is stored.

Conclusion: Thoughts from the Field

During the authors' presentation at

- They believe that a good process can ensure consistency and fairness and help court interpreters become more professional.
- They believe that anyone should be able to file a complaint against an interpreter who violates the Code of Professional Responsibility, including the judge, attorneys, the LEP party, and community advocate organizations.
- They also believe that interpreters should be able to file complaints against other interpreters for violations, *but only if the process includes a disinterested panel or committee to carefully review complaints for veracity*. The members of the panel or committee should not know the interpreter, and only valid, meaningful complaints

Links of Interest

National Center for State Courts
Consortium for State Court Interpreter Certification
www.ncsconline.org/D_Research/CourtInterp.html

National Association of Judiciary Interpreters and Translators
www.najit.org

should be considered or acted upon. All trivial or nuisance complaints should be dismissed without consideration.

In short, the message from interpreters is this: “*We support the development of a fair, impartial, and thorough disciplinary process that recognizes us as an important and professional court resource.*”

Notes

1. Hewitt, William E. *Court Interpretation: Model Guides for Policy and Practice in the State Courts* (Williamsburg, Virginia: National Center for State Courts, 1995), www.ncsconline.org/D_Research/CourtInterp/Res_CtInte_Pub2006.pdf.
2. The Model Code of Professional Responsibility for Interpreters in the Judiciary, www.ncsconline.org/wc/publications/Res_CtInte_Model
3. *Title 1, Chapter 1, General Provisions, Interpreters and Translators*. State of Nevada Revised Statute, 1.540, www.leg.state.nv.us/NRS/NRS-001.html.
4. Observation by David Gordon, Academic Coordinator, Judicial Education Administrative Office of the Courts, Nevada Supreme Court (2007).
5. *Report of Ethical or Other Violations Filed Against an Interpreter in the State of [_____]*. Professional Issues Committee of the Consortium for State Court Interpreter Certification (2006).
6. Professional Issues Committee of the Consortium for State Court Interpreter Certification (2006).

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Check out www.atanet.org/conf/2007
for complete details

2007 Membership Directory Correction

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