

NEW MEXICO'S SUCCESS WITH NON-ENGLISH SPEAKING JURORS

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Since its territorial days New Mexico has encouraged participation of non-English speakers, particularly Spanish-speaking citizens, in its jury system. The New Mexico Constitution adopted in 1911, guarantees all citizens the right to participate on juries.

This article describes New Mexico's use of court interpreters to successfully incorporate non-English speakers into juries. Included are discussions of New Mexico's history and background in this practice, practical applications, problems, solutions, and associated costs.

Based on New Mexico's successful use of non-English speakers on juries, participation of non-English speaking jurors is encouraged for the rest of the United States. New Mexico's jury instructions for the pre-deliberation oath to be administered to court interpreters and guidance to the jury are included for reference, along with New Mexico's Non-English Speaking Juror Guidelines prepared by the Administrative Office of the Courts.

Introduction

In America, a jury verdict in a trial that adheres to all constitutional requirements represents one of the most important contributions the judiciary makes to our democracy because justice is a community project. In jury rooms throughout the country, the community directly participates in the community project called "justice." The American jury system empowers citizens to announce the standard of care they will demand in their communities;¹ the medical care they expect from their doc-

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1. Uniform Jury Instruction 13-1601 N.M.R.A. (2001) (civil uniform jury instruction on negligence).

tors;² the level of responsibility they expect from each other;³ and the safety they expect from manufacturers who sell products in the community.⁴ These citizens decide the guilt or innocence of an accused,⁵ and are given the awesome power to decide whether a defendant who is found guilty of capital murder is to be sentenced to death.⁶

Because of these powers and responsibilities, juries must truly reflect the diversity of our communities. Whether they are rich, poor, educated, uneducated, professionals, or laborers, citizens over the age of 18, can and must participate in the American civil and criminal justice system. Citizens have a community responsibility to further our free society by promoting safety and security in our country, but they also have a concomitant responsibility to free an accused when the evidence presented at trial does not support a guilty verdict beyond a reasonable doubt. All adult citizens should participate, because above all, justice requires an unapologetic and undaunted courage to exercise one's moral genius. All people, no matter their station in life or their ability to speak and understand the English language have that moral genius.

New Mexico, like any other state in the United States, has a population of non-English speaking citizens. Non-English speaking citizens are people who cannot speak or understand the English language, speak only or primarily a language other than English, or who have a dominant language other than English, which could inhibit their understanding of legal proceedings.⁷ This article argues that non-English speaking citizens should not be systematically excluded from jury service. In New Mexico, we provide interpreters for non-English speaking jurors to allow them to fulfill their civic responsibility and participate in the community project called "justice."

2. Uniform Jury Instruction 13-1101 N.M.R.A. (civil uniform jury instruction on duty of doctors and health care providers).

3. Uniform Jury Instruction 13-1603 N.M.R.A. (civil uniform jury instruction on ordinary care).

4. Uniform Jury Instruction 13-1402 N.M.R.A. (civil uniform jury instruction on duty of suppliers).

5. Uniform Jury Instruction 14-6014 N.M.R.A. (criminal uniform jury instruction on sample verdict forms).

6. Uniform Jury Instruction 14-7033 N.M.R.A. (criminal uniform jury instruction on death penalty sentencing proceedings).

7. N. M. STAT. ANN. 1978, § 38-10-2(C) (1985).

Further, this article examines the history and background of why New Mexico allows those who are not fluent in English to serve on juries; the practical problems and solutions for assuring effective jury participation by non-English speakers; and, the cost associated with New Mexico's efforts. For those jurisdictions that may be interested in permitting non-English speaking citizens to serve on juries, New Mexico's Non-English Speaking Juror Guidelines and relevant jury instructions adopted by the New Mexico Supreme Court are included here.⁸

History of Non-English Speaking Jurors in New Mexico

Territory of New Mexico v. Romine is the first reported opinion to address the subject of non-English speaking jurors.⁹ Romine appealed his conviction of first-degree murder because the jurors who convicted him did not understand English. The defendant argued that he had a right to a jury that spoke and understood English. He also argued that juries must be given written instructions, and that since the jury instructions, which were written in English, had to be translated into Spanish for the jury by an interpreter, this jury did not have the required written instructions. The court rejected these arguments by noting that for over 20 years juries in New Mexico had embraced both Spanish- and English-speaking members. At that time the preponderance of Spanish-speaking citizens in New Mexico was very large, "and in certain counties the English speaking citizens possessing the qualifications of jurors, [could] be counted by tens instead of hundreds."¹⁰ The territorial court explained the fairness of allowing non-English speaking jurors to decide the defendant's guilt or innocence as follows:

The practice under the territorial law has been uniform for a long series of years, and works as little injustice to any parties, whatever their language, as any system that could well be devised under the prevailing conditions. In all counties where the jury contains members representing each language, or where persons speaking each are before the court, all the proceedings are translated by a sworn interpreter, who is a court officer, into the other language from that in which they originally take place. Thus,

8. See *infra* app. A.

9. 2 N.M. (Gild., E.W.S. ed.) 114 (1881).

10. *Id.* at 123.

every one interested is as fully as possible informed of every proceeding, and no injustice is done.¹¹

Although the structure of the interpretation services provided during this trial is not known, the common law practice of allowing non-English speaking citizens to serve on grand and petit juries became a state constitutional right when the New Mexico Constitution was adopted on January 21, 1911. Article VII, Section 3 provides that “[t]he right of any citizen of the state to . . . sit upon juries, shall never be restricted, abridged or impaired on account of . . . inability to speak, read or write the English or Spanish languages[.]”¹² The right to sit upon a jury was included with the right to vote and to hold public office.¹³ That the rights to vote, hold office, and serve on a jury were considered extremely important is evidenced by the constitutional requirement that Article VII, Section 3 can only be amended if “in an election at which at least three-fourths of the electors voting in the whole state, and at least two-thirds of those voting in each county of the state, shall vote for such amendment.”¹⁴ In contrast, other constitutional amendments only require a simple majority of those voting.¹⁵

Although Article VII, Section 3 is intended to grant all citizens the right to sit upon a jury, the right is not absolute.¹⁶ The rights of the prospective juror who does not speak English must be balanced against other constitutional rights, such as the defendant’s right to a speedy trial as guaranteed by the Sixth Amendment to the United States Constitution. Practical considerations may also be taken into account by the trial judge. For example, the availability of interpreters and inadequate funding for interpreters may permit the exclusion of a non-English speaking citizen from jury duty, but never will mere inconvenience allow such exclusion.¹⁷ The responsibility of New Mexico courts is to:

[M]ake every reasonable effort to protect a juror’s rights under Article VII, Section 3 . . . and to accommodate a juror’s need for the assistance of an interpreter because he or she is not otherwise

11. *Id.* at 123-124.

12. N.M. CONST. art. VII, § 3.

13. *Id.*

14. *Id.*

15. *See Id.* art. XIX, § 1.

16. *State v. Rico*, 52 P.3d 942, 945 (N.M. 2002).

17. *Id.*

able to participate in court proceedings due to the 'inability to speak, read or write the English or Spanish languages.'¹⁸

What constitutes a reasonable effort depends on several factors, including:

[T]he steps actually taken to protect the juror's rights, the rarity of the juror's native language and the difficulty that rarity has created in finding an interpreter, the stage of the jury selection process at which it was discovered that an interpreter will be required, and the burden a continuance would have imposed on the court, the remainder of the jury panel, and the parties.¹⁹

Ultimately, if a court interpreter is not available to provide interpretation services for a juror who is eligible to serve but for the fact that he or she doesn't speak English, the judge has the discretion to either postpone the trial until a court interpreter is available or to excuse the juror subject to recall.²⁰ As provided in New Mexico's Non-English Speaking Juror Guidelines, adopted on November 15, 2000, a judge does not have the discretion to excuse a non-English speaking juror simply because he or she cannot read, write, speak, or understand the English language.²¹ Reasonable efforts have included providing a Spanish-speaking interpreter who is also fluent in American Sign Language to assist a juror who is both deaf and Spanish-speaking.

A non-English speaking juror can request excusal from jury service from the presiding judge because he or she is not comfortable using the services of an interpreter in the same way that any other juror can make such a request if he or she would not be comfortable serving as a juror.²² For example, where a prospective juror is hearing impaired and wears hearing aids, but also needs an interpreter in American Sign Language, there have been several excusals based on incompatibility between the court interpreter's equipment and the non-English speaking juror's hearing aid.

Because the legal system is by nature adversarial, interpreters are subject to challenges like anyone else. There have occasionally been complaints about the use of court interpreters for non-English speaking jurors. As detailed later in this article,

18. *Id.* at 943.

19. *Id.* at 945.

20. *Id.* at 946.

21. See *infra* app. A § II(F).

22. N. M. STAT. ANN. 1978, §§ 38-5-10 & 38-5-11 (1991).

New Mexico uses a specific jury instruction to explain the interpreter's role, including the facts that the interpreter must be educated, schooled, and certified in his or her languages of expertise. The interpreter is required to swear during the oath that he or she will only provide translation services to the non-English speaking juror and will not otherwise participate in the trial or jury deliberations. These facts alone eliminate most insecurities and complaints.

Cost of Reasonable Accommodations

New Mexico has a rich, deeply rooted history as a multi-lingual, multi-cultural border state. A review of court records for the last three years reveals that court interpreters in New Mexico have been used to assist jurors in the following languages: Apache, Arabic, American Sign Language, Cantonese, Chinese, Farsi, French, German, Gujarati, Hindi, Italian, Japanese, Keres (Native American), Korean, Laotian, Navajo, Spanish, Tagalog, Russian, and Vietnamese. Spanish is the most common language requiring interpreters, representing about 57 percent of non-English speaking jurors. Vietnamese is in second place, representing approximately 20 percent of the demand for court interpreter services.

Despite the many languages that require the services of court interpreters, for the most part, only a small percentage of the juror pool requires such services. For example, the Second Judicial District Court, located in Albuquerque, the largest district court in New Mexico, only required court interpreter services for 30 out of 4,533 qualified jurors from July 1, 2007 through April 1, 2008. This represents 0.662 percent of the juror population in this judicial district. However, in the Third Judicial District Court in Las Cruces, which is in close proximity to Mexico, the number of non-English speaking jurors has risen dramatically. This phenomenon shows no signs of dissipating. For the months of January, February, and March 2008, 114 non-English speaking jurors appeared for voir dire in the Third Judicial District Court. During those three months, eleven trials went all the way to jury verdict with non-English speaking jurors fully participating.

The preferred procedure is to have certified court interpreters assist non-English speaking jurors during all phases of the trial.²³ A certified court interpreter is a person who has met the certification requirements of the New Mexico Administrative Office of the Courts and who has “a sufficient range of formal and informal language skills in English and another language so that he is readily able to interpret, translate and communicate simultaneously and consecutively in either direction between a non-English speaking person and other parties[.]”²⁴ The interpreter both interprets spoken words and translates written words.

New Mexico currently has 269 interpreters who interpret nine different languages. New Mexico’s 269 interpreters are mostly in private practice and are not court staff. There are only five or six actual court staff interpreters, and they are for the most part located in Albuquerque and Santa Fe. One position in Albuquerque is split by two interpreters (job-sharing). New Mexico is a member of a consortium through the National Center for State Courts that works to resolve issues involving language interpreters, including expanding the number of available interpreters and what languages can be interpreted. There are currently 40 states involved in the consortium, and the number of participating states continues to increase. New Mexico recruits, trains, and tests its interpreters and administers the interpreter’s exam, which is the same nationwide for consistency.

Payment of the court interpreter is the largest expense, since most interpreters provide their own equipment.²⁵ At present, spoken language certified court interpreters are paid \$46.00 per hour and certified sign language interpreters are paid \$60.00 per hour. Looking at the 30 non-English speaking jurors needed in Albuquerque for nine months in 2007 and 2008, the total expense for interpreter services was \$8,176.50, or an average of \$273.00 per juror. The total expense breaks down as follows: 42 hours to interpret during juror orientation at a

23. See *infra* app. A § III(A).

24. N. M. STAT. ANN. 1978, §§ 38-10-2(B), 38-10-5 (1985).

25. Jurors are paid minimum wage per hour (presently \$6.50; on July 24, 2008, the hourly rate will increase to \$6.55) plus mileage. Jurors are not paid per diem in New Mexico. N.M. Stat. Ann. 1978 § 38-5-58 (1991).

cost of \$1,932.00, and 98.25 hours for jury selection at a cost of \$4,519.50. Three non-English speaking jurors out of the 30 called for jury service were selected to serve during trials. The interpretation services were for 49.5 hours at a cost of \$2,277.00. Two of the trials were simple drug possession cases and the third trial was a civil trial lasting only 17 hours.

Best Practices

Anecdotal reports suggest that non-English speaking jurors have had a positive experience while serving on New Mexico juries. Sandra Caldwell, an interpreter in Las Cruces, New Mexico, has been the primary source for the anecdotal evidence. However, trial judges with whom I have spoken have invariably told me that English-speaking jurors who have served with non-English speaking jurors also report positive experiences. In fact, some people have commented to Sandra Caldwell that it is rather anti-climatic to observe a trial with non-English speaking jurors because it is actually not very different from a jury trial with all English-speaking jurors. A positive experience is only possible if court staff consistently implement important procedures and are respectful of all jurors.

The most significant requirement is that all court personnel, including the trial judge, trial court administrative assistant, jury staff, bailiff, interpreter coordinator, and interpreters receive adequate training and work as a team in assisting non-English speaking jurors. Intensive training takes place at the outset of employment for judges and other staff. Jury staff must be trained to identify and track non-English speaking jurors from the outset and notify all appropriate parties when a non-English speaking juror is called to serve. Therefore, it is extremely important that prospective jurors be asked in the Juror Qualification Form whether they read, write, speak, and understand the English language. If the answer is no, they must be asked which language they speak, read, write, and understand. The Jury Summons in New Mexico also contains, in bold, shadowed, conspicuous print, the following notification: “New Mexico does not exclude non-English speaking jurors from service. If you need an interpreter, one will be provided to you at no cost. If you need this service, please contact jury staff at

(phone number).” The court staff uses this information to coordinate with an interpreter and notify other court staff that a non-English speaking citizen has been called to jury duty.

It is essential that court staff also be trained to examine juror qualification forms as soon as they are received to identify those citizens who might require the services of an interpreter. Courts must track non-English speaking jurors early in the jury selection process to allow sufficient time to schedule interpreter services. Last-minute attempts to secure interpreter services may be difficult, especially when an interpreter is necessary for both litigants and one or more jurors. It must be kept in mind that when an interpreter is needed for an accused, the accused is entitled to communicate privately with his or her attorney. The same interpreter cannot interpret for both the accused and a juror to avoid the risk that privileged communication will be inadvertently revealed to the non-English speaking juror. This is only one reason why multiple interpreters should be in place when interpretation services are needed for both the defendant and a juror or witness.²⁶

Once the judge and the court staff have received intensive training, the system operates as smoothly as it does when there are no non-English speaking jurors. However, public education is also critical. The Court Services Division of the Administrative Office of the Courts has made a jury orientation video shown to all people summoned for jury duty. This video includes a segment on interpreters for non-English speaking jurors in the jury pool and is closed-captioned in Spanish. During orientation, everyone who has received a jury summons, which can mean up to 1,500 people at a time, comes to the court to learn about the rights, procedures, and obligations of jury duty. From questionnaires sent to prospective jurors, court staff receives information regarding potential excusals due to language issues. During orientation, court staff makes an announcement advising prospective jurors that if anyone is more comfortable speaking in a language other than English, interpreters can be made available. All prospective jurors are citizens, so to some

26. *But see* State v. Nguyen, 144 N.M. 197, 185 P.3d 368 (N.M. Ct. App. 2008) (holding that absent a showing of prejudice, a defendant is not deprived of a fair trial when a court interpreter is used for both the defendant and a juror).

extent they are functional in the English language. Information about interpreters is primarily made available when prospective jurors come in for orientation, but also comes from the prospective jurors themselves. People who serve as non-English speaking jurors play a role in getting information out to the community at large.

Aside from occasional local coverage about specific cases there has not been much coverage in the popular press about the use of non-English speaking jurors. An article in *USA Today* appeared on February 4, 2000²⁷ after the Supreme Court upheld Article VII, Section 3 of New Mexico's Constitution guaranteeing all citizens the right to sit upon a jury to "never be restricted, abridged or impaired on account of . . . inability to speak, read or write the English or Spanish languages[.]" There was also an NPR interview that aired during its *Weekend Edition Sunday* program on February 27, 2000 on this subject.²⁸ Public education has been the exclusive responsibility of the judiciary.

Logistics

The type of equipment used for interpretation services is key to minimizing disruption during the trial and to preserving the confidentiality of jury deliberations. Wireless audio equipment with headphones is preferable during the trial itself. This permits the juror to sit in the jury box while the interpreter is in a different area of the courtroom where his or her presence will be the least disruptive. The interpreter does not need to be in close proximity to the juror, except for sight translation of exhibits. However, because this equipment transmits sound via radio waves, it should not be used in the jury deliberation room due to the risk that someone might intercept the discussion. During deliberations a wired system offers the security needed, but it requires that the interpreter and non-English speaking juror sit close to one another. The length of wire on the equip-

27. Guillermo X. Garcia, *N.M. Carpenter Becomes First Non-English Speaking Juror*, U.S.A. TODAY, Feb. 4, 2000 at 04.A, available at <http://pqasb.pqarchives.com/USAToday/search.html>.

28. Available at <http://www.npr.org/templates/story/story.php?storyId=1070887>.

ment dictates the distance at which the interpreter and the juror must position themselves. Despite close proximity, the interpreter should not sit at the table with the jurors to avoid appearing to be a thirteenth juror.

Although debatable, in my opinion, the same interpreter should be used for both trial and jury deliberations. While it might appear prudent to have different interpreters for each phase of the proceedings because of concerns about the interpreter appearing to be a thirteenth juror, to be effective and accurate, it is often critical that the interpreter have detailed knowledge about the facts of the case. A simple example is when a juror makes a statement during deliberations such as “the cousin testified” If the interpreter does not know the cousin’s gender, at least in Spanish, the interpretation cannot be accurate. This information can be significant if more than one cousin testifies.

To adhere to ethical behavior and maintain the interpreter’s professional role, interpreters must follow certain protocols with other jurors. The interpreter must only communicate with the jury in his or her role as interpreter, otherwise remaining as invisible as possible and declining to speak directly with other jurors, except to explain a technical problem with equipment.²⁹

Jury Instructions

The Non-English Speaking Juror Guidelines³⁰ suggest that prior to jury deliberations, the trial judge should, on the record and in the presence of the jury, instruct the interpreter not to interfere or participate in any way during jury deliberations.³¹ In addition, the guidelines recommend that after jury deliberations, but before the verdict is announced, the trial judge should question the interpreter on the record about whether the interpreter abided by the oath given not to participate in the deliberations.³² The guidelines also allow a party to request that the

29. See Rule 23-111 (B)(9) N.M.R.A., Court Interpreters: Code of Professional Responsibility.

30. See *infra* app. A.

31. *Id.* § III(C)(5).

32. *Id.* § III(C)(6).

jurors be questioned regarding whether the interpreter improperly participated in the deliberations.³³ In *State v. Pacheco*, the New Mexico Supreme Court set forth the mandatory steps to follow when an interpreter assists a non-English speaking juror. The court stated:

First, prior to excusing the jury for deliberations, the trial court must administer an oath, on the record in the presence of the jury, instructing the interpreter not to participate in the jury's deliberations. See NES Guidelines, § III(C)(5). We also require that the interpreter be identified on the record by name, that the interpreter state whether he or she is certified, and that the interpreter indicate whether he or she understands the instructions. In addition to instructing the interpreter, the trial court must also give an instruction to the jury about the interpreter's role during deliberations. . . .

After deliberations, but before the verdict is announced, the trial court is required to ask the interpreter on the record whether he or she abided by the oath not to participate in deliberations. The interpreter's response must be made part of the record. Furthermore, at the request of any party, the trial court must allow jurors to be questioned to the same effect. Finally, the trial judge must also instruct the interpreter not to reveal any part of the jury deliberations until after the case is closed.³⁴

In addition to the oath given to an interpreter at the beginning of the proceedings, the court offered a pre-deliberation oath for the interpreter and a pre-deliberation instruction to the jury.

Pre-Deliberation Oath to Interpreter

Do you solemnly swear or affirm that you will not interfere with the jury's deliberations in any way by expressing any ideas, opinions, or observations that you may have during deliberations, and that you will strictly limit your role during deliberations to interpreting?³⁵

The court directed that the instruction be read before deliberations whenever a non-English speaking juror is serving on the jury.

33. *Id.*; *State v. Pacheco*, 155 P.3d 745 (N.M. 2007).

34. See *infra* app. A § III(C)(6); *Pacheco* at 754.

35. *Pacheco* at 755.

Pre-Deliberation Instruction to Jury

Ladies and gentlemen, we have at least one non-English speaking juror who is participating in this case. The New Mexico Constitution permits all citizens to serve on a jury whether or not English is their first language. You should include this [these] juror(s) in all deliberations and discussions on the case. To help you communicate, the juror(s) will be using the services of the official court interpreter. The following rules govern the conduct of the interpreter and the jury:

- 1) The interpreter's only function in the jury room is to interpret between English and [the non-English speaking juror(s) native language].
- 2) The interpreter is not allowed to answer questions, express opinions, have direct conversations with other jurors or participate in your deliberations.
- 3) The interpreter is only allowed to speak directly to a member of the jury to ensure that the interpreter's equipment is functioning properly or to advise the jury foreperson if a specific interpreting problem arises that is not related to the factual or legal issues in the case.
- 4) No gesture, expression, sound or movement made by the interpreter in the jury room should influence your opinion or indicate how you should vote.
- 5) If you can speak both English and [the language of the non-English speaker], we ask that you speak only in English in the jury room so the rest of the jury is not excluded from any conversation.
- 6) Leave all interpretations to the official court interpreter [who is trained and certified by the court]. The interpreter should be the only one to interpret conversations inside the jury room and testimony in the courtroom.
- 7) Any deviation from these rules should be immediately reported by submitting a note identifying the problem to the judge or court personnel.³⁶

Conclusion

Every day in courtrooms throughout the United States, juries are made up of a mix of citizens, those with a professional degree serving with those who do not have a high school diploma; those who are comfortable speaking in groups with those who are shy, reserved, or even inarticulate. So, why should a citizen who has limited English proficiency be automatically excluded from fulfilling a critical civic responsibility? Is it less efficient to allow non-English speaking citizens to par-

36. *Id.* at 755.

ticipate in the jury system? Yes. Does it require more effort from judges and staff? Yes. Does it require more rules and jury instructions? Yes. The question remains whether less efficiency, more effort, and more instructions justify the systematic exclusion of non-English speaking citizens from our jury system. New Mexico has answered the question “no.” The problems caused by allowing non-English speaking citizens to participate in a jury system are not insurmountable and the cost is not prohibitive. New Mexico’s experience with non-English speaking jurors has been pleasantly effective. Not only should our non-English speaking citizens enjoy the privileges of citizenship, they should share in the responsibilities. Patriotism requires service to one’s community, and like voting, jury service is an important civic responsibility.

APPENDIX A

Non-English Speaking Juror Guidelines

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Administrative Office of the Courts Non-English Speaking Juror Guidelines³⁷

- I. INTRODUCTION
- II. NON-ENGLISH SPEAKING JUROR ASSISTANCE SERVICES
 - A. Scope
 - B. Court Interpreters
 - C. Jury Summons
 - D. Juror Questionnaire
 - E. Jury Handbook and Orientation
 - F. Jury Selection
 - G. Trial Proceedings
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- III. COURT INTERPRETATION STANDARDS
 - A. Certification and Availability Standards
 - 1. Certified
 - 2. Uncertified
 - 3. Availability
 - B. Written Translation Standards
 - 1. Qualification and Orientation Materials
 - 2. Trial Materials

37. The Guidelines printed here are taken directly from *Pacheco*, Appendix C, 141 N.M. at 351-56, 155 P.3d at 756-61. The most current version of the guidelines can be found at http://www.nmcourts.gov/newface/court-interp/guidelinesandpolicies_for_non-english-speaking_jurors.pdf/.

3. Machine Translation
- C. Use and Performance Standards
 1. Hours of Service
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 3. Pre-Interpretation Interview
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IV. COURT INTERPRETATION COSTS

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V. COURT INTERPRETER RECRUITMENT AND TRAINING

- A. Administration
- B. Special Training

I. INTRODUCTION

These guidelines are intended to assist in the efforts of the New Mexico Judiciary to incorporate non-English speaking (NES) citizens into New Mexico's jury system. Because each local court has unique needs and limitations, these guidelines may not be applicable in all courts. Accordingly, these guidelines should not be considered mandatory directives that must be followed in all cases. However, all courts are encouraged to implement the standards set forth below to the fullest extent possible.

II. NON-ENGLISH SPEAKING JUROR ASSISTANCE SERVICES

A. Scope

Article VII, Section 3, of the New Mexico Constitution provides that "[t]he right of any citizen of the state to . . . sit upon juries, shall never be restricted, abridged or impaired on account of . . . inability to speak, read or write the English or

Spanish languages.” To comply with this constitutional mandate, all courts should strive to incorporate all New Mexico citizens into our jury system regardless of the language spoken by a prospective NES juror. Because most potential NES jurors speak Spanish as their primary language, these guidelines seek to implement statewide standards for accommodating prospective jurors who speak Spanish. However, where financially and logistically possible, all courts are encouraged to implement these guidelines for other languages.

B. Court Interpreters

Upon request by an NES citizen called for jury duty, all courts should appoint a court interpreter to assist the NES juror or prospective juror. In the absence of a specific request for a court interpreter, all courts should independently determine whether a juror or prospective juror is in need of a court interpreter. To make this determination, a court may consider conducting a limited interview of the juror or prospective juror to assess whether the juror or prospective juror is capable of understanding the proceedings in English.

C. Jury Summons

The New Mexico jury summons form should include a statement in Spanish notifying citizens called for jury duty that assistance is available for those who cannot understand English. The Spanish notice should also provide a telephone number that prospective NES jurors may call for further assistance. The Administrative Office of the Courts (AOC) is responsible for producing jury summonses for local courts that will include an appropriate Spanish notice. The AOC will coordinate with local courts to ensure that an adequate number of trained court personnel are available to respond to calls for assistance from prospective NES jurors.

D. Juror Questionnaire

The AOC is responsible for preparing a Spanish version of the juror questionnaire used by local courts. The AOC is also responsible for distributing copies of the Spanish version of the juror questionnaire to all local courts. All local courts should provide a Spanish version of the juror questionnaire upon re-

quest from any prospective juror. All local courts should also make arrangements to have court personnel available to provide an oral, Spanish translation of the juror questionnaire and to otherwise assist prospective NES jurors who cannot read Spanish.

E. Juror Orientation Materials

The AOC is responsible for distributing to all local courts copies of the Spanish version of jury orientation materials approved by the Supreme Court. To the extent that local courts may provide English language jury orientation materials to prospective jurors, those courts should also make arrangements to provide oral, Spanish translations when needed. Alternatively, courts are encouraged to produce written translations of juror orientation materials.

F. Jury Selection

All courts should make arrangements to have a court interpreter available for prospective NES jurors during the jury selection process. Upon arriving for jury selection, the court should introduce the court interpreter appointed to assist prospective NES jurors and advise prospective NES jurors that they should alert the interpreter if they have any questions during the process. The transcript of proceedings need not include the foreign language statements of the court interpreter or prospective NES juror, provided that the transcript clearly indicates when a court interpreter was used to interpret for a prospective NES juror.

Although a court interpreter may provide interpretation services for more than one prospective NES juror at a time, a court interpreter ordinarily should not be used to interpret for both a litigant and a prospective NES juror. However, when the litigant and his or her attorney can communicate in the same non-English language for confidential communications, the court interpreter may be used to otherwise interpret for both the litigant and the prospective NES juror. Subject to availability, courts are encouraged to avoid using the same court interpreter for jury selection and trial in the same case.

Prospective NES jurors are subject to peremptory challenges and challenges for cause the same as any other prospec-

tive juror. However, a prospective NES juror may not be challenged or excused simply because that juror is unable to read, write, or speak the English language. Moreover, the trial court should not excuse a prospective NES juror who asks to be excused simply because he or she cannot read, write, or speak the English language. Exercising its discretion in ruling on an objection to the service of any NES citizen, the court should consider all facts and circumstances pertaining to service by this juror, as the court would do in ruling on an objection to service by any citizen. In the event that a court interpreter will not be available to provide interpretation services for a prospective NES juror who would otherwise be selected to serve on the jury, the presiding judge may either postpone the proceedings until a court interpreter is available or excuse the juror from service for that proceeding only, provided that the prospective NES juror is recalled for jury selection for the next scheduled proceeding. If an interpreter cannot be obtained after reasonable effort, the prospective NES juror may be excused permanently.

G. Trial Proceedings

All courts should make arrangements to have a court interpreter available for all NES jurors during all trial proceedings. The transcript of proceedings need not include the foreign language statements of the court interpreter or the NES juror, provided that the transcript clearly indicates when a court interpreter was used to interpret for an NES juror. Although a court interpreter may provide interpretation services for more than one NES juror, a court interpreter ordinarily may not provide interpretation services for both a litigant and an NES juror or for a witness and an NES juror. However, when the litigant and his or her attorney can communicate in the same non-English language for confidential communications, the court interpreter may be used to otherwise interpret for the litigants, witnesses, other court participants, and NES jurors. Subject to availability, courts are encouraged to avoid using the same court interpreter for the trial and for jury deliberations.

H. Jury Deliberations

All courts should make arrangements to have a court interpreter available for all NES jurors during all jury deliberations. One court interpreter may provide interpretation services for more than one NES juror at a time during deliberations. To the extent that documentary exhibits are submitted to the jury for consideration during deliberations, the court interpreter assigned to assist NES jurors may provide an oral translation of the written material. With respect to jury instructions submitted to the jury, courts are encouraged to draft written, Spanish translations of the jury instructions with the assistance of a court interpreter. Alternatively, the court interpreter assigned to assist NES jurors during deliberations may provide an oral translation of the jury instructions.

III. Court Interpretation Standards for NES Jurors

When providing the court interpretation services to NES jurors and prospective jurors as outlined above, all courts should strive to meet the following standards:

A. Certification and Availability Standards

1. Certified

All courts should use certified court interpreters to assist NES jurors during all jury selection, trial, and deliberation proceedings. Certification is governed by the provisions of the Court Interpreters Act, NMSA 1978, §§ 38-10-1 to -8 (1985), as administered by the AOC. Except as otherwise provided below, an uncertified court interpreter should only be used if the requirements of NMSA 1978, Section 38-10-3(B) (1985), are met. In the event that a court must use an uncertified court interpreter, the court should consider briefly examining the qualifications of the interpreter.

2. Uncertified

All courts may use uncertified court interpreters to assist NES jurors and prospective jurors in completing the juror questionnaire. Uncertified court interpreters may also be used during the jury orientation process.

3. Availability

All courts should maintain a list of locally available certified and uncertified court interpreters and submit an updated copy of that list to the AOC by May 1st of each year. For those courts that do not have an adequate number of locally available certified or uncertified court interpreters available to assist NES jurors and prospective jurors, the local court administrator or chief judge should coordinate with the AOC to compile a list of certified and uncertified court interpreters who are available from other areas. The AOC should also assist local courts in the training of local court personnel to assist NES jurors and prospective jurors with the juror questionnaire, jury orientation, and with questions arising outside the context of formal court proceedings.

B. Written Translation Standards

1. Qualification Materials

The AOC will provide all courts with a written, Spanish translation of the juror qualification form and questionnaire translated by a certified court interpreter.

2. Trial Materials

Written materials that are submitted to the jury for consideration during trial or jury deliberations should be orally translated by a certified court interpreter or translated in writing by a certified court interpreter. If a certified court interpreter is not available, the court may use an uncertified court interpreter to orally translate written materials if the requirements of Section 38-10-3(B) are met.

3. Machine Translation

A number of services are available on the Internet and elsewhere that provide free or low-cost translation of written materials from English into a number of other languages. Because machine translation may not be accurate, courts should not use machine translation for written materials that are to be used in formal court proceedings, such as jury instructions or documentary exhibits. Although courts may consider using machine translation for other informational and local orientation materials submitted to jurors and prospective jurors, all courts

are cautioned against relying exclusively on machine translation without human verification of the accuracy of a machine translation.

C. Use and Performance Standards

Because of the demanding and sensitive nature of the services provided by court interpreters appointed to assist NES jurors and prospective jurors, all courts are encouraged to use and instruct court interpreters in accordance with the following standards.

1. Hours of Service

All courts should strive to limit the amount of time that a court interpreter interprets for an NES juror or prospective juror to avoid court interpreter fatigue. Ideally, two court interpreters should be used as a team to provide interpretation services, and each interpreter should avoid interpreting for more than 30-45 minutes without a rest period. Because this may not be logistically feasible in all circumstances, every court should remain sensitive to the risk of court interpreter fatigue. Whenever a court interpreter suspects that the quality of interpretation may become compromised because of fatigue, the interpreter should advise the trial court judge of the need for a period of rest.

2. Oath of Interpreter

Before a court interpreter begins to provide interpretation services for an NES juror or prospective juror during jury selection or trial, the trial judge should administer an oath to the court interpreter in accordance with NMSA 1978, Section 38-10-8 (1985).

3. Pre-Interpretation Interview

Prior to providing interpretation services for an NES juror or prospective juror, with the knowledge and permission of the court, the court interpreter should briefly interview the NES juror or prospective juror to enhance the effectiveness of the interpretation by becoming familiar with the speech patterns and linguistic traits of the NES juror or prospective juror.

4. Courtroom Explanation of the Role of the Interpreter

Prior to the commencement of proceedings, the trial judge should explain the role of the court interpreter to those present in the courtroom by explaining that the interpreter was appointed by the court to assist jurors or prospective jurors who do not understand English. The judge should also explain to the jury that the interpreter is only allowed to interpret and that the jurors may not ask the interpreter for advice or other assistance. The judge should also explain that, for those English speaking jurors who may understand the non-English language spoken by the court interpreter, the jurors should disregard what they hear the interpreter say and rely solely on the evidence presented in English.

5. Pre-Deliberation Instructions

Prior to excusing the jury for deliberations, the trial judge should, on the record in the presence of the jury, instruct the court interpreter who will be providing interpretation services for an NES juror that the interpreter should not interfere with deliberations in any way by expressing any ideas, opinions, or observations that the interpreter may have during deliberations but should be strictly limited to interpreting the jury deliberations. The trial judge should also ask the court interpreter to affirmatively state on the record that the interpreter understands the trial judge's instructions.

6. Post-Deliberation Instructions

Following jury deliberations but before the jury's verdict is announced, the trial judge should ask the court interpreter on the record whether the interpreter abided by his or her oath to act strictly as an interpreter and not to participate in the deliberations. The interpreter's identity and answers should be made a part of the record. At the request of a party to the litigation, the jurors may also be questioned to the same effect. The trial judge should also instruct the court interpreter not to reveal any aspect of the jury deliberations after the case is closed.

7. Equipment

With the assistance of the AOC, all courts should make arrangements to provide equipment for use by a court interpreter

who will be providing interpretation services for NES jurors. The AOC will develop standards and seek funding to acquire adequate equipment for use by court interpreters throughout the state who will be providing interpretation services for NES jurors and prospective jurors. The equipment should allow interpreters to provide interpretation services for multiple persons with minimum disruption of the court proceedings.

To the extent that the AOC and local courts are unable to provide court interpreters with interpretation equipment, all court [personnel] should assist court interpreters with the logistical arrangements for providing interpretation services whenever possible. Accordingly, prior to jury selection or trial proceedings, court personnel should identify the number of NES jurors or prospective jurors scheduled to appear in court. This information should be provided to the appointed court interpreter so that the interpreter can make arrangements for the appropriate equipment and seating arrangements. The interpreter should obtain the prior approval of the trial court if special equipment and seating arrangements are needed. The bailiff should inform counsel if any seating changes have been made to accommodate NES jurors or prospective jurors.

IV. COURT INTERPRETATION COSTS

A. Jury and Witness Fee Fund

All costs associated with administering these guidelines and providing services for NES jurors and prospective jurors should be paid from the Jury and Witness Fee Fund. To the extent that such costs are initially incurred at the local court level, local courts may seek reimbursement from the Jury and Witness Fee Fund.

B. Interpreters in Civil Cases

The costs for a court interpreter to provide interpretation services to an NES juror or prospective juror in civil cases should be paid by the court through the Jury and Witness Fee Fund.

C. Interpreter Compensation

Court interpreters appointed to provide interpretation services for NES jurors or prospective jurors should be paid at a fixed rate in accordance with the approved fee schedule established by the AOC. However, all courts are free to employ a certified interpreter on a full-time basis or under contract at a mutually agreed upon compensation rate.

V. COURT INTERPRETER RECRUITMENT AND TRAINING

A. Administration

The AOC is responsible for the recruitment and training of court interpreters to provide interpretation services for NES jurors and prospective jurors. Consistent with the New Mexico Judicial Branch Personnel Rules, local court personnel are encouraged to train for and become certified as court interpreters.

B. Special Training

The AOC, in consultation with the Court Interpreters Advisory Committee, *see* NMSA 1978, § 38-10-4 (1985), will develop supplemental training standards for court interpreters who will provide interpretation services for NES jurors and prospective jurors. These standards should be incorporated into the general certification process for all new court interpreters.

EFFECTIVE DATE:

Guidelines are effective November 15, 2000

John M. Greacen

Director, Administrative Office of the Courts

Date

