**The Good Judge-ment Podcast Interpreter Issues Outline**

**What Are We Talking About?**

1. The Georgia Supreme Court said in Ramos v. Terry, 279 Ga. 889 (622 SE2d 339) (2005) that it would regulate the use of interpreters in Georgia courts due to its inherent power to maintain a court system capable of providing for the administration of justice in an orderly and efficient manner, a quote from Garcia v. Miller 261 Ga. 531(3), 408 SE2d 97 (1991). The Court said it has the Constitutional duty to ensure “the speedy, efficient, and inexpensive resolution of disputes and prosecutions” and so it would promulgate rules establishing a statewide plan for the use of interpreters in proceedings involving non-English speakers before any court or grand jury hearing in Georgia. (Const., Art. VI, § IX, Par. I)
   1. The Supreme Court first created the Supreme Court Commission on Interpreters, who created the first interpreter Rule in 2001.
   2. Judicial Council of Georgia created the Standing Committee on Court Interpreters in 2021
   3. Rules for Legal Interpreting in the State of Georgia effective January 1, 2024. See the Supreme Court’s website.

**Why is Interpreting Important?**

1. Ramos v. Terry further says that “the use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English.” The use of qualified interpreters is necessary to preserve meaningful access to the legal system for persons who speak and understand only languages other than English. The competence of an interpreter is a matter for the trial court and that determination is subject to appellate review for abuse of discretion. See [*LaCount v. State,* 237 Ga. 181(2), 227 S.E.2d 31 (1976)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=1976135427&pubNum=711&originatingDoc=I902185895ab411dab072a248d584787d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=5bca091a499048f3b77279d53092d7b3&contextData=(sc.Search)). A court abuses its discretion when it selects an interpreter who is not qualified, sworn, and impartial. [*Gopar–Santana v. State,* 862 So.2d 54 (Fla.App.2003)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003670399&pubNum=735&originatingDoc=I902185895ab411dab072a248d584787d&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=5bca091a499048f3b77279d53092d7b3&contextData=(sc.Search)). We conclude it is an abuse of discretion to appoint someone to serve as interpreter who is neither certified nor registered as an interpreter without ensuring that the person appointed is qualified to serve as an interpreter, without apprising the appointee of the role s/he is to play, without verifying the appointee's understanding of the role, and without having the appointee agree in writing to comply with the interpreters' code of professional responsibility.
2. In Ling v. State, 288 Ga. 299 (702 SE2d 881) (2010), the Georgia Supreme Court further said that both this Court and the Court of Appeals also have expressly acknowledged that failure to provide adequate interpretation services to a defendant in criminal proceedings implicates due process concerns, [*Puga–Cerantes v. State,* 281 Ga. 78(5), 635 S.E.2d 118 (2006)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2010306922&pubNum=711&originatingDoc=I3fded805f63611dfaa23bccc834e9520&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=4d06ea558c2144a194b3ffc4b19c3e66&contextData=(sc.Search)); [*Holliday v. State,* 263 Ga.App. 664, 668, 588 S.E.2d 833 (2003)](https://1.next.westlaw.com/Link/Document/FullText?findType=Y&serNum=2003709243&pubNum=711&originatingDoc=I3fded805f63611dfaa23bccc834e9520&refType=RP&originationContext=document&transitionType=DocumentItem&ppcid=4d06ea558c2144a194b3ffc4b19c3e66&contextData=(sc.Search)).
3. *State v. Tunkara*, 298 Ga. 488 (2016). In a nutshell, in that case Defendant Tunkara’s first jury trial ended in mistrial. At the first trial Tunkara had a certified interpreter in his native language .  The State elected to try him a second time. At the second jury trial, the court appointed a different non-certified interpreter ( first interpreter unavailable). The second interpreter was inadequate. Tunkara was ultimately convicted and sentenced to life. On appeal, the Supreme Court of GA unanimously granted a new trial concluding that the Tunkara’s due process and other constitutional rights had been violated when the Court appointed a unqualified interpreter in the 2nd trial.
4. OCGA § 24-6-654, “A court shall provide a court qualified interpreter to any hearing impaired person whenever the hearing impaired person has been provided with a public defender or court-appointed legal counsel [and said interpreter] shall be present at all times when the hearing impaired person is consulting with legal counsel.”
   1. This is important because when courts appoint counsel, courts need to be mindful that they also have to provide the LEP (Deaf/hard of hearing) and the appointed attorney an interpreter outside of court when they are consulting about the case. This could mean jail visits, office visits, etc.

**Who Is Impacted by Interpreting Rules?**

1. Anytime you have someone who is Limited English Proficient, meaning that they cannot readily understand or communicate in spoken or written English or someone who is Deaf and Hard of Hearing such that they cannot understand oral communications in a normal conversational tone. Remember that someone can be LEP even if they only understand some English but are not fluent.
2. Anytime an LEP individual is at any court-connected appearance in the courts in this state including hearings, trials, motions, mediations, depositions, arbitrations, administrative hearings, grand jury hearings, support services, and probation proceedings.
3. The Supreme Court Rules also that at all court-managed functions, such as information counters, intake or filing offices, cashiers, records rooms, sheriff’s offices, probation and parole offices, pro se clinics, criminal diversion programs, anger management classes, detention facilities, and other similar offices, operations and programs, that Title VI of the Civil Rights Act of 1964. 42 U.S.C. § 2000d et seq should be followed.
   1. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

**How Do Courts Comply?**

1. Use a Georgia-licensed interpreters. You don’t even have to know what all the qualifications are, the Administrative Office of the Courts keep the official list, and there is a website. <https://gcr.onegovcloud.com/public/directory/>
   1. The new rules create 3 tiers of licensed interpreters based upon the specific tests passed, observation hours, etc. Sign language interpreters are included in these rules for the first time ever.
   2. There are also apprentice interpreters and ad hoc interpreters. The Rules have careful language about ensuring that there are no other options for interpreting available before you use an non-licensed apprentice or ad-hoc interpreter.
2. Appointing Interpreters
   1. Any agency conducting a court proceeding should make every reasonable effort to ensure that an individual performing interpretation services in said proceeding under its control is appropriately qualified. There is a great table in Appendix A of these rules. Courts must appoint an interpreter at the highest level that you have available.
   2. Any other persons who are not listed on the Interpreter Roster and are charged to interpret in any court in the State of Georgia shall be under the jurisdiction of the Committee and bound by these rules, and any court who uses such person should inform such non-listed interpreter of the same.
3. What Not To Do
   1. The Rule says that under no circumstances should a judge appoint any of these people to interpret – even if this person has a license. These people would present huge conflicts of interest issues.
      1. A family member of the LEP individual or deaf or hard-of-hearing person;
      2. A witness or party to the court proceeding;
      3. Law enforcement officers, such as probation officers, police, deputy sheriffs, or constables;
      4. A social worker, counselor, or health professional involved in the court proceeding;
      5. Any person who may have an interest or perceived interest in the outcome of the court proceeding;
      6. Any person who has been removed from the Interpreter Roster as the result of a disciplinary action;
      7. Any interpreter who has produced or participated in the production of material that will or has been introduced as evidence in a legal proceeding shall not provide interpreting services in court during that same proceeding as they may be called upon to testify as an expert witness and could compromise their appearance of neutrality. Such materials include, but are not limited to, document translations, audio or video recordings of the interpretation of forensic interviews, and translation transcription of audio or video recordings. There is an exception to this one, but the Rule say the exceptions should be rare.
4. Use of Deaf Interpreters
   1. The use of a Deaf Interpreter is recommended in court proceedings, including when LEP is at issue, if an individual:
      1. Uses idiosyncratic non-standard signs or gestures (colloquially referred to as “home signs”);
      2. Uses a foreign sign language;
      3. Has minimal or limited formalized American Sign Language communication skills;
      4. Is deaf-blind or deaf with limited vision;
      5. Uses signs particular to a given region, ethnic, or age group;
      6. Has linguistic characteristics reflective of Deaf Culture which are not generally familiar to the majority of hearing interpreters; or
      7. Would benefit from the use of a Deaf Interpreter as recommended by the court proceeding interpreter.
   2. Ultimately the court, with guidance from one or more court proceeding interpreter, should evaluate the need for a Deaf Interpreter and provide one or more Deaf Interpreter to work with the interpreters who are hearing when justice so requires.
   3. When a Deaf Interpreter is used along with an interpreter who is hearing, the two shall work as one unit and not “rotate” or take turns, but in fact work together to create the proper interpreted message. Meaning that in court proceedings where a Deaf Interpreter is required and also a team is required, the total team shall consist of no less than four interpreters (a hearing and Deaf Interpreter unit teaming or rotating with another hearing and Deaf Interpreter unit).
5. You may need Team or Relay interpreting depending upon the situation.

**When Do We Have To Do This?**

1. At each critical stage of a criminal case – AT NOT COST TO THE LITIGANTS
2. At each critical stage of a civil case – AT NOT COST TO THE LITIGANTS
3. In a juvenile case to the children and adult parents and guardians – AT NOT COST TO THE LIGITANTS
4. See the table in Schedule A for everything else

**Odds and Ends**

1. You should familiarize yourself with the interpreter oath so that you can give it before an interpreter begins.
2. Know that interpreters are background checked and have CLE requirements and ethic obligations that are part of the Rules.
3. Judges and attorneys have ethical considerations regarding appointment of qualified interpreters and representing LEP persons and persons who are DHH.