



A FIRST-TIMER'S GUIDE TO DEPOSITION INTERPRETERS



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Whether it's an employment discrimination case or a personal injury matter, a patent dispute, or a cross-border antitrust proceeding, the probability that an attorney will encounter parties and witnesses with limited English proficiency rises every day. Not only is the United States becoming more diverse, its courtrooms are also often the forum of choice for business entities around the world.

Sooner or later, every litigator will be involved in a case that requires the use of an interpreter.

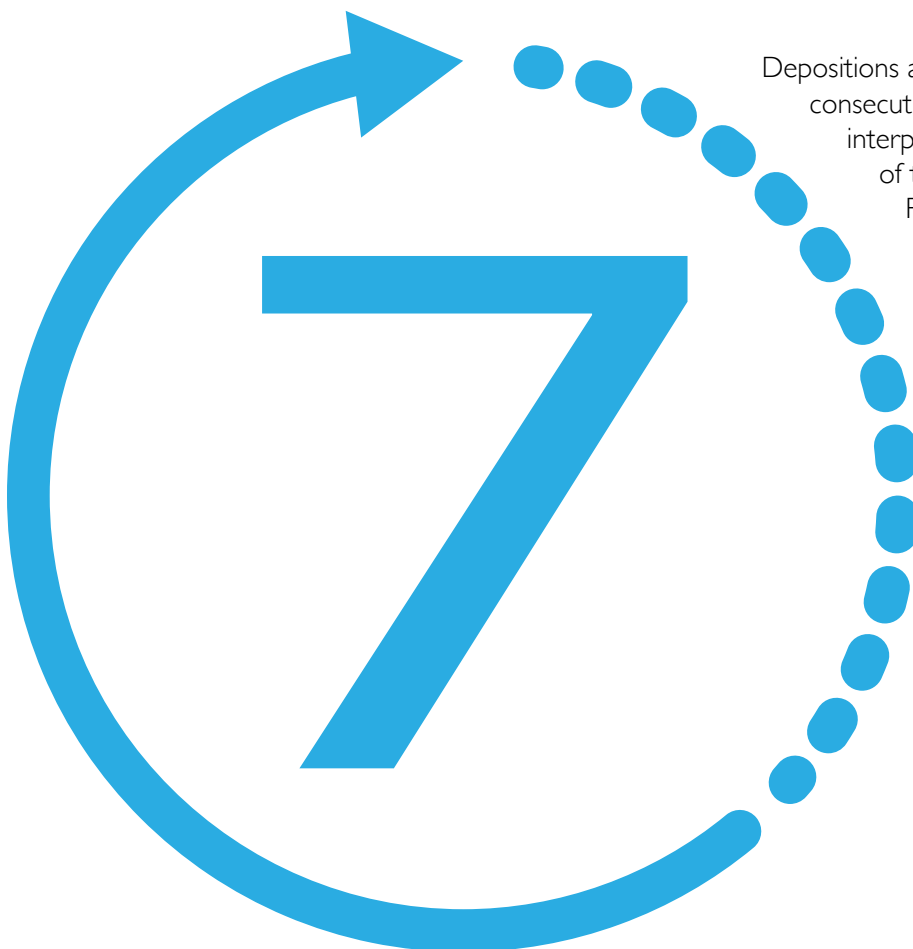
The use of interpreters during pretrial depositions in civil matters presents strategic and legal issues that may not be immediately apparent to first-timers. This ebook addresses the most important issues that a litigator will have to resolve in a case involving a deposition witness with limited English proficiency.



Modes of Interpretation

There are three principal modes of interpretation used in legal proceedings:

- **Simultaneous interpretation.** The interpreter translates for the non-English-speaking listener in real time, relating everything that is said during the proceeding. Simultaneous interpretation is employed when the non-English-speaking listener is a passive observer of a legal proceeding.
- **Consecutive interpretation.** The interpreter allows speakers to finish their utterance completely before providing a translation. Consecutive interpretation is used when the non-English-speaking person is actively participating in a legal proceeding, for example, as a trial witness or deponent.
- **Sight translation.** The interpreter translates and states orally the information contained in a written document. In a legal proceeding, sight translation is used to convey the meaning of important documents or transcripts of testimony.



Depositions are almost always interpreted using the consecutive interpretation mode. Consecutive interpretation usually doubles the amount of time it takes to complete a deposition. For this reason, some depositions involving interpreters may be difficult to complete within the time limits specified by court rule (e.g., the seven-hour rule provided by Fed. R. Civ. P. 30 and many state counterparts).

Considerations When Deposing Via Interpreters

1. Is an interpreter necessary or desirable?

There is no legal right to an interpreter in civil litigation. Nor are there hard and fast rules for when an interpreter should be retained in a particular matter. It's a matter of judgment that each litigator must make depending on the facts of the case.

For a pretrial deposition, the attorney noticing the deposition must decide whether the deponent's English proficiency is so limited that effective testimony can only be obtained through the use of an interpreter. Attorneys will also want to weigh the impact that interpreted testimony will have on the judge or jury, as well as the advocacy challenge presented by examining the witness with an interpreter.

Experienced litigators say that [the need to use interpreters should be raised early in the case](#), preferably at the initial pretrial conference. If the parties dispute the need for an interpreter at a deposition, then the court will decide the issue as a matter of discretion, based on its supervisory authority over discovery matters.

2. Noticing depositions with interpreters

The fact that an interpreter will be used should be specified in the deposition notice.

Although Rule 30 of the Federal Rules of Civil Procedure does not require mention of an interpreter, it is considered good practice to do so. Most state court rules are similarly silent on the matter. But not all. In Nebraska, [Rule 6-330 \(Depositions upon oral examination\)](#) prescribes the language to be used in cases in which an interpreter will, or may, be used at a deposition:



If it is known that an interpreter will be used, the notice shall state that an interpreter will be used and shall state the language that will be interpreted or the type of interpretation (e.g., sign language). If it is unknown whether an interpreter may be necessary, the notice shall include the following advisory statement: "If you are a person who is deaf, hard of hearing, or unable to communicate in the English language, you should contact as soon as possible the attorney or the party whose name is stated in this notice or subpoena and let that attorney or party know that you will need the help of an interpreter to understand and answer questions during the deposition."



3. Interpreter Selection

In most jurisdictions, civil litigators have wide latitude in the selection of interpreters used in depositions. However, it is a good idea for litigators to use interpreters that meet the certification requirements established by judicial administrators in their local jurisdiction. These certification programs ensure that the interpreter is competent and, in many jurisdictions, follows a code of conduct addressing matters such as professionalism and impartiality.

Florida is a state that requires litigators to use state-certified interpreters in all "court-related proceedings," a term that includes depositions. Litigators who want to employ a non-certified interpreter must demonstrate to the trial court a compelling reason to do so.

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Considerations When Deposing Via Interpreters (Continued)

Using certified interpreters can also offer a small measure of protection against subsequent challenges to the deposition transcript.



In *Vaca v. Sears Roebuck Co.*, No. 3:04-23423 (D.S.C., Feb. 26, 2007), for example, a magistrate judge forbade the defendant from using a deposition transcript that — following review by a certified federal court interpreter — was found to be riddled with translation errors. Selection of a more-skilled interpreter at the outset would have saved Sears Roebuck the time and money it expended defending the first deposition as well as the expense of conducting the same deposition twice.

The interpreter should be skilled in translating the deponent's spoken language, of course. But additional expertise in the relevant industry and its specialized vocabulary can be critical in obtaining accurate and useful interpretations of the deponent's testimony. Moritt Hock & Hamroff LLP litigator Alexander D. Widell recommends [seeking referrals from colleagues](#) and, if possible, observing interpreter candidates at work in other trials.

Court administration websites (e.g., [California](#), [Illinois](#), [Georgia](#)), associations such as the [National Association of Judicial Interpreters and Translators](#), and third-party deposition service providers are also good places to start a search for [skilled interpreters](#).

4. Prepare the Interpreter and Witness

Prior to the deposition, the attorney should meet with the interpreter to go over the particulars of the case and flag for the interpreter important terms and documents that might be used. Matters that should be discussed include:

- A brief description of the case
- Information about the witness's background and education level
- Documents likely to be shown to the witness

- Physical evidence likely to be shown to the witness
- Numbers and addresses that may come up during the deposition

The non-English-speaking witness should be similarly prepared by counsel. Matters to be covered with the witness should include instructions on how to answer questions posed through the interpreter, where to look while answering questions (not at the interpreter), and how to comport themselves when objections are raised.

It's critical that the witness be instructed to not speak when the interpreter or counsel are speaking because this prevents the creation of an accurate deposition transcript.

5. Swear in the Interpreter

The interpreter's qualifications should be placed on the deposition record, and the interpreter should be sworn in. In *Ivanov v. Phenix Mutual Fire Insurance Co.*, 939 A.2d 683 (2008), the Maine Supreme Court suggested the following interpreter's oath:

“Do you solemnly swear or affirm that you will truly and correctly interpret or translate all of the proceedings in this deposition into [the language] and you will repeat the statements made in [the language] into English to the best of your skill (so help you God)?”



One Solution: The Deposition Protocol

Many litigators find it useful to hammer out a detailed deposition protocol in cases where language interpreters and document translators will be involved. A good deposition protocol can make the painstaking process of deposing witnesses through interpreters go more smoothly by solving in advance deposition-related issues, and by providing a framework for rapid resolution of disputes that may come up during the deposition.

In her article [Translation Protocols: The Time Has Come \(PDF\)](#), Foley Hoag partner Lisa Wood relates how several experienced antitrust litigators have solved language interpretation challenges through deposition protocols. Key topics to include in a deposition protocol, according to Wood, include:

- The selection of interpreter for the deposition
- Whether there will be limits on who may be selected as an interpreter
- Whether “check interpreters” will be allowed
- The process for raising objections to translated materials
- The process for resolving objections to translated materials
- Agreed-upon discovery time limits and deposition length limits
- The necessary components of all translated documents
- The process for resolving witness any disagreements with the accuracy of translated documents

Wood cautions that litigators could be required to educate the court on the need for heightened attention to language-related challenges in their cases because some courts may be initially reluctant to devote already scarce judicial resources to unfamiliar problems.

Some courts -- e.g., those in California, Florida, New York -- are well-versed in the legal issues raised by witnesses and parties with limited English proficiency. Research in their dockets will yield helpful guidance for attorneys who are handling for the first time a case involving interpreted testimony. Deposition protocols negotiated and ordered in [In Re Lithium Ion Batteries Antitrust Litigation](#), No. 13-md-2420-YGR (N.D. Cal., Oct. 19, 2015), and [In Re Chrysler-Dodge-Jeep “Ecodiesel” Marketing, Sales Practices, and Products Liability Litigation](#), MDL No. 17-MD-2777-EMC (N.D. Cal., Nov. 3, 2017), both provide useful examples of how litigators have resolved deposition interpreter challenges.

Conclusion

Cases where interpreters are involved put a high premium on early planning and careful attention to how testimony from non-English speakers can be effectively obtained and presented to the judge or jury. Attorneys should also be prepared to write their own pretrial discovery rules -- via deposition protocols or other stipulated procedures -- because, in many jurisdictions, existing rules are either unworkable for translated testimony or silent altogether.

