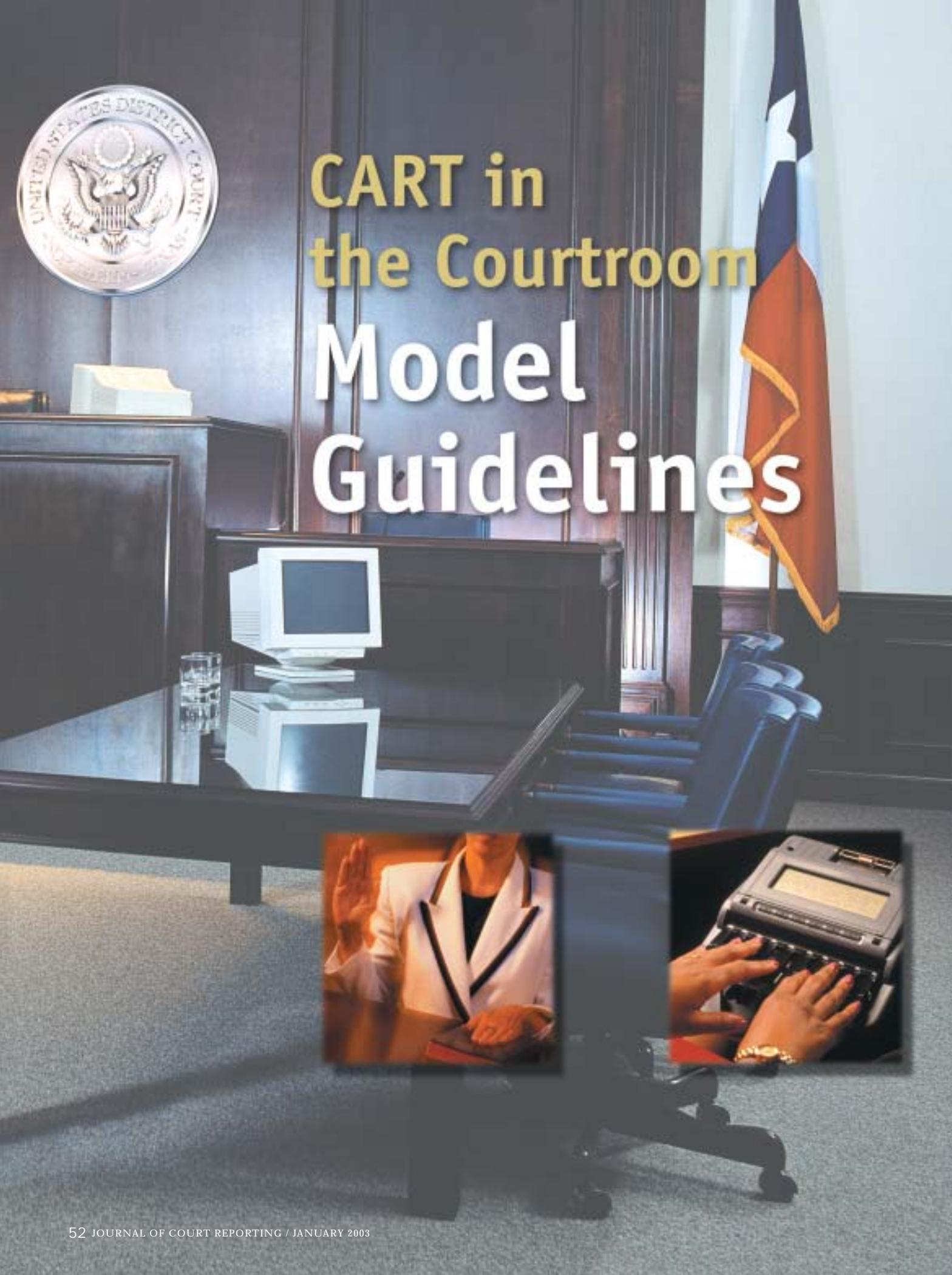




CART in the Courtroom Model Guidelines



To provide continuity in the provision of CART services in the legal setting, the National Court Reporters Foundation and the American Judges Foundation have developed model guidelines for the use of CART in the courtroom. Courts can use these guidelines to manage the accessibility of CART services for people with hearing loss in a uniform and effective manner.



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INTRODUCTION

These Communication Access Realtime Translation (CART) in the Courtroom Model Guidelines provide a framework that can be modified by any courtroom in the country to meet the communication access needs of people who are Deaf, deaf, late-deafened or hard-of-hearing as required by the Americans with Disabilities Act. Courts should revise these guidelines as necessary to meet their individual circumstances.

For the purposes of these guidelines, CART consumers will be defined as people with communication barriers, such as hearing loss.

The Americans with Disabilities Act specifically recognizes CART as an assistive technology that affords effective communication access. In August 2001, the U.S. Ninth Circuit Court of Appeals (*Duvall v. County of Kitsap, Wash.*, No. 99-35934) determined that realtime reporting is a reasonable accommodation for people who are deaf or hard-of-hearing under the Americans with Disabilities Act. Furthermore, in *Adams v. State*, 749 S.W. 2d 635, 639 (Tex. App. — Houston [1st. Dist.] 1988, pet. ref'd), the conviction was reversed because the trial court did not ensure understanding of the proceedings on the part of the deaf defendant. Compare that to *Brazell v. State*, 828 S.W. 2d 580, 582 (Tex. App. — Austin 1992, pet. ref'd), in which the trial court ensured understanding by seating the deaf defendant close enough to the court reporter to permit reading the simultaneous English language transcription.

Although the federal courts are exempt from the provisions of the Americans with Disabilities Act, in 1996 the Judicial Conference of the United States “adopted a policy that all federal courts provide reasonable accommodations to persons with communications disabilities. Each federal court shall provide, at judiciary expense, sign language interpreters or other appropriate

Acknowledgments

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In addition to basing these model guidelines on the knowledge and experience of the Task Force members, several advisors contributed to their development, including Janice Friend, Pat Graves, Sue Deer Hall, Katy Ingersoll, The Honorable John Mutter, The Honorable Jeff Rosinek, Karen Yates, The Honorable Chris Williams and Cecilee Wilson.

The foundation for these guidelines comes from two primary resources: the National Court Reporters Association’s CART Provider’s Manual and the Los Angeles County Superior Court’s ADA-CART Procedures Manual, which was a joint effort between the Los Angeles County Superior Court and the Los Angeles County Court Reporters Association. Both of these documents provided a clear direction for the Task Force that allowed for the efficient production of these guidelines.

Disclaimer

These guidelines are designed to provide continuity in the provision of CART services, offering a structure from which courts can draw in order to meet their individual circumstances. Courts can then manage the accessibility of CART services for people with hearing loss in a uniform and effective manner, benefiting both the court and CART consumers. These guidelines reflect recommended procedures regarding the provision of CART in the nation’s courts. The information and guidance offered herein should not be construed as anything more than suggested best practice.

auxiliary aids and services to participants in federal court proceedings who are deaf, hearing-impaired, or have other communications disabilities.”

Communication Access Realtime Translation (CART) is a word-for-word speech-to-text interpreting service for people who need communication access. With CART, only the text appears on a screen. While broadcast captioning, in which the text appears with a video image on a television, falls under the CART umbrella in its broadest sense — communication access — it is considered a separate specialty.

Official court reporters are charged with preparing an accurate, complete, and secure official record of the proceedings. The proceedings include a verbatim record of the testimony, but will not include the inflection and spirit of speakers or environmental sounds. Using realtime technology, this record is instantly available to all judicial participants. A realtime-capable official reporter converts stenographic notes into English text automatically, and this text is immediately displayed through litigation-support software on any computer screen in the courtroom, such as laptops set up at the counsel table or a monitor built into the judge's bench. Judges have instant access to the unofficial court record for purposes of review, and attorneys can annotate and highlight the uncertified transcript as it appears on their computer screen for later use.

At the center of communication access in the courts are CART providers/interpreters, who ensure equal access to courtroom proceedings. CART is based on realtime technology. The CART provider/interpreter works along with the official court reporter, but in a distinct role. While the official reporter provides the official record of proceedings, the CART provider/interpreter assumes an interpretive rather than an official role. Using the instant steno-to-English translation and screen-transmission capabilities of realtime technology, the CART provider/interpreter captures not only the words, but also the spirit of the pro-

ceedings and environmental sounds. For example, if anyone laughs in the courtroom or the proceedings are disrupted by sounds or other disturbances, CART providers/interpreters include this in their unofficial, on-screen text display.

It is strongly recommended that a single official reporter not perform both functions of making the record and providing CART services at the same time, though it is acknowledged that in certain situations there may be no other option. When no other option exists, the role to be performed is that of the official reporter of proceedings, and the CART consumer is then entitled to read the display screen of the official reporter. Disclosure must be made to the judge and all parties, including the person requiring interpretive services, that the record of proceedings will not include the spirit of the speaker or environmental sounds, or any off-the-official-record conversations.

The court may assign an official court reporter to use their realtime technology to make the record instantly available to all judicial participants or may hire a freelance CART provider/interpreter, depending on the court's available resources.

The CART provider/interpreter abides by the statutes, rules and standards governing interpreters.

ARRANGING FOR CART

Persons in need of CART should contact [FILL IN CONTACT PERSON NAME] at [FILL IN CONTACT TTY, FAX, AND E-MAIL NUMBERS] at least two days prior to the court date appearance so that arrangements can be made. [See the Introduction about modifying these guidelines for the specific circumstances of your jurisdiction.] When possible, please submit your request in writing.

The CART provider should receive at least 24 hours notice of the assignment, including the name of the person requesting the service and the date,

time, and location of the proceedings. Whenever possible, the same CART provider should be assigned to the CART consumer for the duration of the continuous proceedings.

ROLE OF THE CART PROVIDER/INTERPRETER

A CART provider/interpreter's role is to facilitate communication. The CART provider/interpreter will at all times stay in role and perform in a manner appropriate to the situation. A CART provider/interpreter should decline any invitation or suggestion to comment, interject, advise, respond to inquiries, or in any way become involved in the proceedings outside the role of the CART provider/interpreter. If necessary, the CART provider/interpreter should politely explain the necessity to stay “in role.”

A CART provider/interpreter may be asked to step out of the role to answer questions about the service or to demonstrate equipment during a break. Deviations from the role should be the exception and should be discouraged but may occur with the approval of the judge.

In a court proceeding a CART consumer may be a litigant, juror, judge, attorney, witness or other participant. The CART provider/interpreter will have general knowledge of capital “D” Deaf culture, and will understand that the preferred communication mode of a person with a hearing loss differs depending on whether that individual identifies himself as Deaf, deaf, late-deafened or hard-of-hearing.

The official court reporter and the CART provider/interpreter perform different functions. For example, a CART provider/interpreter may accompany a consumer into the jury room or into confidential discussions with attorneys. A CART provider/interpreter should attempt to refrain from working in the dual capacity of official reporter of proceedings and CART provider/interpreter. However, when no other option exists, the role performed is that of the official re-

porter of the proceedings. The CART consumer may then read the unedited testimony as it appears on a laptop computer or other monitor, keeping in mind that in certain situations, such as bench conferences, the official reporter is responsible for ensuring that the realtime feed will not be available.

The CART provider/interpreter should discuss with the judge his or her role as an interpreter before the proceedings begin. The CART provider/interpreter should be sworn in in the same manner as a foreign language interpreter. The CART provider/interpreter must exercise discretion in situations that may warrant interrupting the proceedings in order to ensure the integrity of the CART translation. Care should be taken not to call undue attention to the consumer or the provision of CART services.

Furthermore, the CART provider/interpreter should be aware of the role of the sign language interpreter. Very often, an interpreter will be present to serve deaf and hard-of-hearing individuals who prefer using sign language, or to voice for a non-oral individual. The CART provider/interpreter and sign language interpreter will work as a team to ensure full, effective communication access.

The CART provider/interpreter must be fair and impartial to each participant in all aspects of CART and be alert to conflicts of interest. Such circumstances may include, for example, providing CART for someone who is a close friend, family member or business associate. The CART provider/interpreter will disclose to the judge any potential conflict of interest or inability to be impartial.

ETHICS AND GUIDELINES FOR PRACTICE

In providing CART service, a CART provider/interpreter should:

A. Accept assignments using discretion with regard to skill, setting, and the consumers involved and accurately represent the provider's qualifications for CART.

- B. Establish a clear understanding of:
1. who is hiring the CART provider/interpreter (Note: In many jurisdictions, a freelance CART provider/interpreter will be hired when the court cannot spare an official reporter to function in this distinct role.);
 2. the role played by the CART provider/interpreter in assisting with communication as opposed to the role of the official reporter of proceedings in providing a verbatim record, and the fact that the CART provider/interpreter should not conduct readback of any proceedings to anyone; and
 3. the fact that no electronic file is to be produced or archived.
- C. Acquire, when possible, information or materials in advance to ensure effective communication.
- D. Know the software and hardware system used and be able to do simple troubleshooting.
- E. Strive to interpret in as close to a verbatim form as English style, syntax and grammar will allow.
- F. Include in the realtime display the identification, content and spirit of the speaker, as well as environmental sounds such as laughter (except under circumstances described in M below).
- G. Refrain from counseling, advising or interjecting personal opinions except as required to accomplish the task at hand.
- H. Delete all files immediately after the assignment.
- I. Cooperate with all parties to ensure that effective communication is taking place.
- J. Preserve the privacy of a consumer's personal information.
- K. Familiarize himself or herself with the provisions of these guidelines, the National Court Reporters Association's "CART Provider's Manual" and the General Guidelines for Professional Practice, and any updates thereto.
- L. Keep abreast of current trends, laws, literature, technological advances relating to CART, and Deaf, deaf,

late-deafened and hard-of-hearing culture.

M. Refrain whenever possible from working in the dual capacity of official reporter of proceedings and CART provider/interpreter at the same time. When no other option exists, the role to be performed is that of the official reporter of proceedings, and the consumer is then entitled to read the unedited text file of the official reporter, which will not include the inflection and spirit of the speaker or environmental sounds that would normally be provided by the CART provider/interpreter. Disclosure must be made to the judge and all parties, including the person requiring interpretive services, of this limitation. Further, in certain situations, such as bench conferences, the official reporter is responsible for ensuring that the realtime feed will not be available.

PROTOCOLS

Attorney Protocol

When providing services in the courtroom for an attorney, the CART provider/interpreter will:

- Report to the appropriate court staff, briefly explaining the role of a CART provider/interpreter and setup requirements;
- Communicate to the appropriate court staff the need for the CART provider/interpreter to be sworn or affirmed as an interpreter;
- Communicate to counsel the role, responsibilities and limitations of the CART provider/interpreter;
- Obtain necessary information for effective communication;
- Conduct a brief orientation with counsel on the associated hardware and software; and
- Notify the appropriate court staff when ready to proceed.

Juror Protocol

Once the juror services unit has been notified of the request for CART services, a CART provider/interpreter

will be assigned to the consumer and a meeting place arranged.

When reporting to the jury assembly room, the CART provider/interpreter will:

- Notify the assembly room clerk of his or her presence;
- Notify the assembly room clerk of the CART consumer's name, requesting to be advised of his or her arrival;
- Locate an appropriate area for equipment setup;
- Introduce himself or herself to the CART consumer;
- Provide the CART consumer with a brief overview of the role, responsibilities, and limitations of the CART provider/interpreter;
- Familiarize the CART consumer with the CART hardware and software;
- Interpret all jury orientation for the CART consumer;
- Be prepared to relocate as soon as the CART consumer receives his or her assignment;
- Remain in the jury assembly room, or within close proximity, in order to hear all announcements;
- Advise the CART consumer when his or her name is called, informing him or her of the assignment; and
- Remind the jury assembly room to contact the courtroom to inform the staff that a CART consumer, accompanied by a CART provider/interpreter, is in the jury panel.

In the courtroom, the CART provider/interpreter will:

- Report to the appropriate court staff outside the presence of the jury panel, briefly explaining the role of the CART provider/interpreter;
- Communicate to the appropriate court staff the need for additional preparation time and setup requirements;
- Communicate to the appropriate court staff the need for the CART provider/interpreter to be sworn or affirmed as an interpreter;
- Determine how the judge conducts voir dire;
- Obtain a copy of the jury random

list, ascertaining the CART consumer's position on the list;

- Obtain the judge's approval and set up the equipment in a location most conducive to interpreting the proceedings, keeping in mind the possible need to relocate during the voir dire process; and
- Accompany the CART consumer back to the jury assembly room when excused and remain with the CART consumer until he or she is reassigned or excused.

During a trial, the CART provider/interpreter will:

- Exit the courtroom along with the jury panel; and
- Adhere to the jury admonition.

During deliberations, the CART provider/interpreter will:

- Relocate equipment in the jury deliberation room to facilitate the interpretation of the deliberation process;
- Provide the jurors with a brief overview of the role, responsibilities, and limitations of the CART provider/interpreter;
- Interrupt, if necessary, to ensure effective communication;
- Interpret all readback conducted by the official court reporter, whether in the jury deliberation room or in open court;
- Relocate equipment in the courtroom once the jury has a verdict; and
- Accompany the CART consumer back to the jury assembly room when excused and remain with the CART consumer until he or she is reassigned or excused.

During deliberations, the CART provider/interpreter will not:

- Interject his or her opinions in the deliberation process;
- Answer any questions pertaining to the deliberation process; or
- Provide readback of courtroom proceedings to anyone, not even the CART consumer.

Defendant (Criminal) Protocol

The CART provider/interpreter will:

- Coordinate with the bailiff (if the defendant is in custody) and/or defense counsel in order to:
 - Establish proper security procedures;
 - Determine if defendant-counsel communication will be required outside of the courtroom and, if so, ascertain the location and set up equipment;
 - Establish the defendant's location in the courtroom during the proceedings and set up equipment;
- Keep confidential all conversations between counsel and the defendant;
- Advise counsel and the defendant of the role, responsibilities and limitations of the CART provider/interpreter; and
- Conduct a brief orientation with the defendant and counsel on the associated hardware and software.

Witness Protocol

The CART provider/interpreter must establish contact with counsel and will:

- Ascertain what services are required (i.e., pretrial interview, testimony, etc.);
- Determine the appropriate location for equipment setup;
- Keep confidential any information gained during the course of daily duties;
- Advise counsel and the witness of the role, responsibilities and limitations of the CART provider/interpreter; and
- Conduct a brief orientation with counsel and the witness on the associated hardware and software.

Interested Party Protocol

The CART provider/interpreter will:

- Report to the appropriate court staff, briefly explaining the role of a CART provider/interpreter;
- Communicate to the appropriate court staff the need for additional preparation time;
- Identify the best area for setup;
- Obtain necessary information for effective communication; and

- Conduct a brief orientation with the interested party on the associated hardware and software.
 - Advise the party and their counsel of the role, responsibilities, and limitations of the CART provider/interpreter;
 - Establish whether the party will be testifying and, if so, communicate with the judge the need to move equipment to the witness stand during the proceedings; and
- Party (Civil) Protocol**
- When providing services in the courtroom for a party in a civil action, the CART provider/interpreter will:
- Report to the appropriate court staff, briefly explaining the role of a CART provider/interpreter;
 - Advise the party and their counsel of the role, responsibilities, and limitations of the CART provider/interpreter;
 - Conduct a brief orientation with the party and their counsel on the associated hardware and software;
 - Obtain necessary information for effective communication;
 - Establish whether the party will be testifying and, if so, communicate with the judge the need to move equipment to the witness stand during the proceedings; and
 - Notify the appropriate court staff when ready to proceed.

**For More Information on CART
Communication Access Information Center**
www.cartinfo.org

NCRA's CART Special Interest Area
<http://cart.NCRAonline.org>

NCRA's Member Services and Information Center
800-272-6272 (TTY 703-556-6289)
msic@ncrahq.org

The Voice of Experience

"Working with the official reporter is integral in understanding that you, the CART provider, are not the official record, no way, no how. We are doing two very distinct jobs," says Deanna Baker, RMR, of Tucson, Ariz. Baker has provided CART in the court on several occasions and brought her experience to the creation of these Model Guidelines.

Providing CART in the courtroom, whether for a defendant or party to the proceedings; a juror, witness or attorney; or someone who has an interest in the proceedings, such as a relative to a defendant, requires preparation. And while getting a list of terms and witnesses may help, the real key is education — talking to the consumer, attorneys, bailiff and judge — and even the official reporter. "At least talk with the judge ahead of time to explain what is going on," advises Baker, especially if it is not practical to talk to everyone before the proceedings.

"The CART provider is working with a consumer providing access to the proceedings, which include conferences with their attorneys, clients, witnesses, [and describing] environmental sounds (gavel banging, fire alarm), etc.," Baker says. "The CART provider doesn't worry about when or if an exhibit is marked. If the CART provider is working with a juror, the CART provider joins the juror in deliberating; obviously the official reporter does not."

In a case in which Baker provided access for a defendant who is profoundly hard of hearing, one difference between the official reporter and the CART provider was immediately apparent to Baker. "During breaks I was available for discussions between counsel and the defendant, their witnesses, family members, etc.," she says. "This is where the official reporter could not participate."

In addition, the official reporter who was taking the trial pointed out other things that Baker had the ability to do which

the official reporter did not, Baker explains. "As an 'interpreter' I am writing for 100 percent comprehension by the defendant and not so concerned about the 100 percent verbatim, as is the official. I have the flexibility to paraphrase if need be, depending on the comprehension of the person reading. Again, official reporters are 100 percent verbatim."

But as with any branch of the court reporting profession, providing CART is not without its challenges. In another instance where Baker was providing CART for a juvenile defendant, she says, "The juvenile's mom, who was very vocal and abrasive and not being very patient waiting for the words to come up, was very agitated with the process. When the son was sentenced to a much longer term than mom expected, she lurched over me to grab her son and supposedly flee. Many flailing arms and legs and me in the middle!"

Although CART in the court setting is not like being the official court reporter, it's also unlike providing CART in the classroom. "A courtroom is a very intimidating place, and adding the obstacle of CART just adds to the pressure," says Baker. There are usually more speakers in a courtroom than in classroom or conference situations, where it's usually just the lecturer, or in a one-on-one situation, like a meeting with a doctor, she points out, so it is important to have speaker IDs for all players instead of just ">>" — and if you use Q&A banks instead, the consumer might miss out on who is speaking.

Like any branch of our profession, there are many challenges and situations that you could never have prepared for, so there is a clear need for the CART provider to always act with the utmost diligence — and to be as prepared as possible. *Deanna Baker, RMR, of Tucson, Ariz., was part of the task force which developed these guidelines.*