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I N S E N A T E

March 26, 2010

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the judiciary law, in relation to standards and waivers regarding qualified court interpreters

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 386 of the judiciary law, as renumbered by chapter  
2 649 of the laws of 1945 and as amended by chapter 259 of the laws of  
3 1909, is amended to read as follows:

4 S 386. Appointment and compensation of court interpreters generally.  
5 The county judge and the district attorney of the county may appoint one  
6 interpreter, who shall act as and be the court interpreter for such  
7 county. Such interpreter shall hold office during the pleasure of the  
8 county judge and district attorney and they shall appoint his OR HER  
9 successor in office. Said interpreter shall receive a salary to be  
10 fixed by the board of supervisors of said county, which shall be a  
11 charge upon the county, to be paid monthly, in the same manner as other  
12 county officials are paid. Said interpreter so appointed shall, before  
13 entering upon his OR HER duties file in the office of the county clerk,  
14 the constitutional oath of office, AND AN AFFIDAVIT UNDER OATH OR AFFIR-  
15 MATION TO MAKE A TRUE AND IMPARTIAL INTERPRETATION OF PROCEEDINGS IN AN  
16 UNDERSTANDABLE MANNER USING SUCH INTERPRETER'S BEST SKILLS AND JUDGMENT  
17 IN ACCORDANCE WITH THE STANDARDS FOR PROFESSIONAL CONDUCT AND ETHICAL  
18 BEHAVIOR FOUND AND REINFORCED IN THE UCS COURT INTERPRETER MANUAL AND  
19 THE COURT INTERPRETER CANONS OF PROFESSIONAL RESPONSIBILITY. COURT  
20 INTERPRETERS SHALL PARTICIPATE IN TRAINING PROGRAMS PROVIDED BY THE  
21 COURT SYSTEM FOR COURT PERSONNEL ON ETHICS, DOMESTIC VIOLENCE AND  
22 CULTURAL SENSITIVITY. The provisions of this section, however, shall  
23 not apply to the counties of New York, Kings and Queens, nor to any  
24 other county in which the appointment or compensation of court inter-  
25 preters therein is governed by a special or local act or by any special  
26 provision of a general act.

27 S 2. Section 387 of the judiciary law, as amended by chapter 15 of the  
28 laws of 1975, is amended to read as follows:

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 S 387. Temporary appointment of interpreters. If the services of an  
2 interpreter be required in any court and there be no unemployed official  
3 interpreter to act therein, the court may appoint an interpreter to act  
4 temporarily in such court. Such interpreter shall before entering upon  
5 his duties file with the clerk of the court the constitutional oath of  
6 office, AND AN AFFIDAVIT UNDER OATH OR AFFIRMATION TO MAKE A TRUE AND  
7 IMPARTIAL INTERPRETATION OF PROCEEDINGS IN AN UNDERSTANDABLE MANNER  
8 USING SUCH INTERPRETER'S BEST SKILLS AND JUDGMENT IN ACCORDANCE WITH THE  
9 STANDARDS FOR PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR FOUND AND REIN-  
10 FORCED IN THE UCS COURT INTERPRETER MANUAL AND THE COURT INTERPRETER  
11 CANONS OF PROFESSIONAL RESPONSIBILITY. COURT INTERPRETERS SHALL PARTIC-  
12 IPATE IN TRAINING PROGRAMS PROVIDED BY THE COURT SYSTEM FOR COURT  
13 PERSONNEL ON ETHICS, DOMESTIC VIOLENCE AND CULTURAL SENSITIVITY. The  
14 court shall fix the compensation of such interpreter at not more than  
15 twenty-five dollars per day for each day's actual attendance by direc-  
16 tion of the presiding judge or justice and such compensation shall be  
17 paid from the court fund of the county upon the order of the court.

18 S 3. The judiciary law is amended by adding two new sections 381 and  
19 382 to read as follows:

20 S 381. STANDARDS AND FUNCTIONS OF COURT INTERPRETERS. 1. A QUALIFIED  
21 INTERPRETER IS A PERSON WHO IS: (A) ABLE TO COMMUNICATE WITH NON-ENGLISH  
22 SPEAKING PERSONS TO ORALLY TRANSFER THE MEANING OF STATEMENTS TO AND  
23 FROM ENGLISH AND THE LANGUAGE SPOKEN BY A NON-ENGLISH SPEAKING PERSON;

24 (B) INTERPRET IN A MANNER THAT CONSERVES THE MEANING, TONE, LEVEL AND  
25 REGISTER OF THE ORIGINAL STATEMENT WITHOUT SUBSTANTIVE ADDITIONS OR  
26 OMISSIONS; AND

27 (C) PERFORMS HIS OR HER DUTIES IN CONFORMANCE WITH THE STANDARDS OF  
28 PROFESSIONAL CONDUCT AND ETHICAL BEHAVIOR FOUND AND REINFORCED IN THE  
29 UCS COURT INTERPRETER MANUAL AND THE COURT INTERPRETER CANONS OF PROFES-  
30 SIONAL RESPONSIBILITY.

31 2. ANY PERSON SERVING AS A COURT INTERPRETER PURSUANT TO THE  
32 PROVISIONS OF THIS ARTICLE SHALL, IN ANY PROCEEDING BEFORE A COURT,  
33 STATE AGENCY OR HEARING OFFICER, STATE OR SUBMIT SUCH PERSON'S QUALI-  
34 FICATIONS ON THE RECORD, UNLESS WAIVED OR OTHERWISE STIPULATED TO BY THE  
35 PARTIES OR COUNSEL TO THE PARTIES PRIOR TO SUCH PROCEEDING.

36 3. A NON-ENGLISH SPEAKING PERSON SHALL BE ENTITLED TO THE SERVICES OF  
37 A QUALIFIED COURT INTERPRETER APPOINTED BY A COURT OR STATE AGENCY IN A  
38 CRIMINAL OR CIVIL PROCEEDING, AND SUCH COURT OR STATE AGENCY SHALL,  
39 UNLESS WAIVED PURSUANT TO SECTION THREE HUNDRED EIGHTY-TWO OF THIS ARTI-  
40 CLE, APPOINT A QUALIFIED COURT INTERPRETER IN A CIVIL OR CRIMINAL  
41 PROCEEDING TO: (A) INTERPRET THE PROCEEDINGS TO A NON-ENGLISH SPEAKING  
42 PARTY;

43 (B) INTERPRET THE TESTIMONY OF A NON-ENGLISH SPEAKING PARTY OR  
44 WITNESS;

45 (C) ASSIST THE COURT, AGENCY OR HEARING OFFICER IN PERFORMING DUTIES  
46 AND RESPONSIBILITIES OF THE COURT, AGENCY OR HEARING OFFICER IN ANY  
47 PROCEEDING INVOLVING ONE OR MORE PARTIES WHO ARE NON-ENGLISH SPEAKING  
48 PERSONS.

49 S 382. WAIVER OF COURT INTERPRETER. 1. WAIVER OF THE RIGHT TO AN  
50 INTERPRETER BY A NON-ENGLISH SPEAKING PARTY TO A PROCEEDING SHALL BE  
51 EFFECTIVE ONLY WHEN APPROVED BY A JUDGE OR HEARING OFFICER AFTER SUCH  
52 NON-ENGLISH SPEAKING PARTY HAS CONSULTED WITH COUNSEL, RECEIVED ORAL  
53 COUNSEL FROM A JUDGE OR HEARING OFFICER IN OPEN COURT AS TO THE NATURE  
54 AND EFFECT OF SUCH WAIVER, AND HAS DEMONSTRATED, TO THE SATISFACTION OF  
55 SUCH JUDGE OR HEARING OFFICER, COMPREHENSION OF SUCH NATURE AND EFFECT  
56 AND THAT SUCH WAIVER IS KNOWINGLY AND VOLUNTARILY MADE. FOLLOWING

1 APPROVAL OF A WAIVER, A JUDGE OR HEARING OFFICER SHALL ENSURE THAT A  
2 RECITATION OF THE WAIVER PROCEDURE PURSUANT TO THIS SECTION IS MADE PART  
3 OF THE RECORD OF SUCH PROCEEDING.

4 2. THE FAILURE OF A NON-ENGLISH SPEAKING PERSON TO REQUEST AN INTER-  
5 PRETER SHALL NOT BE DEEMED A WAIVER OF SUCH RIGHT. ANY NON-ENGLISH  
6 SPEAKING PERSON MAY RETRACT A WAIVER MADE PURSUANT TO SUBDIVISION ONE OF  
7 THIS SECTION AT ANY TIME DURING THE PROCEEDING AND INDICATE HIS OR HER  
8 DESIRE TO BE ASSISTED BY A QUALIFIED INTERPRETER.

9 S 4. This act shall take effect immediately.