

RIAC2



CRIMINAL LAW

FAMILY LAW



IMMIGRATION LAW

April, 2017

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The Regional Immigration Assistance Center provides legal support for attorneys who represent indigent noncitizen clients in criminal and family court. Founded in the wake of Padilla v. Kentucky, there are six centers located in New York State. Region 2 covers sixteen counties in the central part of the state.

**RIAC2 is administered by the Criminal Division of the Oneida County Public Defender.*

Anatomy of a RIAC Advisal: Part 2 **GET A QUALIFIED, INDEPENDENT INTERPRETER!**

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Part 2

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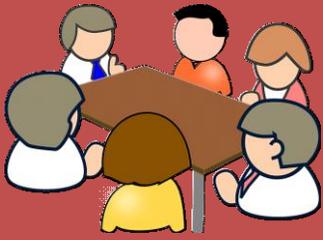
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“A lawyer who undertakes to represent a client with whom effective direct lawyer-client communication can only be maintained through an interpreter must consider the need for interpreter services and when necessary take steps to secure the services of a qualified interpreter.” Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 1995-12, July 6, 1995.

Courts routinely provide interpreters for any in-court proceedings, but only do so if they are aware of the defendant’s inability to communicate in English. Counsel must make the request and make sure the Court has provided an interpreter at each appearance.

Communication with clients outside of court must also be undertaken with an interpreter, yet many, if not most, attorneys, do not use qualified, independent interpreters for out-of-court conferences with clients and/or witnesses. Such services are required under the Sixth Amendment and can be compensated under New York County Law §722-c, which authorizes payment for “investigative, expert or other services” that are “necessary.”

“Effective assistance of counsel is impossible unless the client can provide his or her lawyer with intelligent and informed input.” *U.S. v. Quesada-Mosquera*, 816 F. Supp. 168 at 173 (E.D.N.Y. 1993), citing *Faretta v. California*, 422 U.S. 806, 820, 95 S. Ct. 2525, 2533, 45 L. Ed. 2d 562 (1975). *Quesada-Mosquera* involved eighteen Spanish-speaking defendants from different countries and cultures. Defense counsel in that case, who is fluent in Spanish, explained:



UPCOMING EVENTS:

March 31, 2017:

12 pm – 3 pm

BROOME CO PUBLIC DEFENDER

Basic Concepts in

“Crimmigration”: Immigration
Consequences in Criminal Court
Broome County Public Library,
1st Floor, 185 Court Street,
Binghamton, NY

Email dstrange@ocgov.net to
register.

April 6, 2017:

12:30 pm – 4:00 pm

TOMPKINS COUNTY ACP

“Defense Strategies in Criminal
and Family Court”

TC3 Ithaca Extension Center,
118 Tioga Street, 6th Floor, Rm
611 Ithaca, NY

April 14, 2017:

Sharon Ames will be at the
**Onondaga County Assigned
Counsel Program** offices in
Syracuse on during normal
business hours to answer any
questions from attorneys with
pending cases involving non-
citizens. A lunch hour (bring
your own lunch) Q & A will also
be held, and she will discuss
local jail practices and the new
ICE enforcement policies. If you
would like to schedule a time to
meet with her on that day,
please call, email or send her a
text to reserve a time slot.

“The cultural differences are ...dramatic between what we monolithically construe as our Anglo-Saxon or Judeo-Christian or American system, [and foreign cultures. We cannot say that] someone ...who grew up in a Puerto Rican family in New York or a Cuban American family in Florida ...speak[s] the same language as someone of Italian descent from Argentina, [or] someone from the closed Indian society of Quito or La Paz....

[T]hese people come from a country [Colombia] where the Napoleonic Code is in force.... Possession is actual; it's never constructive. The concept of conspiracy doesn't exist. The word "sentence" means any decree of the court. "Juicio" means trial.... [T]o [defendants] "juicio" is every time they come to court.” *Quesada-Mosquera, supra*, at 172.

The use of a friend or relative who accompanies the defendant is not acceptable for the reasons outlined above. The friend or relative may be able to speak or understand English, but when viewed through the lens of his or her culture, inaccuracies such as those explained above can be common, resulting in faulty interpretation and a misunderstanding of the entire process.

The RIAC can help with any difficulties counsel may face in getting orders for interpretation services or obtaining a qualified interpreter.

Here are some Dos and Don'ts when using interpreters:

- DO** have the interpreter wait in your office until the client arrives.
- DO** speak as if you are talking directly with your client. The interpreter will interpret your words as if you are having a conversation with your client.
- DO** take time for introductions.
- DO** allow extra time for any meetings.
- DO** provide documents to the interpreter ahead of time.
- DO** discuss confidentiality.
- DO** avoid using long and convoluted sentences, acronyms, jargon or slang.
- DO** check for understanding.

- DON'T** rely on family members or friends to act as interpreters.
- DON'T** make assumptions about the client's ability to communicate in English.
- DON'T** leave the client alone with the interpreter.
- DON'T** allow side conversations.