Civil case hypo:

PI case – slip and fall at an amusement park. Plaintiff, a 45 year old male, fell while standing on the top step – the steps are raised cement blocks set in dirt; Plaintiff alleges that the block he was standing on tilted causing him to fall; Plaintiff sustains severe ankle injury as a result. The only witnesses to the fall are Plaintiff and his spouse. Each side has multiple experts: construction and design experts regarding the steps; reconstruction experts as to the accident; and medical experts as to the injuries and future treatment. Plaintiff has had two post injury ankle operations, and physical therapy. Primary issues: causation - negligent design, construction and maintenance of the steps; comparative negligence. Secondary issue: Pain and suffering and future medicals, including additional surgeries. Plaintiff's offer: $1M; Defense's offer $200k. Medicals and lost wages are $100,000. You are the judge pro tem at the Settlement Conference. The case is set for jury trial.

1. **Questions:**
    a. How do you approach the case at the beginning of the conference?
    b. What strategies or techniques will you employ during the course of the conference if you find:
        1. **First situation:** Counsel is professional and reasonable. Before the accident, Plaintiff had an active lifestyle, and 2 years after the accident, has not returned to full activities despite the surgeries and diligent rehabilitation. Plaintiff's occupation is not affected by the injuries, but he is very frustrated. Plaintiff "will accept nothing less" than $1M. Defense carrier is equally unwilling to budge.
        2. **Second situation:** Counsel is combative and attack each other's failure to cooperate, etc. They immediately announce that they are hopelessly apart and the case will be tried.

FAMILY LAW CASE SETTLEMENT HYPO

Husband and wife have been married for 12 years. They have been separated for 18 months.

The parties have three children together, ages 2, 5 and 8. The parents share joint legal and physical custody with Wife having the children approximately 60% of the time and Husband having the children approximately 40% of the time. This custody split is in consideration of Husband's work schedule. If both parties worked full-time, then the parents would share an equal timeshare of the children.

Husband is employed outside of the home as a software engineer earning $175K per year. He has an advanced degree. Wife is not employed outside of the home—she is a homemaker and cares for the three children. Wife has an advanced degree in marketing, but she has not been employed outside of the home since the parties married.

Husband has been paying temporary child and spousal support. Each party is incurring debt to support his/her own individual monthly obligations. Wife continues to reside in the family residence. Husband resides in a one bedroom apartment with his new girlfriend and Husband has had a child with the girlfriend. That child is 18 months old. Wife indicates that if the family residence is sold that she will not be able to afford housing in this area and she will have to relocate to Tracy with the children where housing is considerably cheaper. Husband wants the house sold and will oppose any attempt by Wife to move with the children to Tracy.

Husband wants Wife to return to work immediately. Wife is indicating that she needs to update her skills as she has not worked in 12 years (since the date of marriage). Additionally, she indicates that child care costs for the children will be significant if she returns to work.

Husband wishes to bifurcate marital status immediately as he wishes to marry the mother of his new child. Wife is opposing bifurcation indicating that if she bifurcates that Husband will not have any incentive to resolve these issues as all he wants to do is get married to the mother of his new child.

The attorneys for these parties do not get along. Multiple email skirmishes have erupted between them. They are unable to speak with one and other in a civil way by telephone. While you are meeting with them they are being disagreeable and disrespectful with one and other and with you.

1. As the temporary judge, how do you de-escalate the conflict between the attorneys and have them start focusing on solving the problems of this family?

2. Which issues would you tackle first? Would you be concerned about addressing emotional issues first such that further discussion might not be productive? Would you start with the less emotional issues and then move to the more volatile issues and risk the agreements that you already have?

3. What can you do as a temporary judge to help these folks move toward resolution?

Examples of Recent Complaints against Pro Tems in Santa Clara County

While most complaints arise from a party's disagreement with the judgment entered, those relating to fairness, conduct or demeanor of the judge are as follows:

1. **Fairness and Impartiality**.
    a. Gender bias favoring one party over the other. Examples include sexual overtones to a party; a party was flirting with the judge and dressed inappropriately, and "the judge should know better than to fall for her antics."
    b. Was racist or sexist; one party was same sex or ethnic background as the judge.
2. **Conduct and demeanor**.
    a. Judge did not let party explain his/her case; party not given a chance to present case; asked questions and did not allow a statement to be made.
    b. Judge was not present at the moment, was annoyed, uninterested, unengaged and inattentive.
    c. Judge was rude, interrupted one party more than the other. Judge was nicer to one party; interrupted one party more than the other.
    d. Appeared to be overwhelmed by the evidence.

BENCH CARD:
WORKING WITH COURT INTERPRETERS

JUDICIAL COUNCIL OF CALIFORNIA

HOW DO I DETERMINE IF A PERSON NEEDS AN INTERPRETER?

- Interpreter was needed at prior proceeding
- Limited-English-proficient (LEP) person requests interpreter
- Attorney requests an interpreter
- Person is not able to communicate because of an apparent language barrier
- Court staff determines there is a need

SAMPLE QUESTIONS TO ASSESS UNDERSTANDING OF ENGLISH:
(Ask on the record. Avoid questions easily answered with yes or no replies.)

- What is your name?
- How did you come to court today?
- What kind of work do you do?
- How did you learn English?
- What is the reason for you being in court today?
- You may have the right to a free interpreter to help you communicate and understand the proceedings today. Would you like the help of an interpreter?

WHAT TO DO IF I DETERMINE A PERSON NEEDS AN INTERPRETER?

1. Before the proceeding, request a certified or registered interpreter.
2. If no certified or registered interpreter is available after diligent search (form INT-120), you may for good cause appoint provisionally qualified (form INT-110) interpreter for proceeding. CRC, rule 2.893; Gov. Code, § 68560 et seq.
3. If interpreter is NOT provisionally qualified, you may appoint to prevent burdensome delay (or other unusual circumstance) only for a brief, routine matter. Indicate on record:
   a. Party waives certified/registered and provisionally qualified interpreter;
   b. Good cause to appoint noncertified/nonregistered, nonprovisionally qualified interpreter; and
   c. Interpreter is qualified to interpret the proceeding.

See forms INT-100-INFO, INT-110, and INT-120 for provisional qualification process.

SAMPLE VOIR DIRE QUESTIONS TO ASSESS NONCREDENTIALED INTERPRETER QUALIFICATIONS:

- What training or credentials do you have as an interpreter?
- How did you learn English?
- How did you learn your other language?
- What is your experience interpreting in court? What types of cases?
- Describe your familiarity with legal terminology.
- Do you know any of the parties in this case? If so, how?
- Are you able to remain neutral and impartial?
- Do you understand you are only here to facilitate communication and should not give advice or your opinion?

To the parties: Does either party have any questions for the interpreter?

Who can get an interpreter?

LEP party, witness, or person with significant interest or involvement in a case or with legal decisionmaking authority, or whose presence or participation in the matter is necessary or appropriate as determined by a judicial officer.

Examples: Victims, legal guardians, or custodians of a minor or an adult involved as a party, witness, or victim.

Who cannot serve as interpreter?

- Minors, with no exception
- Persons with conflict of interest
- Bilingual staff

The court may appoint an interpreter hired by a party

The court may exercise its discretion to appoint an interpreter hired by a party, even if a court-provided, qualified interpreter is available (Gov. Code, § 71802(b)(3).)

When appointing an interpreter hired by a party, the judge must ensure the impartiality of the interpretation and may choose to appoint a court-provided interpreter for certain aspects of the proceeding, such as witness testimony.

If the party-retained interpreter is not a certified or registered interpreter, the court will need to provisionally qualify the interpreter pursuant to the procedures in rule 2.893 of the California Rules of Court.

Waiver of the use of any interpreter by the LEP person is rare. Waiver must be:

- Knowing, intelligent, and voluntary;
- After consultation with counsel, if represented;
- Approved by judicial officer, in his or her discretion;
- Entered on record or other writing; and
- Revocable by party or judicial officer at any time.

BENCH CARD: WORKING WITH COURT INTERPRETERS

COMMUNICATING THROUGH INTERPRETERS

BEFORE THE PROCEEDING BEGINS

- Allow the interpreter to converse briefly with the LEP person to ensure understanding of accents, dialect, or pronunciation differences.
- Whenever possible, allow the interpreter to review the court file prior to the hearing, to become familiar with names, dates, and technical vocabulary.
- If you anticipate a long proceeding (one hour or more), consider appointing two or more interpreters.

DURING THE PROCEEDING

- Instruct all participants to speak loudly and clearly, and to speak one at a time.
- Speak directly to the LEP person, not to the interpreter.
- Speak/read slowly and clearly, avoiding compound questions, double negatives, jargon, and legalese.
- Pause during consecutive interpretation (including witness testimony) so the interpreter can keep the pace.
- Don't ask the interpreter independently to explain anything said by the party.
- Take into account the fatigue factor. Allow for breaks or alternate interpreters every 30 minutes.
- Monitor the interpreter so that side conversations with the LEP person do not take place.
- Check in periodically with the LEP person to make sure he or she understands. Do so with substantive questions, not just a simple "yes" or "no."
- Recognize that court proceedings can be confusing and intimidating for a non-English speaker since other countries' legal systems and concepts often vary from those of the U.S.

SAMPLE LANGUAGE TO EXPLAIN THE INTERPRETER'S ROLE

FOR THE PARTY/WITNESS

The court interpreter is a neutral person who is here only to interpret the proceedings and allow us to communicate. The interpreter will interpret only what is said, without adding, omitting, or summarizing anything. The interpreter will say in English everything you say in your language, so do not say anything you do not want everyone to hear.

When speaking, please speak directly to the attorney or to me. Do not ask the interpreter for advice. If you do not understand the interpreter, then tell me. If you need a question or answer repeated, please tell me. Wait until the entire question has been interpreted before you answer, even if you understand some English. And speak only in your language to avoid confusion. Do you have any questions?

FOR THE JURY

You may hear languages other than English during this trial. You must only consider the evidence provided through the official court interpreter. Some of you may understand the non-English language used, but it is important for all jurors to consider the same evidence. Therefore, you must base your decision on the evidence presented in the English interpretation. You must not rely in any way on your own interpretation of the witness' words.

REQUIRED STATEMENTS ESTABLISHING AN INTERPRETER'S CREDENTIALS ON THE RECORD

FOR CERTIFIED/REGISTERED INTERPRETERS (GOV. CODE, § 68561(g))

1. Name of interpreter (as listed on court interpreter certification or registration)
2. Current certification/registration number
3. Statement that identification was verified with badge *or* certification/registration documentation and photo ID
4. Language to be interpreted
5. Statement that oath was administered or on file with court

FOR NONCERTIFIED/NONREGISTERED INTERPRETERS (GOV. CODE, § 68561(f))

1. Certified/registered interpreter not available (form INT-120)
2. Name of qualified interpreter
3. Statement that good cause exists and required procedures and guidelines were followed (forms INT-110, INT-120)
4. Statement that oath was administered pursuant to required procedures and guidelines

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