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OFFICE OF
APPELLATE COURTS

AUG 2 1995

FILED

August 1, 1995

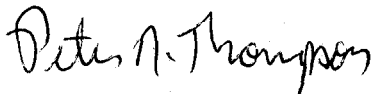
Frederick Grittner
Clerk of the Appellate Courts
230 State Capitol
St Paul MN 55155

RE: Proposed Rule and Code of Professional Responsibility for Interpreters.
C9-94-1898; CX-89-1863

Dear Clerk Grittner:

I enclose for filing 12 copies of my comments in the above entitled matter.

Very truly yours,



Peter N. Thompson

cc

Enclosures

STATE OF MINNESOTA

IN SUPREME COURT

C9-94-1898

CX-89-1863

OFFICE OF
APPELLATE COURTS

AUG 2 1995

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In re Hearing to Consider
Proposed Code of Professional
Responsibility for Interpreters
In the Minnesota State Court
System and Proposed Amendments
to the General Rules of Practice
for the District Courts.

To: The Honorable Chief Justice and Associate
Justices of the Minnesota Supreme Court

**1. General Rules of Practice for the District Courts
Proposed Rule 8. Interpreters**

I respectfully request that before approving the proposed Rule 8 of the General Rules of Practice for the District Courts the Court add the following language:

“After swearing in the interpreter, the trial judge shall determine whether the interpreter has the necessary qualifications to interpret accurately and impartially. The inquiry should include, but not be limited to: 1) the training and experience of the interpreter; 2) the interpreter’s familiarity with the relevant foreign language and appropriate dialects; 3) the interpreter’s familiarity with the English language, court procedures, and relevant terms that will be involved in the litigation; 4) the interpreter’s understanding of his or her obligations to testify fully and accurately as set forth in the Code of Professional Responsibility for Interpreters; 5) the interpreter’s relationship to the parties, the issues in the case or other matters that might give rise to a potential bias. The trial judge should make the initial inquiry but should permit

the parties to submit additional questions for the court to ask or permit the parties to directly question the interpreter to establish the foundation for the interpreter's testimony."

The proposed rule addresses when an interpreter can be removed by the court, but says nothing about the court's responsibility to ensure that the interpreter is qualified. Furthermore, the commentary makes no reference to the trial judge's duty to ensure that an interpreter is qualified before permitting the interpreter to provide testimony. Minn. R. Evid. 604 provides clearly, "An interpreter is subject to the provisions of these rules relating to the qualification as an expert." Minn. R. Evid. 702 allows experts to testify only if they are qualified by "knowledge, skill, experience, training or education."

The key to a fair trial is to ensure that the interpreter is qualified and understands his or her obligations as an interpreter before allowing the interpreter to present testimony. In my experience, trial judges do not scrutinize the qualifications of interpreters, and raising the issue on appeal is futile. I recommend amending the proposed rule to directly inform trial judges about this important duty.

2. Canon 3 of the Code of Professional Responsibility for Interpreters.

The commentary to Canon 3 of the Code of Professional Responsibility for Interpreters suggests that the fact that a proposed interpreter is the attorney in the case at issue (subd. 7) or counsel for a party involved in the proceedings (subd. 1) would not "alone disqualify an interpreter from providing services as long as the interpreter is able to render services objectively." I urge the Court to amend the Canon to prohibit

an attorney representing a party in litigation from serving as an interpreter in that litigation, except in non-jury trials on non-controversial issues.

The status and responsibilities of “attorney of record” should “alone” without further inquiry disqualify the attorney from serving as an interpreter except in a non-jury trial on a non-controversial issue. The dual role of court interpreter and advocate for the client presents a serious conflict of interest. See Minn. Code of Prof. Conduct 3.7. A lawyer representing a client in litigation should not serve as an interpreter for the client or for witnesses testifying for or against the client.

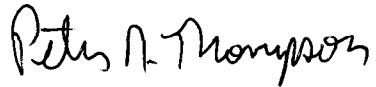
I further recommend that the commentary to Canon 3 be amended to preclude police officers or interpreters who have worked for the police in investigating the case, from serving as interpreters at a criminal trial. At trial the state is in an adversary proceeding with the defendant. Interpreters who are police officers or agents of the police are not perceived as neutral but as adversarial to the defendant. I would also consider disqualifying any interpreter hired by the defense in a criminal case or hired by either party in a civil case, but such an approach may be impractical.

Finally I am puzzled by the statement in the commentary that “An Interpreter may serve if the judge and all parties consent.” What does this mean? Given a literal reading it says nothing or very little. Obviously an interpreter may serve if the judge and parties consent. Should the statement be read in the context that an interpreter who otherwise should be disqualified for bias may ethically serve if the bias is disclosed and the parties consent? What if one party does not consent? Does it mean that if either party objects for any reason the interpreter ethically may not serve even if the judge determines the interpreter is qualified to serve? I ask that the Court review

this language and amend it to express clearly the intent of the Canon.

I thank the Court for the opportunity to comment.

Respectfully submitted,

A handwritten signature in cursive script that reads "Peter N. Thompson".

Peter N. Thompson
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Dated: August 1, 1995