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March 28, 1997

OFFICE OF
APPELLATE COURTS

APR 9 1997

FILED

Minnesota Supreme Court
25 Constitution Avenue
St. Paul, MN 55155

Re: Proposed Amendments to Rule 8 of the General Rules of Practice (related to the appointment of court interpreters)

Dear Justices:

On February 20, 1997, the Supreme Court Advisory Committee on Court Interpreters approved proposed amendments to Rule 8 of the General Rules of Practice and recommended them for review by the Supreme Court. A copy of the Committee's report is enclosed. An electronic version is being supplied to clerk of the appellate court.

The Advisory Committee thanks the Court for your support of its work and activities. Please inform us of an concerns or questions you may have related to the proposed amendments to Rule 8 of the General Rules of Practice.

Very truly yours,

ROBERTA J. CORDANO
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Supreme Court Advisory Committee
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AG:68168 v1

STATE OF MINNESOTA
IN SUPREME COURT
C9-94-1898

In re:

Minnesota Court Interpreter Advisory Committee

Recommendations of Minnesota Court Interpreter Advisory Committee

March 31, 1997

Hon. Paul H. Anderson, Chair

Joy Bartscher, Saint Paul
Mary Biermaier, Saint Paul
Beatriz Cabrera, Minneapolis
Leonardo Castro, Mankato
Roberta J. Cordano, Saint Paul
Dr. Yang Dao, Brooklyn Park
Sue K. Dosal, Saint Paul
Dr. Bruce Downing, Minneapolis

Hon. Jeffrey L. Flynn, Worthington
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MINNESOTA COURT INTERPRETER ADVISORY COMMITTEE

Proposed Amendments to Rule 8 of the General Rules of Practice for the District Courts

HISTORY

Essentially, two events prompted the Supreme Court Interpreter Advisory Committee (“advisory committee” or “committee”) to undertake the task of reviewing Rule 8 to determine whether it should be amended. The first was a public hearing held by the advisory committee on June 14, 1996. At this public hearing, the committee heard testimony from interpreters about their experiences in the field since Rule 8 was implemented on January 1, 1996. The committee learned from their testimony that, among other things, two trends were developing. First, some interpreters who were on the statewide roster and who had completed the language proficiency examinations (primarily Spanish examinations) were not being hired by courts. Many courts were still using interpreters who were on the statewide roster, but had not made any efforts to take the proficiency examinations offered by the State Court Administrators. Thus, interpreters with demonstrated proficiency in court interpreting were not being sought out or hired by courts. Interpreters testified that the current system does not provide any incentive for interpreters to take the proficiency examinations offered by the State Court Administrator’s Office and become certified because Rule 8 does not require courts to use certified court interpreters.

Second, the advisory committee learned that some courts were using sign language interpreters who did not possess minimum certification credentials from the Registry of Interpreters for the Deaf (RID), a long-standing professional organization that has been certifying sign language interpreters for nearly 20 years. Specifically, these sign language interpreters did not possess a Certificate in Transliteration and a Certificate in Interpretation or an equivalent certification from RID. Sign language interpreters have worked hard for many years to educate the courts and the legal system about the qualifications of sign language interpreters. As a result, we have seen an increasing number of courts establish a practice of using only RID-certified sign language interpreters. The experience with sign language interpreters was also troubling for

another reason: many people are striving to increase the level of skill and quality of spoken language court interpreters to match that of many sign language court interpreters in Minnesota. The success and experience of sign language interpreters has been a model to others in the field of interpreting. Consequently, the advisory committee determined that we should continue to encourage our courts to use only RID-certified sign language interpreters, until a court certification test is approved for sign language court interpreters.

The second event was the Supreme Court's promulgation of the Rules on Certification of Court Interpreters on September 18, 1996. After this occurred, the advisory committee discussed how we can encourage interpreters to invest time and resources into becoming certified. It became clear to the committee that unless interpreters are rewarded and recognized for their efforts to become certified, we may not see much improvement in the quality of interpreting in our courts. Therefore, in order to continue to improve the quality and availability of interpreters, the committee decided that courts must be required to use the interpreters who have invested in developing their court interpreting skills and who have demonstrated that they are proficient at court interpreting.

AMENDMENTS TO RULE 8

Although the advisory committee comments in the proposed amended Rule 8 explain the reasons for the amendments to the Rule, below is a list of most of the amendments that are being proposed and a brief discussion of the purpose(s) of the amendments.

1. Requirements for Interpreters to be listed on the statewide roster, Rule 8.01:

Essentially three changes were made to this Rule. First, the statewide roster will contain three "categories" of interpreters: (a) Certified Court Interpreters; (b) Non-certified Court Interpreters; and (c) Non-certified Sign Language Court Interpreters. Second, interpreters must pass the ethics examination before they are eligible to be listed on the statewide roster. Third, to be eligible to be listed on the statewide roster, non-certified sign language court interpreters are required to possess two particular certificates from RID, or an equivalent certification.

Purpose of Amendments:

1) Establishing 3 “categories” of interpreters: Rule 8, as it is currently written, does not distinguish between certified court interpreters and non-certified court interpreters who satisfy the minimum requirements to be listed on the statewide roster. Amending the Rule as proposed will allow the State Court Administrator to categorize the statewide roster in a manner that will be most useful to court administrators and the public. For example, court administrators will be able to look to the list of certified court interpreters first to see if there are any certified court interpreters in a particular language. If one or more certified court interpreters in a particular language are on the statewide roster, the court administrator can try to obtain one of them. However, if there are no certified court interpreters in a language, the court administrator may look to the list of non-certified interpreters. Because sign language interpreters are also required to be certified by RID, it is easier to maintain a separate list for this group.

2) Requiring Interpreters to Pass the Ethics Examination: As stated in the Advisory Committee Comment, this change will ensure that court interpreters on the statewide roster have a demonstrated knowledge of the Code of Professional Responsibility, instead of only a sworn affidavit that they’ve read the Code of Professional Responsibility as required under the current Rule 8.

3) Requiring Sign Language Interpreters to Possess C/T and C/I Certificates from RID: Because sign language interpreters have had a national testing system for nearly 20 years, and because of the general availability of RID-certified sign language interpreters throughout Minnesota, we will be able to ensure that courts use minimally qualified sign language interpreters. See Advisory Committee Comments for more details.

2. Appointment of Court Interpreters, Rule 8.02:

This process has been substantially revised. The previous rule only required that courts appoint an interpreter listed on the statewide roster unless good cause is found and entered on the record. The proposed amendments outline a three-step process for appointing court interpreters. First, Rule 8.02(a) requires courts to use certified court interpreters. Only after making “diligent efforts” to obtain a certified interpreter and finding “none to be available,” may a court appoint a non-certified court interpreter who is on the statewide roster pursuant to Rule 8.02(b). In rare

cases, when non-certified court interpreters on the statewide roster cannot be found or are not available, Rule 8.02(c) permits a court to appoint a non-certified court interpreter not on the statewide roster.

Purpose of Amendments:

1) Requiring courts to appoint certified interpreters: The primary purpose of the amended 8.02(a) is to ensure that courts use certified interpreters whenever possible. This amendment will reinforce the Supreme Court's commitment to the interpreter certification process and the improvement of the quality of interpreters in Minnesota courtrooms. Likewise, people interested in becoming certified are provided with some assurance that courts will use certified interpreters.

2) Stating that certified interpreters are presumed to be competent: Rule 8.02(a) also provides that certified court interpreters are presumed to be competent, however, it also provides that a court may, at any time, make further inquiry into the appointment of a particular interpreter. The purpose of this amendment is to hopefully help prevent unreasonable or perpetual objections from being made by counsel in proceedings involving interpreters.

3) Requiring courts to make "diligent" efforts to obtain certified court interpreter prior to appointing non-certified interpreter if "none [are] available": The State of New Mexico has a similar provision in their statutes related to the appointment of interpreters. While 8.02(a) clearly requires courts to use certified court interpreters, 8.02(b) permits courts to use non-certified court interpreters in the event that no certified court interpreters are available. The phrase "diligent efforts" places a burden on courts to locate a certified interpreter before they can hire a non-certified court interpreter on the statewide roster. Rule 8.02(b) responsibly gives courts some flexibility because of the limited number of certified court interpreters available at this time.

The Court should be aware that the advisory committee discussed at length whether the word "reasonably" should be inserted before the word "available" in Rule 8.02(b). The majority of the committee voted not to include the word because of concerns that courts would use costs or other reasons to not hire a certified interpreter. There was strong sentiment that the phrase would create a loophole permitting court administrators to evade the intent of this rule. The concerns of some advisory committee members that courts may refuse to slightly modify a schedule to accommodate the schedule of a certified court interpreter was addressed in the

Advisory Committee Comment. (The Comment states that courts may need to consider making scheduling adjustments in order to secure a certified court interpreter.) The advisory committee is aware, however, that the Comments are not approved by the Court.

Related to this, please also note that in the Advisory Committee Comment to Rule 8.02, courts are encouraged to seek the services of certified court interpreters who are located outside of their district if none can be found within its own district. Obviously, this is not mandatory, but it reinforces the intent of the Rule, which is to encourage the use of certified court interpreters whenever possible to ensure that the users of interpreter services receive accurate information during court proceedings.

4) Limiting the use of non-certified court interpreters not on the statewide roster: Courts should use non-certified court interpreters not on the statewide roster only when no certified or non-certified court interpreters on the statewide roster can be found. This should occur in very few situations, but because the current certification system is so new, this provision is necessary to allow courts to deal with situations we cannot anticipate at this time.

5) Requiring that only sign language interpreters who possess C/I and C/T certificates from RID be used by courts: The rationale for this is explained above and in the Advisory Committee comments.

3. Disqualification of Interpreters from a Proceeding, Rule 8.03:

The advisory committee's recommendations do not make any substantive amendments to this rule. The first sentence of the rule is clarified by adding that interpreters can only be disqualified for "engaging in" the "conduct" identified.

EFFECTIVE DATE; OTHER ISSUES

Please note that this rule does not address when an interpreter must be appointed or who pays for the interpreter in certain proceedings. These issues are being addressed by the Advisory Committee. However, because these issues are complicated and involve the analysis of other laws and rules currently in place, the Advisory Committee feels further study of these issues must be done before they can be addressed in this or another rule. We hope to have further

recommendations on these issues for the court by early 1998.

Last, but not least, the Advisory Committee recommends an implementation date of **January 1, 1998**. This will give the Advisory Committee sufficient time to educate courts, judges, administrators and attorneys about the new amendments to Rule 8. And, perhaps more importantly, extending the implementation date to next year will allow courts and counties to adjust their budgets to anticipate the cost of court interpreter services.

AMENDMENTS TO THE
GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

1 **RULE 8. INTERPRETERS**

2 **Rule 8.01 Statewide Roster**

3 The State Court Administrator shall maintain and publish annually a statewide roster list
4 of interpreters which shall include:

5 (a) **Certified Court Interpreters:** This shall be a list of certified court interpreters
6 who have satisfied all certification requirements pursuant to the Minnesota Supreme Court's Rules
7 on Certification of Interpreters.

8 (b) **Non-certified Court Interpreters:** This shall be a list of non-certified court
9 interpreters, not including sign language interpreters, who have not satisfied the requirements of
10 the Minnesota Supreme Court's Rules on Certification of Court Interpreters, but who may possess
11 interpreting credentials from other governmental agencies or professional associations and who
12 have: (1) ~~successfully~~ completed the interpreter orientation program sponsored by the State Court
13 Administrator; and (2) filed with the State Court Administrator a written affidavit agreeing to be
14 bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court
15 System as the same may be amended from time to time; and (3) received a passing score on a
16 written ethics examination administered by the State Court Administrator.

17 (c) **Non-certified Sign Language Court Interpreters:** This shall be a list of sign
18 language court interpreters who have satisfied the requirements set forth in Rule 8.01(b) and possess,
19 at a minimum, both a Certificate of Transliteration and a Certificate of Interpretation from the
20 Registry of Interpreters for the Deaf or an equivalent certification from the Registry of
21 Interpreters for the Deaf or another organization that is approved by the State Court
22 Administrator.

23 **Advisory Committee Comment 1997~~5~~ Amendment**

24 It is the policy of the state to provide interpreters to litigants and witnesses in
25 civil and criminal proceedings who are handicapped in communication. Minn. Stat. §§
26 611.30 -32 (199~~6~~4); Minn. R. Crim. P. 5.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2;

1 Minn. Stat. § 546.44, subd. 3 (1996); *see also* 42 U.S.C. § 12101; 28 C.F.R. Part 35, §
2 130 (prohibiting discrimination in public services on basis of disability).

3 To effectuate that policy, the Minnesota Supreme Court has initiated a statewide
4 orientation program of training for court interpreters and promulgated the Rules on
5 Certification of Court Interpreters. Pursuant to Rule 8.01, the State Court Administrator
6 has established a statewide roster of court interpreters who have completed the orientation
7 program on the Minnesota court system and court interpreting and who have filed an
8 affidavit attesting that they understand and agree to comply with the Code of Professional
9 Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on
10 September 18, 1995. The creation of the roster is the first step in a process that is being
11 undertaken to ~~improve~~ ensure the competence of court interpreters. To be listed on the
12 roster, a non-certified court interpreter must attend an orientation course provided or
13 approved by the State Court Administrator. The purpose of the orientation is to provide
14 interpreters with information regarding the Code of Professional Responsibility, the role of
15 interpreters in our courts, skills required of court interpreters, the legal process, and
16 legal terminology. Inclusion on the roster only ensures that an interpreter has had
17 minimal exposure to the requirements of court interpreting and an understanding of the
18 court system in Minnesota. Merely being listed on the roster does not certify or
19 otherwise guarantee an interpreter's competence.

20 In 1997, two key changes were made to this rule. First, interpreters are
21 now required to receive a passing score on the ethics examination before they are eligible
22 to be listed on the Statewide Roster. This change was implemented to ensure that court
23 interpreters on the Statewide Roster have a demonstrated knowledge of the Code of
24 Professional Responsibility.

25 Second, to be eligible to be listed on the Statewide Roster, non-certified sign
26 language court interpreters are required to possess certificates from the Registry of
27 Interpreters for the Deaf (RID), which demonstrate that the interpreter has minimum
28 competency skills in sign language. This change was recommended by the Advisory
29 Committee because of reports to the Committee that courts were hiring sign language
30 interpreters who completed the orientation training, but who were not certified by RID.
31 This practice was troubling because prior to the promulgation of Rule 8, courts generally
32 adopted the practice of using only RID certified sign language interpreters to ensure a
33 minimum level of competency. Unlike most spoken language interpreting fields, the field of
34 sign language interpreting is well established with nationally developed standards for
35 evaluation and certification of sign language interpreters. Because of the long history of
36 RID, its certification program, the availability of RID certified sign language interpreters
37 in Minnesota and the recent incidents when courts have deviated from their general
38 practice of appointing RID certified sign language interpreters, the Advisory Committee
39 determined that it is appropriate and necessary to amend Rule 8 to maintain the current
40 levels of professionalism and competency among non-certified sign language court
41 interpreters.

42 **Rule 8.02 Appointment**

43 **(a) Use of Certified Court Interpreter.** Whenever an interpreter is required to be

1 appointed by the court, the court shall appoint only a certified court interpreter who is those
2 individuals included listed on the statewide roster of interpreters established by the State Court
3 Administrator under Rule 8.01, except as provided in Rule 8.02(b) and (c). A certified court
4 interpreter shall be presumed competent to interpret in all court proceedings. The court may, at
5 any time, make further inquiry into the appointment of a particular certified court interpreter.
6 Objections made by a party regarding special circumstances which render the certified court
7 interpreter unqualified to interpret in the proceeding must be made in a timely manner, unless the
8 good cause is found and entered on the record by the court. For purposes of this rule, good cause
9 includes, but is not limited to, a determination that given the totality of the circumstances,
10 including the nature of the proceedings and the potential penalty or consequences involved, the
11 services of an interpreter on the statewide roster are not reasonably available to the court. In all
12 cases, the court shall make a determination, on the basis of the testimony or stated needs of the
13 person whom the interpreter will assist, that the proposed interpreter is able to accurately interpret
14 all communications to and from such person in that particular proceeding.

15 **(b) Use of Non-certified Court Interpreter on Statewide Roster.** If the court has
16 made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found
17 none to be available, the court shall appoint a non-certified court interpreter who is otherwise
18 competent and is listed on the Statewide Roster established by the State Court Administrator
19 under Rule 8.01. In determining whether a non-certified court interpreter is competent, the court
20 shall apply the screening standards developed by the State Court Administrator.

21 **(c) Use of Non-certified Court Interpreter Not On The Statewide Roster.** Only after
22 the court has exhausted the requirements of Rule 8.02(a) and (b) may the court appoint a non-
23 certified interpreter who is not listed on the Statewide Roster and who is otherwise competent.
24 In determining whether a non-certified interpreter is competent, the court shall apply the
25 screening standards developed by the State Court Administrator. In no event shall the court
26 appoint a non-certified sign language interpreter who does not, at a minimum, possess both a
27 Certificate of Transliteration and a Certificate of Interpretation from the Registry of Interpreters
28 for the Deaf or an equivalent certification from the Registry of Interpreters for the Deaf or
29 another organization that is approved by the State Court Administrator.

1 **Advisory Committee Comment 1997~~5~~ Amendment**

2 Rule 8.02(a) requires that courts use certified court interpreters. If certified court
3 interpreters are not available or cannot be located, courts should next use only
4 interpreters listed included on the statewide roster maintained by the State Court
5 Administrator, to assure that interpreters have had a minimum level of training and
6 orientation to the appropriate roles and responsibilities of court interpreting and to the
7 court environment. However, Rule 8.02 recognizes, however, that in rare circumstances
8 it will not always be possible to appoint an interpreter from the statewide roster. Courts
9 should make very effort to locate an interpreter on the roster who can appear in person
10 at the proceeding and should utilize Non-roster interpreters and telephone interpreting
11 services, such as AT & T's Language Lines Service, should be used only as a last resort
12 because of the limitations of such services including the lack of a minimum orientation
13 to the Minnesota Court System and to the requirements of court interpreting. For a
14 detailed discussion of the issues, see Court Interpretation: Model Guides for Policy and
15 Practice in the State Courts, chapter 8 (National Center for State Courts, 1995), a copy
16 of which is available from the State Court Administrator's Office.

17 To avoid unreasonable objections to a certified court interpreter in a proceeding,
18 the rule makes a presumption that the certified court interpreter is competent. However,
19 the rule also recognizes that there are situations when an interpreter may be competent to
20 interpret, but not qualified. Examples of such situations include when an interpreter has
21 a conflict of interest or the user of the interpreter services has unique demands, such as
22 services tailored to a person with minimal language skills, that the interpreter is not as
23 qualified to meet.

24 Rule 8.02(b) requires that courts make "diligent" efforts to locate a certified court
25 interpreter before appointing a non-certified court interpreter. Because the certification
26 process is still in an early stage and because it is important to ensure that courts use
27 competent interpreters, courts should seek the services of certified court interpreters who
28 are located outside the court's judicial district if none can be found within its own district.
29 In addition, courts should consider modifying the schedule for a matter if there is
30 difficulty locating a certified interpreter for a particular time.

31 Because the certification program being implemented by the State Court
32 Administrator is still new, interpreters are being certified in only certain languages at this
33 time. The Advisory Committee recognizes that it may be some time before certification
34 is provided for all languages used in our courts. However, the committee feels strongly
35 that for those languages for which certification has been issued, the courts must utilize
36 certified court interpreters to ensure that its interpreters are qualified. If a court uses non-
37 certified court interpreters, court administrators should administer the screening standards
38 prior to hiring an interpreter. However, the presiding judge is still primarily responsible for
39 While a valid interpreting skills test is the only reliable way to assure court interpreter
40 competency, until such certification program is fully implemented in Minnesota, the
41 presiding judge will continue to bear the responsibility of determining ensuring the
42 competence and qualifications of the an interpreter. A model voir dire to determine the
43 competence and qualifications of an interpreter is set forth in the State Court
44 Administrator's Best Practices Manual on Court Interpreters, Court Interpretation: Model
45 Guides of Policy and Practices in State Courts, supra. p. 148. A copy of the voir dire is
46 available from the State Court Administrator's Office.

1 **Rule 8.03 Disqualification From Proceeding**

2 A judge may disqualify a court interpreter from a proceeding for good cause. Good cause
3 for disqualification includes, but is not limited to, an interpreter who engages in the following
4 conduct:

5 (a) Knowingly and willfully making a false interpretation while serving in a
6 proceeding;

7 (b) Knowingly and willfully disclosing confidential or privileged information obtained
8 while serving in an official capacity;

9 (c) Failing to follow applicable laws, rules of court, or the Code of Professional
10 Responsibility for Interpreters in the Minnesota State Court System.