

AUG 05 1997

FILED

STATE OF MINNESOTA

IN SUPREME COURT

C9-94-1898

AMENDMENT TO THE GENERAL RULES OF
PRACTICE FOR THE DISTRICT COURTS

ORDER

WHEREAS, the Court Interpreter Advisory Committee filed a report with this Court that recommended the Court amend Rule 8, Title 1 to the General Rules of Practice for the District Courts. and

WHEREAS, the Supreme Court published the proposed rule, solicited comments on the rules, and held a public hearing on June 11, 1997, and

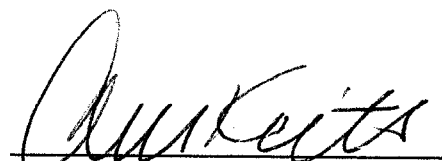
WHEREAS, the Supreme Court has reviewed the recommendations of the committee and the comments submitted by the public and is fully advised in the premises,

NOW, THEREFORE, IT IS HEREBY ORDERED:

1. The attached Rule 8, Title 1 to the General Rules of Practice for the District Courts is prescribed and promulgated for the regulation of interpreters in the Minnesota state court system.
2. The inclusion of Advisory Committee comments is made for convenience and does not reflect court approval of the comments made therein.
3. The amended rule is effective January 1, 1998.

DATED: Aug. 5, 1997

BY THE COURT:



A.M. Keith
Chief Justice

AMENDMENTS TO THE
GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

RULE 8. INTERPRETERS

Rule 8.01 Statewide Roster

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

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

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

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

Advisory Committee Comment 19975 Amendment

It is the policy of the state to provide interpreters to litigants and witnesses in civil and criminal proceedings who are handicapped in communication. Minn. Stat. §§ 611.30 - .32 (19964); Minn. R. Crim. P. 5.01, 15.03, 15.11, 21.01, 26.03, 27.04, subd. 2; Minn. Stat. § 546.44, subd. 3 (19964); *see also* 42 U.S.C. § 12101; 28 C.F.R. Part 35, § 130 (prohibiting discrimination in public services on basis of disability).

To effectuate that policy, the Minnesota Supreme Court has initiated a statewide orientation program of training for court interpreters and promulgated the Rules on Certification of Court Interpreters. Pursuant to Rule 8.01 of the General Rules of Practice for the District Courts, the State Court Administrator has established a statewide roster of court interpreters who have completed the orientation program on the Minnesota court system and court interpreting and who have filed an affidavit attesting that they understand and agree to comply with the Code of Professional Responsibility for Court Interpreters adopted by the Minnesota Supreme Court on September 18, 1995. The creation of the roster is the first step in a process that is being undertaken to ~~improve~~ ensure the competence of court interpreters. To be listed on the roster, a non-certified court interpreter must attend an orientation course provided or approved by the State Court Administrator. The purpose of the orientation is to provide interpreters with information regarding the Code of Professional

Responsibility, the role of interpreters in our courts, skills required of court interpreters, the legal process, and legal terminology. Inclusion on the roster only ensures that an interpreter has had minimal exposure to the requirements of court interpreting and an understanding of the court system in Minnesota. Merely being listed on the roster does not certify or otherwise guarantee an interpreter's competence.

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

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

Rule 8.02 Appointment

(a) Use of Certified Court Interpreter. Whenever an interpreter is required to be appointed by the court, the court shall appoint only a certified court interpreter who is those individuals included listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b) and (c). A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be made in a timely manner, unless the good cause is found and entered on the record by the court. For purposes of this rule, good cause includes, but is not limited to, a determination that given the totality of the circumstances, including the nature of the proceedings

and the potential penalty or consequences involved, the services of an interpreter on the statewide roster are not reasonably available to the court. In all cases, the court shall make a determination, on the basis of the testimony or stated needs of the person whom the interpreter will assist, that the proposed interpreter is able to accurately interpret all communications to and from such person in that particular proceeding.

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

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

Advisory Committee Comment 19975 Amendment

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

(National Center for State Courts, 1995), a copy of which is available from the State Court Administrator's Office.

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

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

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

Rule 8.03 Disqualification From Proceeding

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

- (a) Knowingly and willfully making a false interpretation while serving in a proceeding;
- (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

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