

STATE OF MINNESOTA

IN SUPREME COURT

C9-94-1898

**ORDER ESTABLISHING DEADLINE FOR SUBMITTING  
COMMENTS ON PROPOSED AMENDMENTS  
TO THE RULES ON CERTIFICATION OF COURT INTERPRETERS**

The State Court Administrator filed a Petition on May 4, 2005, recommending amendments to the Rules on Certification of Court Interpreters, and placement of the Rules on Certification of Court Interpreters within the General Rules of Practice for the District Courts. This court will consider the proposed amendments after soliciting and reviewing comments on the Petition. Annexed to this order are (1) a copy of the Petition, (2) proposed revisions to Rules on Certification of Court Interpreters, and (3) proposed Enforcement Procedures for The Code of Professional Responsibility for Court Interpreters.

IT IS HEREBY ORDERED that any individual wishing to provide a written statement in support or opposition to the proposed amendments to and placement of the Rules on Certification of Court Interpreters, shall submit fourteen copies of such statement addressed to Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Rev. Dr. Martin Luther King Jr. Blvd., St. Paul, Minnesota 55155, on or before July 8, 2005.

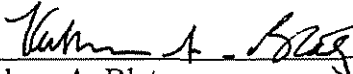
Dated: May 6, 2005

BY THE COURT:

OFFICE OF  
APPELLATE COURTS

MAY 6 2005

**FILED**

  
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Kathleen A. Blatz  
Chief Justice

STATE OF MINNESOTA

IN SUPREME COURT

FILE NO. C9-94-1898

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In Re Petition of the State Court Administrator  
for Amendment of the Rules on Certification of  
Court Interpreters, and Placement of Rules on  
Certification of Court Interpreters in the General  
Rules of Practice for the District Courts.

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PETITION

**To: THE SUPREME COURT OF THE STATE OF MINNESOTA, AND  
KATHLEEN A. BLATZ, CHIEF JUSTICE:**

**I. The State Court Administrator hereby petitions the Court to adopt the  
following amendments to the Rules on Certification of Court Interpreters.**

**A. Summary of Technical Amendments**

The Rules on Certification of Court Interpreters (Rules) make reference in multiple locations to the Minnesota Court Interpreter Advisory Committee. This committee disbanded in June 2002, and since then no amendments have been made to the Rules to reflect this change. It is requested that all references to the Minnesota Court Interpreter Advisory Committee be removed from the Rules, as provided in the attached proposed revisions. Administration of the Court Interpreter Program previously delegated to the Interpreter Advisory Committee should be assigned to the State Court Administrator's Office, and review of appeals should be delegated to a Review Panel, comprised of two judges and one court administrator, selected by the Chief Justice.

**B. Summary of Substantive Amendments**

The proposed substantive amendments relate to the court interpreter grievance procedure. The current grievance procedure existing under the Rules on Certification of Court Interpreters requires replacement for the following reasons: (1) The existing procedure only applies to certified court interpreters, who represent less than 10% of interpreters on the Minnesota Court Interpreter Roster. (2) Appeals from determinations of unethical conduct are to be made to the Interpreter Advisory Committee which, as previously mentioned, disbanded three years ago. (3) The current grievance procedure provides merely vague guidance for the investigation of complaints, hearing procedure, and the assurance of due process.

The State Court Administrator's Office has developed a new comprehensive interpreter grievance procedure. This new procedure was developed based in part on a previous procedure drafted by the Interpreter Advisory Committee in 2002, and in part on interpreter grievance procedures used in other states. This procedure has also been

reviewed and approved by the Conference of Chief Judges, the District Interpreter Liaisons, and The Minnesota Advocates for Human Rights.

It is my recommendation that the entire grievance procedure not be included in the Rules. Inclusion of the full procedure will hinder the State Court Administrator's Office from making revisions in a timely manner, because even slight additions would require going through the formal procedure for rules amendments. (See the request in Section II below to move the Interpreter Certification Rules into the General Rules of Practice.) However, in order to assure that the Certification Rules themselves include enough of the grievance procedure to demonstrably protect the Due Process rights of interpreters, I recommend that the core elements of the procedure be included in the Rules. These elements are included in Rule V.A.

The full grievance procedure will be made available to the general public through the Minnesota Supreme Court's public website. The grievance procedure is attached to this document for the Court's review.

**II. The State Court Administrator hereby petitions the Court to authorize placement of the Rules on Certification of Court Interpreters within the General Rules of Practice for the District Courts.**

The Rules on Certification of Court Interpreters were adopted effective September 19, 1996. These are currently stand-alone rules in the Minnesota Rules of Court and were created by the Interpreter Advisory Committee. The purpose of these Rules is to provide guidance on the certification requirements for Minnesota court interpreters, and procedures for the granting, denial, and suspension of certification status. The Interpreter Advisory Committee disbanded in June 2002. Since then, no new committee has been formed to fill its role, and no existing committee has been given the responsibility of providing oversight for the Rules on Certification of Court Interpreters.

There are multiple reasons for moving the Rules on Certification of Court Interpreters into the Minnesota General Rules of Practice for the District Courts. First, rules for many other major court program areas are included within the General Rules of Practice, including Child Support, Guardian ad Litem, Bail Bond Agents, and Alternative Dispute Resolution. Second, the procedure that courts must follow for the appointment of court interpreters is already contained within Rule 8 of the General Rules of Practice. Finally, in the absence of an independent advisory or rules committee, there is no body to recommend rules changes in the interpreter area to the Supreme Court.

Respectfully Submitted,



Sue Dosal  
State Court Administrator

May 4, 2005

# PROPOSED REVISIONS TO RULES ON CERTIFICATION OF COURT INTERPRETERS

April 18, 2005

(Additions Are Indicated by UNDERLINE; Deletions by ~~STRIKEOUT~~)

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## RULES ON CERTIFICATION OF COURT INTERPRETERS

### DEFINITIONS

These definitions apply to the Rules of the Supreme Court for certification as a court interpreter.

1. "~~Advisory Committee~~Review Panel" means the Minnesota Court Interpreter ~~Advisory Committee~~Review Panel, which is comprised of two district court judges and one court administrator appointed by the Chief Justice of the Minnesota Supreme Court.

2. "Court" means the Minnesota Supreme Court.

3. "Coordinator" means the Court Interpreter Program Coordinator assigned to the State Court Administrator's Office.

4. "Good Character" means traits that are relevant to and have a rational connection with the present fitness or capacity of an applicant to provide interpretation services in court proceedings.

5. "Roster" means the Minnesota statewide roster of court interpreters.

### Rule I. General Requirement for Court Interpreter Certification

**A. Eligibility for Certification.** An applicant is eligible for certification upon establishing to the satisfaction of the State Court Administrator:

1. age of at least 18 years;

2. good character and fitness;

3. inclusion on the Statewide Roster of court interpreters maintained by the State Court Administrator's office in accordance with Rule 8 of the General Rules of Practice for the District Courts;

4. passing score on legal interpreting competency examination administered or approved by the State Court Administrator's Office; and

5. passing score on a written ethics examination administered by the State Court Administrator's Office.

## **Rule II. Examination for Legal Interpreting Competency**

**A. Examination.** Examinations for legal interpreting competency in specific languages, ~~approved by the Advisory Committee~~, shall be administered at such times and places as the Coordinator may designate.

1. Scope of Examination. Applicants for certification in interpreting in a spoken or sign language may be tested on any combination of the following:

- a. Sight Interpretation;
- b. Consecutive Interpretation;
- c. Simultaneous Interpretation; and
- d. Transliteration (when applicable).

2. Denial of Opportunity to Test. An applicant may be denied permission to take an examination if an application, together with the application fee, is not complete and filed in a timely manner.

3. Results of Examination. The results of the examination, which may include scores, shall be released to examinees by regular mail to the address listed in the Coordinator's files. Statistical information relating to the examinations, applicants, and the work of the ~~Advisory Committee~~ State Court Administrator's Office may be released at the discretion of the ~~Advisory Committee~~ State Court Administrator's Office.

4. Testing Accommodations. A qualified applicant with a disability who requires reasonable accommodations must submit a written request to the Coordinator at the same time the application is filed. The Coordinator will consider timely requests and advise the applicant of what, if any, reasonable accommodations will be provided. The Coordinator may request additional information, including medical evidence, from the applicant prior to providing accommodations to the applicant.

5. Confidentiality. Except as otherwise provided in Rule II-A-3, all information relating to the examinations is confidential. The State Court Administrator's Office shall take steps to ensure the security and confidentiality of all examination information.

### **DRAFTING COMMITTEE COMMENT--1996**

The Minnesota Supreme Court is one of the founding states of the State Court Interpreter Certification Consortium. It is the function of the Consortium to develop tests for court interpretation in various languages and administration standards, and to provide testing materials to individual states and jurisdictions. The Minnesota State Court Administrator's Office will in most circumstances utilize tests and standards established by or in conjunction with the Consortium.

## HISTORICAL NOTES

The order of the Minnesota Supreme Court [C9-94-1898] dated September 18, 1996, provides in part that "(t)he inclusion of Drafting Committee comments is made for convenience and does not reflect court approval of the comments made therein."

### Rule III. Application for Certification

**A. Complete Application.** An applicant desiring legal interpreting certification in a particular language shall file with the Coordinator a complete and notarized application on a form prepared by the State Court Administrator's Office and pay the application fee established by the State Court Administrator's Office.

### B. Certification Standards.

1. Screening. The State Court Administrator's Office shall administer character, fitness and competency screening. It shall perform its duties in a manner that ensures the protection of the public by recommending for certification only those who qualify. A court interpreter should be one whose record of conduct justifies the trust of the courts, witnesses, jurors, attorneys, parties, and others with respect to the official duties owed to them. A record manifesting significant deficiency in the honesty, trustworthiness, diligence or reliability of an applicant may constitute a basis for denial of certification.

2. Relevant Conduct. The revelation or discovery of any of the following should be treated as cause for further inquiry before the State Court Administrator's Office decides whether the applicant possesses the character and fitness to qualify for certification to interpret in the courtroom:

- a. conviction of a crime which resulted in a sentence or a suspended sentence;
- b. misconduct involving dishonesty, fraud, deceit or misrepresentation;
- c. revocation or suspension of certification as an interpreter, or for any other position or license for which a character check was performed in this state or in other jurisdictions; and
- d. acts that indicate abuse of or disrespect for the judicial process.

3. Evaluation of Character and Fitness. The State Court Administrator's Office shall determine whether the present character and fitness of an applicant qualifies the applicant for certification. In making this determination, the following factors should be considered in assigning weight and significance to prior conduct.

- a. the applicant's age at the time of the conduct;
- b. the recency of the conduct;
- c. the reliability of the information concerning the conduct;
- d. the seriousness of the conduct;
- e. the factors underlying the conduct;
- f. the cumulative effect of the conduct;
- g. the evidence of rehabilitation;
- h. the applicant's positive social contributions since the conduct;
- i. the applicant's candor in the certification process; and

j. the materiality of any admissions or misrepresentations.

**C. Notification of Application for Certification.** The Coordinator shall notify applicants in writing and by regular mail of the decision on the applicant's request for certification.

**D. Information Disclosure.**

1. Application File. An applicant may review the contents of his or her application file, except for the work product of ~~the Advisory Committee~~, the Coordinator and the State Court Administrator's Office, at such times and under such conditions as the ~~Advisory Committee~~State Court Administrator's Office may provide.

2. Investigation. Information may be released to appropriate agencies for the purpose of obtaining information related to the applicant's character and competency.

3. Confidentiality.

a. Investigative Data: Information obtained by ~~the Advisory Committee~~, the Coordinator and the State Court Administrator's Office during the course of their investigation is confidential and may not be released to anyone absent a court order. The court shall consider whether the benefit to the person requesting the release of the investigative data outweighs the harm to the public, the agency or any person identified in the data.

b. Applicant File Data: All information contained in the files of applicants for court interpreter certification in the State Court Administrator's Office except as otherwise provided in Rule III-D-3 of these rules is confidential and will not be released to anyone except upon order of a court of the competent jurisdiction or the consent of the applicant.

c. Examination Information: Examination Information shall be available as provided in Rule II-A.

**DRAFTING COMMITTEE COMMENT--1996**

The primary purpose of character, fitness and competency screening is to ensure equal access to justice for people with limited English proficiency, or speech or hearing impairments. Such screening also ensures the efficient and effective operation of our judicial system. Our judicial system is adequately protected by a system that evaluates the character, fitness and competency of an interpreter as those elements relate to interpreting in the courtroom. The public interest requires that all participants in the courtroom be secure in their expectation that those who are certified interpreters are competent to render such services and are worthy of the trust that the courts, witnesses, jurors, attorneys and parties may reasonably place in the certified interpreter.

**HISTORICAL NOTES**

The order of the Minnesota Supreme Court [C9-94-1898] dated September 18, 1996, provides in part that "(t)he inclusion of Drafting Committee comments is made for convenience and does not reflect court approval of the comments made therein."

## Rule IV. Appeal of Denial of Certification

**A. Appeal of Certification Denial.** Any applicant who is denied certification by the State Court Administrator's Office may appeal to the ~~chair of the Advisory Committee~~Review Panel by filing a petition for review with the ~~Chair of the Advisory Committee~~Review Panel within twenty (20) days of receipt by the applicant of a final decision by the State Court Administrator's Office.

The petition shall briefly state the facts that form the basis for the complaint and the applicant's reasons for believing that review is warranted. A copy of the petition must be provided to the State Court Administrator's Office.

**B. Response From State Court Administrator's Office.** The State Court Administrator's Office shall submit to the ~~Chair of the Advisory Committee~~Review Panel a response to the applicant's appeal of the denial of certification within a reasonable time after receipt of a copy of the applicant's petition for review. The response should set forth the reasons for the denial of certification.

**C. Decision by ~~Chair of the Minnesota Court Interpreter Advisory Committee~~Review Panel.** The ~~Chair~~Review Panel shall give such directions, hold such hearings and make such order as ~~he/she~~it may deem appropriate.

## Rule V. Complaints and Investigation

**A. Procedure. Complaints:** ~~All~~Complaints of alleged unprofessional, illegal or and unethical conduct by any certified or non-certified court interpreters on the Minnesota Court Interpreter Roster shall be governed by procedures established by the State Court Administrator's Office. the performance of their duties in the courtroom shall be submitted in writing to the Coordinator. These procedures shall include the following:

1. a description of the types of actions which may be grounds for discipline;
2. a description of the types of sanctions available;
3. a procedure by which a person can file a complaint against an interpreter;
4. a procedure for the investigation of complaints;
5. a procedure for the review of complaints;
6. a hearing procedure for cases involving more severe sanctions; and
7. an appeal process when applicable.

**B. ~~Determination to Investigate:~~** ~~The Coordinator shall review each complaint and determine whether there is sufficient cause to believe that a certified court interpreter has engaged in unprofessional or unethical conduct. If sufficient cause exists, the Coordinator shall investigate the complaint or refer the investigation to a qualified agency or individual.~~**Revocation or Suspension of Certification or Roster Status.** The certification or roster status of a certified or



non-certified interpreter on the Minnesota Court Interpreter Roster is subject to suspension or revocation by the State Court Administrator's Office in accordance with the procedures established by the State Court Administrator's Office.

~~C. Submission of Investigative Report to State Court Administrator: The investigator shall submit a report of his/her findings to the State Court Administrator for review.~~

## DRAFTING COMMITTEE COMMENT--1996

Theis complaint procedure is not intended as a means for appealing claims of error by a court interpreter. Theis complaint procedure is available to address unprofessional or unethical conduct by certified and non-certified court interpreters. Consequently, in the absence of fraud, corrupt motive, bad faith, or pattern of established interpreter error, the Coordinator is not likely to initiate an investigation of a complaint of an error of a court interpreter.

It is contemplated that the power to revoke or suspend interpreter certification or roster status will be exercised sparingly and when exercised, consideration will be given to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the interpreter.

## HISTORICAL NOTES

The order of the Minnesota Supreme Court [C9-94-1898] dated September 18, 1996, provides in part that "(t)he inclusion of Drafting Committee comments is made for convenience and does not reflect court approval of the comments made therein."

### **~~Rule VI. Suspension or Revocation of Certification~~**

~~—A. Persons subject to Revocation or Suspension of Certification: The certification of a certified court interpreter in Minnesota is subject to suspension or revocation by the State Court Administrator's Office.~~

~~—B. Grounds for revocation or suspension of certification includes: Unprofessional or unethical conduct, including, without limitation, a conviction of a crime resulting in a sentence or a suspended sentence, or conduct that violates the Minnesota Code of Professional Responsibility for court interpreters.~~

~~—C. Disposition of Criminal Charges: A conviction, acquittal or other disposition of any criminal charge filed against an interpreter shall not preclude an investigation by the Coordinator or action by the State Court Administrator with respect to the conduct upon which the charge was based.~~

~~—D. Evaluation of Investigator's Report and Determination of Appropriate Action: Upon receipt of the investigator's report on conduct that might constitute grounds for revocation or suspension of a court interpreter's certification, the State Court Administrator shall evaluate the report and determine whether the court interpreter's certification shall be temporarily or permanently revoked.~~

~~—E. Confidentiality: All complaints and investigations shall be confidential, except that when a final determination is made to suspend or revoke an interpreter's certification, the final disposition, including the grounds for suspension or revocation and the facts cited in support of the disposition, shall be accessible to the public. For purposes of this rule, a final determination occurs at the conclusion of the appeal proceedings before the Chair of the Advisory Committee, under Rule VII, or upon failure of the interpreter to appeal the State Court Administrator's decision to revoke or suspend within the time provided by Rule VII.~~

## **~~DRAFTING COMMITTEE COMMENT—1996~~**

### **~~2004 Electronic Update~~**

~~———It is contemplated that the power to revoke or suspend interpreter certification will be exercised sparingly and when exercised, consideration will be given to the appropriate procedure and the giving of notice and an opportunity to be heard if such process is due the interpreter.~~

## **HISTORICAL NOTES**

### **~~2004 Electronic Update~~**

~~—The order of the Minnesota Supreme Court [C9 94 1898] dated September 18, 1996, provides in part that "(t)he inclusion of Drafting Committee comments is made for convenience and does not reflect court approval of the comments made therein."~~

## **~~Rule VII. Appeal of State Court Administrator Decisions~~**

~~—An interpreter may appeal the State Court Administrator's decision to revoke or suspend certification to the Chair of the Advisory Committee within twenty (20) days of a final decision by the State Court Administrator. The State Court Administrator shall submit to the Chair of the Advisory Committee a response to the appeal within a reasonable time after receipt of a copy of the petition for review. The Chair of the Advisory Committee shall give such directions, hold such hearings and make such order as s/he may deem appropriate.~~

### **Rule VIII. Expenses and Fees**

The expenses for administering the certification requirements, including the complaint procedures, may be paid from initial application, examination fees and renewal fees. The fees shall be set by the State Court Administrator's Office and may be revised as necessary with the approval of the Supreme Court.

### **Rule VIIIX. Continuing Education Requirements**

The State Court Administrator's Office may establish continuing education requirements for certified and non-certified court interpreters on the Minnesota Court Interpreter Roster with the approval of the Supreme Court.

### **Rule VIIIX. Confidentiality of Records**

Subject to exceptions in rules I.A.3., II.A.3., II.A.5., and III.D., ~~and VI.E.~~ of these rules, section VIII of the Enforcement Procedures for the Code of Professional Responsibility for Court Interpreters, and rule 8.01 of the General Rules of Practice for the District Courts, all information in the files of the Coordinator, the ~~Advisory Committee~~ Review Panel, and the State Court Administrator relating to court interpreters shall be confidential and shall not be released to anyone other than the court except upon order of the court.

### **DRAFTING COMMITTEE COMMENT--2000**

This rule is being added in 2000 to provide a consistent and necessary level of confidentiality for information maintained in the court interpreter orientation and certification process, including for example testing materials, orientation and registration information, and non-roster contact information. Both certified and non-certified interpreters included on the statewide roster under rule 8.01 of the General Rules of Practice for the District Courts must attend orientation training and pass an ethics exam, but the confidentiality provisions in rules II, ~~and III,~~ ~~and VI~~ are limited to those seeking formal certification. Rule VIIIX ensures consistent confidentiality for all testing, orientation, registration and non-roster contact information, and is consistent with the level of accessibility accorded similar information in the attorney licensing process.

**MINNESOTA SUPREME COURT  
STATE COURT ADMINISTRATOR'S OFFICE**

**ENFORCEMENT PROCEDURES FOR  
THE CODE OF PROFESSIONAL RESPONSIBILITY FOR  
COURT INTERPRETERS**

**I. SCOPE**

**A. Interpreters Subject to Enforcement Procedures**

Roster Interpreters: These procedures apply only to interpreters who are included on the Statewide Roster maintained by the State Court Administrator. Interpreters on the roster include certified and non-certified interpreters who have passed the ethics examination administered by the State Court Administrator and who have 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.

Staff Interpreters: Staff interpreters are employees of the Minnesota Courts and are not subject to these enforcement procedures. They are subject to the Minnesota Judicial Branch Human Resources Rules.

**B. Types of Interpreter Actions Subject to Enforcement Procedures**

These procedures apply to complaints about roster interpreters who have allegedly engaged in unethical or unprofessional conduct in the course of performing their interpreter duties, and in some situations unethical conduct outside the scope of interpreting. These procedures supersede former Rules V, VI and VII of the Rules on Certification of Court Interpreters.

These procedures may be used in addition to the sanction of disqualification for good cause imposed by a judge in a proceeding as set forth in Rule 8.03 of the General Rules of Practice for the District Courts. These procedures are also intended to address violations of Minnesota State Court System Administrative Policy No. 18 (court interpreter payment policy) that rise to the level of an ethical violation. Finally, these procedures are not intended to be a vehicle for complaints about interpreting errors made by interpreters during the course of a proceeding, unless there is an allegation of gross incompetence or knowing misinterpretation or misrepresentation.

**C. Who May File A Complaint**

Any person may initiate a complaint by filing it in accordance with Section III. Complainants may include, but are not limited to, defendants, litigants, court personnel, judges and judicial officers, other interpreters, and courtroom observers.

**II. GROUNDS FOR DISCIPLINE**

Complaints against roster interpreters may be filed for reasons including but not limited to:

- A. Conviction of a felony, gross misdemeanor or misdemeanor involving moral turpitude, dishonesty or false statements;
- B. Fraud, dishonesty, or corruption which is related to the functions and duties of a court interpreter;
- C. Knowing misrepresentation of court certification or roster status;
- D. Knowing and willful disclosure of confidential or privileged information obtained while serving in an official capacity as a court interpreter;
- E. Gross incompetence;
- F. Repeated failure to appear as scheduled without good cause;
- G. Violation of the Code of Professional Responsibility for Court Interpreters or violation of Minnesota State Court System Administrative Policy No. 18 (interpreter payment policy) that rises to the level of an ethical violation or unprofessional conduct; and
- H. Engaging in behavior that constitutes discrimination or harassment under the Judicial Branch Rule against discrimination and harassment.

**III. FILING AND REVIEW OF COMPLAINT**

**A. Filing of Complaint**

A complaint must be submitted in writing or an acceptable alternative format, signed by the complainant, and mailed or delivered to the following address: Court Interpreter Program, Minnesota Judicial Center,

25 Rev. Dr. Martin Luther King, Jr. Blvd., St. Paul, Minnesota 55155-1500. The complaint shall state the date, time, place and nature of the alleged improper conduct. If possible, the complaint shall include the name, title and telephone number of possible witnesses. Finally, the complaint shall state why the complainant believes the alleged improper activity should be sanctioned.

If the complainant is unable to communicate in written English, the complainant may submit the complaint in his or her native language.

Alternative forms of documentation, such as video or audio formats, will be considered when the complainant is unable to document a complaint in writing due to illiteracy or where no written form of the complainant's native language exists.

## **B. Review of Complaint**

1. The Court Interpreter Program (CIP) Coordinator shall review the complaint and determine whether the allegations, if true, would constitute grounds for discipline. If the Coordinator determines that the complaint alleges conduct that would be grounds for discipline, an investigation shall proceed according to Section IV.
2. If the Coordinator determines that the complaint does not allege conduct that would be grounds for discipline, the Coordinator shall dismiss the complaint and notify the interpreter and complainant via first class mail. The notification shall include an explanation of the reason(s) for the Coordinator's determination that the complaint does not allege conduct that would be grounds for discipline.
3. If the complainant disagrees with the Coordinator's determination in paragraph III(B)(2), the complainant may file a petition for review with the State Court Administrator within twenty (20) days of receipt by the complainant of the Coordinator's determination. The petition shall briefly state the facts that form the basis for the complaint and the complainant's reasons for believing that review is warranted. A copy of the petition shall be provided to the Coordinator.

The Coordinator shall submit to the State Court Administrator a response to the complainant's appeal of the Coordinator's determination within twenty (20) days after receipt of a copy of the complainant's petition for review.

The State Court Administrator shall make a decision on the complainant's petition within ninety (90) days after receipt of the

Coordinator's response. If the State Court Administrator determines that the complaint does allege conduct that, if true, would be grounds for discipline, the Coordinator shall proceed to investigate the complaint as provided in Section IV.

If the State Court Administrator determines that the complaint does not allege conduct that would be grounds for discipline, the State Court Administrator shall dismiss the complaint and notify the interpreter and complainant via first class mail. The notification shall include an explanation of the reason(s) for the State Court Administrator's determination that the complaint does not allege conduct that would be grounds for discipline. Such a determination by the State Court Administrator shall be final.

4. The State Court Administrator may appoint a designated officer to act on behalf of the State Court Administrator in carrying out any of the aforementioned duties in this section.

#### **IV. PROCEDURE FOR INVESTIGATION, HEARING AND DECISION**

##### **A. Investigation**

If the complaint does allege conduct that would be grounds for discipline, the CIP Coordinator shall investigate as necessary or refer the investigation to a qualified agency or individual.

As part of this investigation, the CIP Coordinator shall contact the interpreter, inform him/her of the complainant's allegations, and give the interpreter the opportunity to respond. This response shall be included in the CIP Coordinator's investigative report.

At the conclusion of the investigation, if the CIP Coordinator determines that conduct occurred that would be grounds for discipline, the CIP Coordinator shall submit a report of his/her findings to the State Court Administrator for review.

If, at the conclusion of the investigation, the CIP Coordinator determines that no conduct occurred that would be grounds for discipline, the CIP Coordinator shall dismiss the complaint and notify the interpreter and the complainant by first class mail. The notification shall include an explanation of the reason(s) for the Coordinator's determination that no grounds for discipline exist. If the complainant disagrees with the Coordinator's determination, he/she may file a petition for review with the State Court Administrator under the same procedure as outlined in Section III(B)(3) of these procedures.

**B. Determination of Need for Discipline**

1. If, upon reviewing the results of the investigation, the State Court Administrator determines that disciplinary action is not warranted, the State Court Administrator shall dismiss the complaint and notify the interpreter and the complainant by first class mail. The notification shall include an explanation of the reason(s) for the State Court Administrator's determination that the alleged conduct is not grounds for discipline. Such a determination by the State Court Administrator shall be final.
2. If the State Court Administrator determines that disciplinary action may be warranted, the State Court Administrator shall send to the interpreter, by certified mail, a copy of the complaint, the CIP Coordinator's report, a citation to the ethical rules which may have been violated, the sanctions deemed appropriate by the State Court Administrator, and a request for a written response to the allegations and to any specific questions posed by the State Court Administrator. Except for good cause shown, if the interpreter fails to respond in writing to the complaint and request for response within twenty (20) days of receipt of the complaint and request, the allegations in the complaint shall be deemed admitted.
3. If under Section IV(B)(2) the State Court Administrator has recommended any of the sanctions listed below, the State Court Administrator shall make a final decision based solely on the written submissions of the CIP Coordinator and the interpreter's written response:
  - a. issuing a private reprimand;
  - b. issuing a corrective order with which the interpreter must comply in order to remain on the roster;
  - c. requiring that certain education courses be taken; or
  - d. requiring that the interpreter work with a mentor or that the interpreter's work be supervised.

Sanctions shall only be imposed if the State Court Administrator finds that there is clear and convincing evidence that the court interpreter has violated the Code of Professional Responsibility or that there are other grounds for discipline, as set forth in Section II of these procedures. This decision must be made within ninety (90) days of receiving the written submissions by the CIP Coordinator and the interpreter. This decision is final, and the interpreter is not entitled to a hearing and is not entitled to appeal this decision.



4. If the State Court Administrator recommends any of the other sanctions set forth in Section V below, the interpreter is entitled to a hearing as provided in Section IV(C).
5. The State Court Administrator may appoint a designated officer to act on behalf of the State Court Administrator in carrying out any of the aforementioned duties in this section.

**C. Hearing**

If (a) the interpreter contests the findings in the CIP Coordinator's report and/or the State Court Administrator's recommended sanction(s); (b) the recommended sanctions are other than those listed in Section IV(B)(3); and (c) the interpreter submits a timely response in writing as provided in Section IV(B)(2), the interpreter may request, and shall be given, a hearing before the State Court Administrator. Such a request for a hearing shall be included in the interpreter's written response to the complaint.

1. Pre hearing discovery shall not be permitted unless expressly authorized by the State Court Administrator in response to a written request.
2. The interpreter may be represented by counsel.
3. All hearings will occur at the Minnesota Judicial Center in Saint Paul. They shall be reported or recorded electronically, and shall be private and confidential, except upon request of the interpreter facing the allegations.
4. Strict rules of evidence shall not apply. The State Court Administrator may, in his or her discretion, consider any evidence presented, including affidavits, giving such evidence the weight he or she deems appropriate.
5. At the hearing, both the CIP Coordinator and the interpreter shall be afforded the opportunity to introduce documents and other relevant evidence and to elicit sworn testimony.
  6. The State Court Administrator may, in his or her discretion, call witnesses, consider or clarify any evidence presented, giving such evidence the weight he or she deems appropriate.

The State Court Administrator may appoint a designated officer to act on behalf of the State Court Administrator in carrying out any of the aforementioned duties in this section.

**D. Decision**

Within ninety (90) days after the hearing, the State Court Administrator shall advise the interpreter and complainant via first class mail of the State Court Administrator's action on the complaint. If the State Court Administrator's action includes sanctions against the interpreter, the State Court Administrator shall specifically enumerate the sanctions, the reasons for such sanctions, and the interpreter's right to appeal. If the sanctions include suspension or revocation of the interpreter's court certification or roster status or placing the interpreter at a lower qualification or skill level on the roster, the State Court Administrator shall specify the conditions and timeframe within which the interpreter may apply for reinstatement of his or her prior court certification or roster status.

In determining whether to impose sanctions due in whole or in part to a criminal conviction, the State Court Administrator must follow the guidelines set forth in Minnesota Statutes chapter 364.

**V. SANCTIONS**

If the State Court Administrator finds that there is clear and convincing evidence that the court interpreter has violated the Code of Professional Responsibility or that there are any other grounds for discipline stated in Section II of these rules, he or she shall impose such discipline or sanctions as he or she may deem appropriate. In determining the type of sanction, the State Court Administrator shall consider the nature and seriousness of the violation, any pattern of improper activity, the effect of the improper activity on the court interpreter system and/or the complainant, the amount of experience the interpreter has as a court interpreter, and any other mitigating or aggravating information presented. Sanctions that may be imposed include but are not limited to:

- A. Issuing a private reprimand;
- B. Issuing a public reprimand;
- C. Issuing a corrective order with which the interpreter must comply in order to remain on the roster;
- D. Imposing costs and expenses incurred by the State Court Administrator and / or Review Panel in connection with the proceeding, including investigative costs, if any:

- E. Requiring that restitution be paid;
- F. Requiring that certain education courses be taken;
- G. Requiring that one or more parts of the interpreter court certification or ethics examination be retaken;
- H. Requiring that the interpreter work with a mentor, or that the interpreter's work be supervised;
- I. Placing the interpreter at a lower qualification or skill level on the roster;
- J. Limiting the type of court hearings for which the interpreter may interpret;
- K. Suspension of interpreter court certification or roster status;
- L. Revocation of interpreter court certification or roster status.

If the sanctions include suspension or revocation of the interpreter's court certification or roster status or placing the interpreter at a lower qualification or skill level on the roster, the State Court Administrator shall specify the conditions and timeframe, if any, within which the interpreter may apply for reinstatement of his or her prior certification or roster status.

## **VI. APPEAL TO COURT INTERPRETER REVIEW PANEL**

### **A. Court Interpreter Review Panel**

The Court Interpreter Review Panel shall be composed of two district court judges and one court administrator appointed by the State Judicial Council. Members of the panel shall serve for a period to be determined by the State Judicial Council.

Any Review Panel member who has a conflict of interest shall recuse himself or herself from the proceedings.

### **B. Appeal Process**

The interpreter may appeal the State Court Administrator's decision only if the sanction imposed includes any of the following:

1. Public reprimand;
2. Requiring the interpreter to pay restitution or costs and expenses;

3. Requiring that one or more parts of the interpreter court certification or ethics examination be retaken;
4. Placing the interpreter at a lower qualification or skill level on the roster;
5. Limiting the type of court hearings for which the interpreter may interpret; or
6. Suspension or revocation of court certification or roster status.

The interpreter must appeal the State Court Administrator's decision in writing to the Court Interpreter Review Panel no later than twenty (20) days after receipt by the interpreter of the State Court Administrator's decision. The appeal shall include the interpreter's written objections to the decision. The State Court Administrator shall submit to the Review Panel a response to the interpreter's appeal within twenty (20) days after receipt of a copy of the appeal. The Review Panel shall review the record of the hearing within ninety (90) days after receipt of the State Court Administrator's submission to determine whether the decision reached and sanctions imposed were appropriate.

The State Court Administrator may appoint a designated officer to act on behalf of the State Court Administrator in the appeal process.

Within thirty (30) days after reaching its conclusion, the Review Panel shall issue its decision, including written findings and sanctions, if appropriate, and shall serve such decision on the interpreter and complainant via first class mail. If the Review Panel's decision includes sanctions against the interpreter, the Review Panel shall specifically enumerate the sanctions. If the sanctions include suspension or revocation of the interpreter's court certification or roster status, or placing the interpreter at a lower qualification or skill level on the roster, the Review Panel shall specify the conditions and timeframe, if any, within which the interpreter may apply for reinstatement of his or her prior certification or roster status.

## **VII. REINSTATEMENT**

An interpreter whose court certification or roster status has been suspended or revoked may apply in writing to the State Court Administrator for reinstatement, within the timeframe established in the suspension/revocation decision or order issued by the State Court Administrator or Review Panel. The State Court Administrator, or his or her designated officer, shall have sole discretion in determining whether the conditions for reinstatement have been satisfied.

## **VIII. CONFIDENTIALITY**

All complaints and investigations shall be confidential, except that when a final determination is made to impose any of the sanctions listed in Section V above (including a determination to suspend or revoke an interpreter's certification or roster status), the final disposition, including the grounds for the sanction(s) and the facts cited in support of the disposition, shall be accessible to the public. For purposes of this section VIII, a final determination occurs at the conclusion of the appeal proceedings before the Review Panel under Section VI above, or upon failure of the interpreter to appeal the State Court Administrator's decision to impose sanctions within the time provided by these Enforcement Procedures.

The State Court Administrator and Review Panel should develop a protocol for disseminating public information to judicial officers, court administrators and interpreter agencies concerning disciplinary actions taken by the State Court Administrator and Review Panel against interpreters.

**STATE OF MINNESOTA**  
**OFFICE OF THE STATE PUBLIC DEFENDER**

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July 11, 2005

OFFICE OF  
APPELLATE COURTS

JUL 11 2005

To the Honorable Justices of the Minnesota Supreme Court:

**FILED**

Re: Proposed amendments to the court interpreter  
Grievance Procedures and Rules on Certification

I am the Deputy State Public Defender and I am submitting these comments on behalf of State Public Defender John Stuart and the state public defense system. Our institutional concern about the proposed rule changes is for our clients, many of whom utilize interpreter services during the course of their involvement with the criminal justice system.

It is, we believe, strongly in the interests of our clients that the system by which court interpreters are regulated be both as fair as possible, and as fair appearing as possible. Without fairness, it will be all the more difficult to assure that high quality interpreters are available for our clients. Without the appearance of fairness, those among our clients who make a complaint about an interpreter will have doubts about whether they have been heard.

At the outset, it is important for us to emphasize that we agree with much of what is contained in the new rules. We support the expansion of the Enforcement Procedures to address complaints against all interpreters on the Statewide Roster. We very much appreciate that these procedures afford complainants the rights to submit a complaint in their native language and to a limited right to review of a complaint's dismissal.

We do, however, think that there are some procedural weaknesses in the rules as proposed that can and should be remedied. From our perspective, the principal problem is the role of the State Court Administrator's office (SCA) as investigator, prosecutor and adjudicator of complaints. Centralization of these functions in a single administrative office is convenient, but it also creates the potential for unfairness and favoritism in addressing complaints about interpreters. Perhaps more importantly, it creates an appearance of unfairness that is not, in our opinion, adequately alleviated by the inclusion of a final appeal opportunity to a "review panel."

To ensure procedural fairness, and that there is an appearance of fairness, we suggest that the Enforcement Procedures should provide a greater degree of separation of functions. One way of accomplishing this is to shift the investigatory role away from the SCA office to an

independent body. As currently proposed, the investigatory role is given to the Court Interpreter Program Coordinator (CIPC). But the CIPC is part of the SCA office and it is the SCA to whom the investigation report is presented, who decides whether to sanction the interpreter, and who handles initial appeals.

Instead of this arrangement, we propose that investigations that would otherwise be handled by the CIPC, be referred to an independent Court Interpreter Ethics Committee, the members of which would be appointed by the Chief Justice. This Committee would consist of five to seven individuals who have expertise in the area of court interpretation. Suggested Committee members include all or some of the following: an interpreter, a judge, a district court employee charged with appointing court interpreters, an advocate for non-English speakers, an advocate for the deaf and hard-of-hearing, a county attorney and a public defender. In identifying qualified Committee members, the Court could look to the membership of the now defunct Minnesota Court Interpreter Advisory Committee. This committee would be comparable to the district ethics committees that the Lawyer's Board relies upon for investigation of many complaints about lawyers. See Rules on Lawyers Professional Responsibility.

In fact, the decentralization of investigative, prosecutorial, and adjudicative functions would be similar to the approach used by the Court in discipline matters involving lawyers and judges. The discipline procedures for lawyers and judges both utilize boards with broad and diverse membership to oversee the discipline process. As noted, many investigations of complaints about lawyers are handled by district ethics committees, which also have broad and diverse membership. See *Id.*

The separation of functions in the discipline process is also in accord with the legislature's approach. The legislature has explicitly stated that, to ensure fairness in disciplining members of regulated occupations, distinct bodies must carry out these different duties. See Minn. Stat. § 214.001, subd. 1 ("procedural fairness in the disciplining of persons regulated by the boards requires a separation of the investigative and prosecutorial functions from the board's judicial responsibility"). In addition, other states have incorporated separation of investigative and decision-making functions in their court-interpreter disciplinary procedures. See, e.g. Prop. Wash. Gen. Ct. R. 11.1(c), [http://www.courts.wa.gov/programs\\_orgs/pos\\_interpret/Disciplinary\\_Process.doc](http://www.courts.wa.gov/programs_orgs/pos_interpret/Disciplinary_Process.doc) (accessed May 19, 2005); Utah R. J. Admin. 3-306 (4), (11).

Amended consistent with our proposal, Enforcement Procedures, § IV, A, para. 1 would read as follows:

If the complaint does allege conduct that would be grounds for discipline under the rules, the CIP Coordinator shall either investigate as necessary or refer the investigation to a qualified agency or individual outside of the Court Administrator's Office, or to the Court Interpreter Ethics Committee.

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If the Ethics Committee concept is adopted by the Court, it would also be necessary to alter other language in the proposed rules, substituting the phrase "Court Interpreter Ethics Committee" for the phrase "CIP Coordinator" as appropriate.

In addition, we suggest that section IV be amended to require the Ethics Committee to submit a report including not only its "findings" but also, if it finds that the interpreter's conduct is grounds for discipline, a recommendation as to sanction. This too would help to decentralize the process. Consistent with this proposal, section IV, A, para. 3 would require the following change:

At the conclusion of the investigation, if the Court Interpreter Ethics Committee ~~CIP Coordinator~~ determines that conduct occurred that would be grounds for discipline, that Committee ~~the CIP Coordinator~~ shall submit a report of its his/her findings and a recommendation of an appropriate sanction to the State Court Administrator for review.

On a more technical note, the proposed Enforcement Procedures and the Rules on Certification appear to be slightly inconsistent. Section VI of the Enforcement Procedures states that members of the "Court Interpreter Review Panel" shall be appointed by the State Judicial Council. In contrast, the definition of the "Review Panel" in the Rules on Certification states that the panel is appointed by the Chief Justice. Rule IV, C subsequently refers to "the Minnesota Court Interpreter Review Panel." Clarification would be helpful to establish whether these three references are to the same panel.

Thank you for your consideration.

Sincerely,

  
Lawrence Hammerling  
Deputy State Public Defender

LH:ch