

STATE OF MINNESOTA

IN SUPREME COURT

C9-94-1898

REQUEST FOR COMMENTS ON
PROPOSED RULES ON CERTIFICATION
OF COURT INTERPRETERS

ORDER


WHEREAS, the Court Interpreter Advisory Committee has filed with this Court proposed Rules on Certification of Court Interpreters, which are attached to this order, and

WHEREAS, the Supreme Court desires to receive written comments on these proposed rules,

NOW, THEREFORE, IT IS HEREBY ORDERED that all persons wishing to submit written comments on the proposed Rules on Certification of Court Interpreters shall file 12 copies of such comments with Frederick Grittner, Clerk of the Appellate Courts, 305 Judicial Center, 25 Constitution Avenue, St. Paul, Minnesota 55155, on or before July 25, 1996.

DATED: June 25, 1996.

BY THE COURT:



A. M. KEITH
Chief Justice

OFFICE OF
APPELLATE COURTS

JUN 25 1996

FILED

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" means the Minnesota Court Interpreter Advisory Committee
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.

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 shall be released to examinees by regular mail to the address listed in the Coordinator's files. Upon written request to the Coordinator, the applicant's test rating sheet may be disclosed to the applicant. Statistical information relating to the examinations, applicants, and the work of the Advisory Committee may be released at the discretion of the Advisory Committee.
4. **Testing Accommodations.** An applicant for certification who requires special testing 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 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.

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.** 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 professional 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, including dishonesty, fraud, deceit or misrepresentation;
 - c. revocation or suspension of certification in other jurisdictions on character and fitness grounds; and
 - d. acts that indicate abuse 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 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.

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 by filing a petition for review with the Chair of the Advisory Committee 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 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.** The Chair shall give such directions, hold such hearings and make such order as he/she may deem appropriate.

RULE V. COMPLAINTS AND INVESTIGATION

- A. **Complaints:** All complaints of alleged unprofessional and unethical conduct by certified court interpreters in the performance of their duties in the courtroom shall be submitted in writing to the Coordinator.
- 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.
- 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

This complaint procedure is not a substitute for appealing claims of error by a court interpreter. This complaint procedure is available to address unprofessional or unethical conduct by 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.

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 ethics 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

It is contemplated that the power to revoke or suspend interpreter certification will be exercised sparingly and that 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.

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 IX. CONTINUING EDUCATION REQUIREMENTS

The State Court Administrator's Office may establish continuing education requirements for certified court interpreters with the approval of the Supreme Court.



INTERNATIONAL TRANSLATION SERVICE

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July 24, 1996

OFFICE OF
APPELLATE COURTS

JUL 26 1996

FILED

Mr. Fred Grittner
Clerk of the Appellate Courts
Supreme Court of Minnesota
St. Paul, MN 55155

RE: PROPOSED RULES ON CERTIFICATION OF COURT INTERPRETERS

Dear Sir:

After carefully reading the proposed Rules on Certification of Court Interpreters we wish to make the following comments:

In Rule VI, Suspension or Revocation of Certification, the rights of the interpreter are not addressed. In addition, there is no explanation of the steps the interpreter can take to defend himself/herself. Given the environment in which interpreters work, accusations of misconduct could be made for many unfounded reasons. It is important that interpreters be able to defend themselves in the face of such allegations. While the Drafting Committee comments for Rule V, "... *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.* ", and Rule VI, "... *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.* " express the Committee's intent to ensure that the rights of the interpreter are protected, these comments are, nevertheless, only comments and they do not have the force of the actual rules.

In Rule VI, paragraph B, there is a reference to the "Minnesota code of ethics for court interpreters." If this refers to the "Code of Professional Responsibility" as described in Rule 8 of the General Rules of Practice for the District Courts, the same term should be used in the Rules on Certification of Court Interpreters.

We applaud the Committee for its initiative. It is imperative that court interpreters be people of the highest ethical standards, in order to guarantee truly equal access to the courts, full protection of people's rights and to maintain the credibility of both the judicial system and the profession of court interpretation. Drafting the rules is certainly a necessary step towards certification. Further delay of certification for those interpreters who have already met all the requirements to become certified can only result in undermining the very credibility that the courts, the committee and the interpreters are pursuing through this process. We urge the Committee to move forward and to grant certification to those interpreters who have qualified by attending the training sessions and passing the requisite examinations.

Sincerely yours;

Leonor Valderrama de Sillers

D. Hal Sillers

John D. Kelly, *President*
Judith G. Schotzko, *Secretary*
Samuel L. Hanson
David Higge
Mary E. McGinnis
Barbara J. Runchey
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Catherine M. Warrick, Ph.D.
Frank B. Wilderson, Jr., Ph.D.



THE SUPREME COURT OF MINNESOTA
BOARD OF LAW EXAMINERS

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Margaret Fuller Corneille, Esq.
Director

July 26, 1996

OFFICE OF
APPELLATE COURTS

JUL 26 1996

FILED

Fred Grittner
Clerk of the Appellate Court
Minnesota Judicial Center
25 Constitution Avenue #305
St. Paul, MN 55155

RE: Proposed Rules on Certification of Court Interpreters

Dear Mr. Grittner:

Below are my comments on the proposed Rules for Certification of Interpreters.

Rule II(A)(4) refers to testing accommodations. It does not state that special testing accommodations will be afforded only to those who are disabled. If the intention is to provide reasonable testing accommodations only for the disabled applicant who is "otherwise qualified" to serve as an interpreter, this should be stated in the Rule.

In addition, this Rule uses the term "special testing accommodations" and later uses the term "reasonable accommodations." I believe the language of the Americans with Disabilities Act (ADA) uses the term "reasonable accommodations".

Finally, it has been the experience of the Minnesota Board of Law Examiners that the Rules and/or other information going to applicants should state that medical evidence supporting the diagnosed disability, as well as medical evidence supporting the type of accommodation requested, must be provided by the applicant in order to evaluate a request for reasonable test accommodations. The committee may wish to incorporate this concept into the Rule.

In **Rule III(B)(1)**, the second sentence references the interpreter's record of conduct as needing to justify the trust of courts and others with respect to "the professional duties owed to them". The use of the word "professional" in this context is confusing. Is a court interpreter considered to be a professional? If so, what significance does this have? Would the more correct language be "official duties" rather than "professional duties"?

Fred Grittner
Clerk of the Appellate Court
Minnesota Judicial Center
July 26, 1996
Page Two

Rule III(B)(2) refers to conduct relevant to the character investigation as "conviction of a crime which resulted in a sentence or a suspended sentence". An applicant may read this provision to exclude the situation in which the applicant has pleaded guilty to a crime. It may also be interpreted as excluding crimes for which fines were imposed or licenses revoked, particularly if the applicant assumes that the word "sentence" implies a jail sentence. Perhaps it would be clearer to state "having been convicted of a crime or having pleaded guilty to a crime which reflects upon the applicant's character or honesty".

Rule III(B)(2)(b) references "misconduct including dishonesty, fraud, deceit or misrepresentation". It is not clear what the definition of "misconduct" is here. If what is being sought is a description of conduct evidencing a lack of honesty, perhaps this rule would be better stated as saying "conduct involving dishonesty, fraud, deceit or misrepresentation".

For the sake of clarification and consistency, in **Rule III(B)(2)(a through d)** the word "conduct" could be incorporated into each of the four subparts. For example, (a) could state "conduct resulting in a conviction of a crime"; (b) could state "conduct involving dishonesty"; (c) could state "conduct resulting in the revocation or the suspension, and (d) could state "conduct associated with abuse or disrespect for the judicial process".

Rule III(B)(2)(c) references "revocation or suspension of certification in other jurisdictions on character and fitness grounds". Is this referring to certification as an interpreter or any other type of certification for which a character check was performed? Perhaps it would be clearer to state "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 any another jurisdiction. Also, the addition of the word "termination" to this list would clarify the intention.

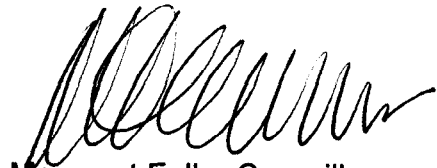
Rule III(D)(3)(b) provides that information in the files will be confidential and not released to anyone "except upon order of the Court of the competent jurisdiction or the consent of the applicant". The definition section of these rules defines "Court" as the Minnesota Supreme Court. Is the Minnesota Supreme Court the court of competent jurisdiction in these matters? A specific provision would eliminate the confusion.

Fred Grittner
Clerk of the Appellate Court
Minnesota Judicial Center
July 26, 1996
Page Three

Thank you for the opportunity to comment.

Very truly yours,

MINNESOTA BOARD OF LAW EXAMINERS

A handwritten signature in black ink, appearing to read 'M. Fuller Corneille', written in a cursive style.

Margaret Fuller Corneille
Director

bb

Nadia Najarro Smith
1010 West 53rd Street
Minneapolis, Minnesota 55419
Tel. 823-0322

July 25, 1996

OFFICE OF
APPELLATE COURTS

JUL 26 1996

FILED

Mr. Fred Grittner
Clerk of the Appellate Courts
305 Judicial Center
24 Constitution Avenue
Saint Paul, Minnesota 55155

Dear Mr. Grittner:

Thank you very much for the opportunity to review and to make some comments and suggestions for the proposed rules on Certification of Court Interpreters. I am in favor of the idea of setting rules on Certification of Court Interpreters, in order to allow both the Supreme Court and the future certified candidates to know the procedures, duties and limitations.

I have the following comments and suggestions:

RULE II. EXAMINATION FOR LEGAL INTERPRETING COMPETENCY

A3 Results of Examination. Line three; instead of the word "may be" could say "shall be," so the rule will guarantee to any applicant their right to see her or his test rating.

RULE IV. APPEAL OF DENIAL OF CERTIFICATION

B Response From State Court Administrator's Office. Line three "...within a reasonable time..." Instead of not giving a certain time frame to the authority the rule could specify a time period for the response, say thirty or forty days. In my home country of Guatemala our administrative law has a principle that government agencies must act on issues within defined time limits, and perhaps there is a similar principle in Minnesota law. A specific time period for decision would bring more clarity to the Administrator's responsibility, and also provide applicants with more certainty regarding the process.

RULE IV. APPEAL OF DENIAL OF CERTIFICATION

C Decision by Chair of the Minnesota Court Interpreter Advisory Committee. This rule could be completed by adding at the end a specified time in which the Chair has to make a decision.

RULE VII APPEAL OF STATE COURT ADMINISTRATOR DECISIONS.

Line four "... within reasonable time..." Again the idea of setting a time frame is very helpful for everybody involved in the appeal, and a period like 30 to 40 days seems reasonable. Given the serious consequences at stake for the interpreter, the Court and the public, it may be desirable to have a requirement added to the rule that the disposition of the

Chair of the Advisory Committee (and perhaps also of the Administrator) must be based on a preponderance of evidence in the record.

I hope that these comments are helpful, and again I appreciate the opportunity to comment on these important rules. Please do not hesitate to contact me if you have any questions about my comments.

Sincerely,

/s/

Nadia N. Smith