

**FILED**

December 19, 2019

**OFFICE OF  
APPELLATE COURTS**

STATE OF MINNESOTA

IN SUPREME COURT

ADM09-8009

**ORDER ESTABLISHING PUBLIC COMMENT PERIOD  
ON PROPOSED AMENDMENTS TO RULE 8 OF  
THE GENERAL RULES OF PRACTICE**

The Supreme Court Advisory Committee for the General Rules of Practice filed a report on December 10, 2019, recommending amendments to Rule 8 of the General Rules of Practice for the District Courts, which generally governs the certification and use of interpreters in court proceedings. A copy of the Advisory Committee's report, with the recommended amendments to Rule 8, is attached to this order. The court will consider the proposed amendments after reviewing any public comments on the Advisory Committee's recommendations.

IT IS HEREBY ORDERED that any person or organization wishing to provide written comments in support of or in opposition to the recommended amendments to Rule 8 of the General Rules of Practice for the District Courts shall file those comments with the Clerk of the Appellate Courts, using the appellate courts' e-filing application, E-MACS, if required to do so. *See* Minn. R. Civ. App. P. 125.01(a)(1). All comments shall be filed so as to be received no later than January 21, 2020.

Dated: December 19, 2019

BY THE COURT:

Lorie S. Gildea  
Chief Justice

**ADM-09-8009  
STATE OF MINNESOTA  
IN SUPREME COURT**

**FILED**

December 10, 2019

**OFFICE OF  
APPELLATE COURTS**

**In re:  
Supreme Court Advisory Committee  
on General Rules of Practice**

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**Recommendations of Minnesota Supreme Court  
Advisory Committee on General Rules of  
Practice**

**Final Report**

**December 10, 2019**

**Hon. Stephen M. Halsey, Buffalo  
Chair**

**Hon. Margaret Chutich, Saint Paul  
Liaison Justice**

**Kevin P. Curry, Minneapolis  
Jill I. Frieders, Rochester  
Phillip Gainsley, Minneapolis  
Hon. Jason T. Hutchison, Minneapolis  
Kenneth A. Kimber, Duluth  
Lisa D. Kontz, West St. Paul  
Sean Jones, Grand Rapids  
Lisa Lane, Minneapolis**

**Rhonda J. Magnussen, Elk River  
Henry Parkhurst, Minneapolis  
Timothy J. Pramas, Saint Paul  
Susan C. Rhode, Minneapolis  
Galen Robinson, Minneapolis  
Hon. Mark M. Starr, Hibbing  
Hon. Mary R. Vasaly, Minneapolis**

**Michael B. Johnson, Saint Paul  
Staff Attorneys**

**David F. Herr, Minneapolis  
Reporter**

## **Introduction**

At the direction of the Court, the advisory committee conducted a limited review of changes to the Interpreter Rules (Gen. R. Prac. 8.01-8.13) proposed by the State Court Administrators Office (SCAO). The review was limited by a reporting deadline of December 13, 2019, which would enable these proposals to be considered alongside other pending rules proposals in January thus assuring their prompt consideration and, if appropriate, adoption.

## **Summary of Recommendations**

The advisory committee received the SCAO proposed changes to Gen. R. Prac. 8 and an accompanying memorandum. Due to the short turn-around required by the December 13, 2019, reporting deadline, advisory committee staff added line numbering to the SCAO proposal along with a few clauses to strengthen notice to interpreters clearly indicating that they are subject to a Code of Professional Responsibility and Interpreter Program policies (see the red type in lines 21-22, 61, and 126-132). Committee members were asked to indicate whether they endorsed the changes as proposed with these minor edits. The response was unanimous with 10 of 16 members responding, all endorsing the proposals.

This limited review also raised a handful of issues that the Court might want to consider, although the limited time frame did not allow a committee vote on these items. These issues are described in greater detail below and in an attachment at the end of this report.

## **Effective Date**

The committee believes that any rule amendments ordered on these rules can be made effective reasonably promptly following adoption.

## **Style of Report**

The specific recommendations are reprinted in traditional legislative format, with new wording underscored and deleted words ~~struck through~~. New advisory committee comments are not underscored.

Respectfully submitted,

MINNESOTA SUPREME COURT ADVISORY  
COMMITTEE ON GENERAL RULES OF  
PRACTICE

**Recommendation 1: The Court should adopt amendments to Rule 8 that implement all of the recommendations made by the State Court Administrators Office, with several minor changes, and the Court might consider several other edits as well.**

### **Introduction**

The State Court Administrators Office (SCAO) proposed changes to Gen. R. Prac. 8 as described in an accompanying memorandum which is appended to this report. Due to the short turn-around required by the December 13, 2019, reporting deadline, advisory committee staff added line numbering to the SCAO proposal along with a few clauses to strengthen notice to interpreters clearly indicating that they are subject to a Code of Professional Responsibility and Interpreter Program policies (see the redlined changes in lines 21-22, 61, and 126-132). Committee members were asked to indicate whether they endorsed the changes as proposed with these minor edits. The response was unanimous with 10 of 16 members responding to endorse the proposals.

This limited review also surfaced a handful of issues that the Court might want to consider, although the limited time frame did not allow a committee vote on these items. These issues are described in greater detail below and in an attachment at the end of this report.

### **Specific Recommendations**

The advisory committee unanimously recommends that the Court adopt the SCAO proposal along with a few clauses to strengthen notice to interpreters clearly indicating that they are subject to a Code of Professional Responsibility and Interpreter Program policies. These minor edits are set forth in red type in lines 21-22, 61, and 126-132 below.

Additional issues that the Court might consider include the following:

1. Objections. Lines 68-70, Rule 8.02(a), and again on lines 123-125, Rule 8.02(e), require that objections to interpreter service or interpreting must be “timely made” without providing any direction as to how, when, and by whom.

Discussions between advisory committee staff and SCAO staff indicate that this was an attempt to indicate that a party cannot knowingly sit on the issue until after it has lost its case and then raise it. It is difficult to come up with language that is a "one size fits all" for every circumstance. The Court might, however, consider at the least adding a clause indicating "by motion of a party or on the court's own initiative, objections...timely made." See also more on reorganization, below.

2. Review of Character and fitness determination. Lines 252-254, Rule 8.06(c), appears to provide that an applicant who is not seeking certification but just seeking roster status, and who has failed to meet the character and fitness requirements, cannot "appeal" or otherwise seek "review" of the character and fitness determination "by any other entity." Conversations between advisory committee staff and SCAO staff indicate that SCAO did not intend to preclude, for example, review by writ, e.g., where the decision on character and fitness is alleged to be arbitrary and capricious. See, e.g., *Faber v. City of Crystal*, No. A06-254, 2007 WL 152122, at \*2 (Minn. Ct. App. Jan. 23, 2007)(unpublished)(we give deference to the quasi-judicial decisions of administrative hearing officers and will uphold them unless they are unconstitutional, beyond the officers' jurisdiction, procedurally defective, arbitrary and capricious, erroneous in law, or unsupported by substantial evidence); *Benedict v. Board of Police Pension Fund Com'rs of Seattle*, 35 Wash. 2d 465, 214 P.2d 171, 27 A.L.R.2d 992 (1950) (If any official, person, or board has acted so arbitrarily or capriciously that a court would be justified in holding that no discretion was exercised, the writ of mandate is available to compel appropriate action). The "not appealable or reviewable by any other entity" language in rule 8.06 also appears overly strong in light of the fact that an adverse determination on character and fitness grounds for applicants for admission to the practice of law may be appealed to the Board, and then to the Supreme Court. RULES FOR ADMISSION TO THE BAR 5.B.(7), 15A., and

17.A. Thus the Court might consider replacing the “not appealable or reviewable by any other entity” language in rule 8.06(c) with less limiting language (e.g., “not appealable or reviewable under these rules...”). Should the Court deem it helpful or appropriate, the committee can in the future address the need to codify in the rule an appropriate remedy that lies outside the administrative process contemplated by SCAO. In the meantime, however, SCAO has done a competent and ethical job of administering these rules and there is nothing to suggest that codification of an express remedy is imminently required.

3. Review of Failed Certification Exam. Although lines 281-284, Rule 8.07, appears similarly to disallow any appeal or review if certification is denied based on the failing of a certification examination, the remedy for failing an examination appears to be retaking and passing the examination, thus the lack of appeal or review seems appropriate in the context of failing a certification exam under rule 8.07. Nevertheless, the “not appealable or reviewable by any other entity” language appears overly strong as it could be read to cut off review of a claim that the examination itself was inherently skewed or prejudicial in some unreasonable manner. Thus the Court might consider replacing the “not appealable or reviewable by any other entity” language in rule 8.06(c) with less limiting language (e.g., “not appealable or reviewable under these rules...”).
4. Written Notice. Line 249 directs the Coordinator to notify interpreters “in writing” of failure to meet standards. The Court might consider adding words such as “including by electronic means,” to remove any ambiguity as to whether “writing” requires paper.
5. Delegation of Fee Setting and Education Requirements. Lines 326-338, Rules 8.09 and 8.10, delegate to SCAO the complete responsibility for the administrative issues of setting fees, expenses, and continuing education requirements. The SCAO memo explains that these are administrative issues

and is seeking flexibility in keeping these up to date without the need to seek a rule. We simply note that neither the fees nor the continuing education requirements are currently set in rule, but have no strenuous objections if the Court desires to delegate these administrative matters to the SCAO, which does a laudable job with maintaining court forms and other administrative tasks delegated under various procedural rules.

6. Reorganization and Other Grammatical Edits for Future Consideration. The Court might consider reorganization of Rule 8 that would follow what the advisory committee recommended for ADR. Although the committee believes this would be a substantial improvement as a rule of procedure and provide clearer guidance to courts and litigants on the use of interpreters, and that separate rules would more clearly define how training, certification, and rostering of interpreters should take place, the committee understands through discussions with SCAO staff that such reorganization might not be the most appropriate step when time is of the essence in making rules changes. The Committee understands that there may be numerous reference and training materials that would have to be revised and updated, and perhaps retraining as well, which might interfere with the goal of the court in fast tracking this issue. For the benefit of future consideration, we have listed in a separate attachment to this report the thoughts on reorganization and other grammatical edits that perhaps may be visited at an appropriate time.



*In these proposed rules amendments, proposed deletions are indicated by a line draw through the words and additions by a line under the words.*

1  
2 **RULE 8. INTERPRETERS**

3 **Definitions**

4 1. ~~“Review Panel” means the Minnesota Court Interpreter Review Panel, which is~~  
5 ~~comprised of two district court judges and one court administrator appointed by the Chief~~  
6 ~~Justice of the Minnesota Supreme Court.~~

7 2. ~~1.~~ “Coordinator” means the Court Interpreter Program Coordinator assigned to  
8 the State Court Administrator’s Office.

9 3. ~~“Good Character” means traits that are relevant to and have a rational~~  
10 ~~connection with the present fitness or capacity of an applicant to provide interpretation~~  
11 ~~services in court proceedings.~~

12 4. ~~2.~~ “Roster” means the Minnesota statewide roster of court interpreters.

13 **Rule 8.01 Statewide Roster**

14 The State Court Administrator shall maintain and publish ~~annually~~ a statewide  
15 roster of certified and non-certified interpreters, ~~which shall include:~~

16 **(a) Spoken Language Court Interpreters:** To be included on the Statewide  
17 Roster, spoken language court interpreters must have: (1) reached the age of at least 18  
18 years; (2) completed the interpreter orientation program sponsored by the State Court  
19 Administrator; (3) filed with the State Court Administrator an affidavit agreeing to be  
20 bound by the Code of Professional Responsibility for Interpreters in the Minnesota State  
21 Court System, the State Court Administrator’s Office Enforcement Procedures for the  
22 Code of Professional Responsibility for Court Interpreters, and all applicable Court  
23 Interpreter Program policies; (4) meet the character and fitness standards in Rule 8.06 and  
24 any other eligibility standards published by the State Court Administrator; and (5)  
25 received a passing score on the English proficiency, ethics, and court terminology  
26 examination administered or approved by the State Court Administrator.

27 **(a)(b) Certified Spoken Language Court Interpreters:** To be included on the  
28 Statewide Roster as a certified spoken language court interpreter, interpreters must have  
29 satisfied all ~~certification~~ requirements in paragraph (a), and met all requirements for  
30 certification pursuant to Rules 8.04 and 8.05. Certification is not available for all  
31 languages.

32 ~~**(b) Non-certified Foreign Language Court Interpreters:** To be included on the~~  
33 ~~Statewide Roster, foreign language court interpreters must have: (1) completed the~~  
34 ~~interpreter orientation program sponsored by the State Court Administrator; (2) filed with~~  
35 ~~the State Court Administrator a written affidavit agreeing to be bound by the Code of~~  
36 ~~Professional Responsibility for Interpreters in the Minnesota State Court System as the~~  
37 ~~same may be amended from time to time; (3) received a passing score on a written ethics~~

38 examination administered by the State Court Administrator; and (4) demonstrated  
39 minimal language proficiency in English and any foreign language(s) for which the  
40 interpreter will be listed, as established by protocols developed by the State Court  
41 Administrator.

42 **(c) Non-certified Sign Language Court Interpreters:** To be included on the  
43 Statewide Roster, ~~non-certified~~ sign language court interpreters must: (1) have satisfied  
44 ~~the all three requirements set forth about in Rule 8.01 paragraph (a)(b);~~ (2) be a member in  
45 good standing with the Registry of Interpreters for the Deaf (RID) ~~or with the National~~  
46 ~~Association of the Deaf (NAD);~~ and (3) possess certificate(s) from RID that demonstrate  
47 minimum competency in sign language(i) both a valid Certificate of Transliteration (CT)  
48 and a Certificate of Interpretation from RID; or  
49 (ii) a valid Comprehensive Skills Certificate (CSC) from RID or  
50 (iii) a valid Level 5 certificate from NAD; or  
51 (iv) a valid Certified Deaf Interpreter (CDI) or Certified Deaf Interpreter Provisional  
52 (CDIP) certificate from RID; or (v) another equivalent valid qualification certification  
53 approved by the State Court Administrator.

54  
55 **(d) Certified Sign Language Court Interpreters.** To be included on the  
56 Statewide Roster as a certified sign language court interpreter, interpreters must have  
57 satisfied all requirements of paragraph (c), and possess the special certification “Legal”  
58 from the Registry of Interpreters for the Deaf or a another equivalent valid certification  
59 approved by the State Court Administrator.

60  
61 **Rule 8.02 Appointment; Applicability of Ethics Rules to All Interpreters.**

62 **(a) Use of Certified Court Interpreter.** Whenever an interpreter is required to be  
63 appointed by the court, the court shall appoint ~~only~~ a certified court interpreter who is  
64 listed on the statewide roster of interpreters established by the State Court Administrator  
65 under Rule 8.01, except as provided in Rule 8.02(b), (c), ~~and (d), and (e).~~ A certified  
66 court interpreter shall be presumed competent to interpret in all court proceedings. The  
67 court may, at any time, make further inquiry into the appointment of a particular certified  
68 court interpreter. Objections made by a party regarding special circumstances which  
69 render the certified court interpreter unqualified to interpret in the proceeding must be  
70 made in a timely manner. The court shall use a certified court interpreter except when no  
71 certified court interpreter is reasonably available. A certified interpreter is not reasonably  
72 available if the hearing would have to be unreasonably delayed to secure the presence of  
73 the interpreter, if the interpreter would have to travel an unreasonable distance to attend  
74 the hearing, or if the interpreter is unwilling to provide interpreting service by remote  
75 means at the request of the court.

76 **(b) Use of Non-Certified Court Interpreter on Statewide Roster.** ~~If the court~~  
77 ~~has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a)~~  
78 ~~and found none to be~~ no certified or employee court interpreter is reasonably available,  
79 the court shall appoint a non-certified court interpreter who is otherwise competent and is  
80 listed on the Statewide Roster established by the State Court Administrator under Rule

81 8.01. If the Roster includes additional information regarding an interpreter's level of  
82 experience, competency, and qualification, the court shall appoint from among the  
83 highest ranked interpreters available. In determining whether a non-certified court  
84 interpreter is competent, the court shall apply the screening standards developed  
85 published by the State Court Administrator.

86 **(c) Use of ~~Non-certified Foreign Spoken Language Court Interpreter not on~~**  
87 **~~the Statewide Roster.~~** Only after the court has exhausted the requirements of Rule  
88 8.02(a) and (b) may the court appoint a ~~non-certified foreignspoken~~ language interpreter  
89 who is not listed on the Statewide Roster and who is otherwise competent. In determining  
90 whether a ~~non-certified foreignspoken~~ language interpreter is competent, the court shall  
91 apply the screening standards ~~developed~~ published by the State Court Administrator.  
92 The court may appoint an interpreter certified in another state.

93  
94 **(d) Use of Non-certified Sign Language Court Interpreter not on the**  
95 **Statewide Roster.** Only after exhausting the requirements of Rule 8.02(a) and (b) may  
96 the court appoint a non-certified sign language interpreter(s) who is not listed on the  
97 Statewide Roster. The court must appoint an interpreter(s) who can establish effective  
98 communication and who meets the requirements of Rule 8.01(c), paragraphs (2) and  
99 (3).is (are):

100 ~~(1) an interpreter who is a member in good standing with RID or NAD who~~  
101 ~~possesses both a valid CT and a valid CI; or a valid CSC from RID; or a valid~~  
102 ~~Level 5 certificate from NAD; or a valid CDI or CDIP certificate; or another~~  
103 ~~equivalent valid certification approved by the State Court Administrator. If no~~  
104 ~~such interpreter is available,~~

105 ~~(2) a team including an interpreter with a valid CDI or CDIP certificate and an~~  
106 ~~interpreter who has a valid CI or a valid CT form RID. If no such interpreters are~~  
107 ~~available, as a last resort,~~

108 ~~(3) an interpreter with a valid CI from RID.~~

109 **(e) Use of Employee Court Interpreter.** In recognition that certification is not  
110 available for all languages and that non-certified interpreters can nevertheless be  
111 competent and qualified to perform interpretation services for the courts, and in  
112 recognition that availability of court interpreters on a statewide basis is a critical concern,  
113 the Minnesota Judicial Branch may employ qualified and competent interpreters to  
114 perform interpreter services for the courts. Employee interpreters must have (1) satisfied  
115 all requirements in Rule 8.01(a); (2) satisfied all requirements for certification in Rule  
116 8.05, or met the competency standards established by the State Court Administrator; and  
117 (3) been found to be qualified and competent by the Chief Judge in the judicial district of  
118 primary employment and taken the oath required by Minn. Stat. §§ 546.44, subd. 2, and  
119 611.33, subd. 2. An employee interpreter who has taken the required oath is not required  
120 to take the oath at any subsequent court proceedings. An employee court interpreter shall  
121 be presumed competent to interpret in all court proceedings. The court may, at any time,  
122 make further inquiry into the appointment of a particular employee court interpreter.  
123 Objections made by a party regarding special circumstances which render the employee

124 court interpreter unqualified to interpret in the proceeding must be made in a timely  
125 manner.

126 **(f) Applicability of Ethics Rules to All Interpreters.** All interpreters providing  
127 court interpreting services are subject to the Code of Professional Responsibility for  
128 Interpreters in the Minnesota State Court System and Court Interpreter Program policies,  
129 without regard to whether they are certified, or on the Statewide Roster. Interpreters on  
130 the Statewide Roster are also subject to the State Court Administrator's Office  
131 Enforcement Procedures for the Code of Professional Responsibility for Court  
132 Interpreters.

133  
134 **Rule 8.03 Disqualification from Appointment or Proceeding**

135 A judge may disqualify a court interpreter from an appointment under Rule 8.02 or  
136 a proceeding for good cause. Good cause for disqualification includes, but is not limited  
137 to, an interpreter who engages in the following conduct:

138 (a) Knowingly and willfully making a false interpretation while serving in a  
139 proceeding;

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

142 (c) Failing to follow applicable laws, rules of court, ~~or~~ the Code of Professional  
143 Responsibility for Interpreters in the Minnesota State Court System, or Court Interpreter  
144 Program policies.

145  
146 **Rule 8.04 General Requirement for Court Interpreter Certification**

147 **(a) Eligibility for Certification.** An applicant is eligible for certification if the  
148 interpreter upon establishing to the satisfaction of the State Court Administrator:

149 ~~1. age of at least 18 years;~~

150 ~~2. good character and fitness;~~

151 ~~3. inclusion~~ 1. meets the requirements under Rule 8.01 and is included on the Statewide  
152 Roster of court interpreters, maintained by the State Court Administrator's office in  
153 accordance with Rule 8 of the General Rules of Practice for the District Courts; and

154 2. receives a

155 4. passing score on the legal court interpreting competency examination under Rule 8.05  
156 administered or approved by the State Court Administrator's Office; and

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

159  
160 **Rule 8.05 Court Interpreter Certification Examination for Legal Interpreting**  
161 **Competency**

162 **(a) Eligibility for Examination.** An applicant is eligible to take the court  
163 interpreting competency examination if the applicant:

164 1. meets the requirements under Rule 8.01 and is included on the Statewide  
165 Roster;

166 2. has paid the examination fee; and

167 3. has registered to take the examination and met all other requirements for  
168 examination as determined by the State Court Administrator.

169  
170 **(b) Examination.** Examinations for ~~legal court~~ interpreting competency in specific  
171 languages shall be administered at such times and places as the Coordinator may  
172 designate.

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

- 175 a. Sight Interpretation;
- 176 b. Consecutive Interpretation; and
- 177 c. Simultaneous Interpretation; ~~and~~
- 178 ~~d. Transliteration (when applicable).~~

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

182 **3. Results of Examination.** The results of the examination, which may include  
183 scores, shall be released to examinees ~~by regular mail~~ to the address listed in the  
184 Coordinator's files. Statistical information relating to the examinations, applicants, and  
185 the work of the State Court Administrator's Office may be released at the discretion of  
186 the State Court Administrator's Office. Pass/fail examination results may be released to  
187 (1) District Administrators by the State Court Administrator's Office for purposes of  
188 assuring that interpreters are appointed in accordance with Rule 8.02, and (2) any state  
189 court interpreter certification authority, including the National Center for State Courts.

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

196 **5. Confidentiality.** Except as otherwise provided in Rule 8.05(a)~~3~~(b)(3), all  
197 information relating to the examinations is confidential unless the examinee waives  
198 confidentiality. The State Court Administrator's Office shall take steps to ensure the  
199 security and confidentiality of all examination information.

200 **(c) Notification of Certification.** The Coordinator shall notify applicants in  
201 writing regarding whether the applicant has passed the examination and has met all other  
202 requirements for certification.

203  
204 **Rule 8.06 Application Character and Fitness Standards for Certification Inclusion on**  
205 **the Statewide Roster**

206 ~~(a) Complete Application.~~ An applicant desiring legal interpreting certification in  
207 a particular language shall file with the Coordinator a complete and notarized application  
208 on a form prepared by the State Court Administrator's Office and pay the application fee  
209 established by the State Court Administrator's Office.

210 **(b) Certification Standards.**

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

220  
221 **2.(a) Relevant Conduct.** The revelation or discovery of any of the following  
222 should be treated as cause for further inquiry before the State Court Administrator's  
223 Office decides whether ~~the applicant an interpreter~~ possesses the character and fitness to  
224 qualify for ~~certification~~ inclusion on the Statewide Roster to interpret in the courtroom:

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

231  
232 **3.(b) Evaluation of Character and Fitness.** The State Court Administrator's  
233 Office shall determine whether the present character and fitness of ~~an applicant a court~~  
234 interpreter qualifies the ~~applicant interpreter~~ for ~~certification~~ inclusion on the roster. In  
235 making this determination, the following factors should be considered in assigning  
236 weight and significance to prior conduct:

- 237 a. the ~~applicant's~~ interpreter's age at the time of the conduct;
- 238 b. the recency of the conduct;
- 239 c. the reliability of the information concerning the conduct;
- 240 d. the seriousness of the conduct;
- 241 e. the factors underlying the conduct;
- 242 f. the cumulative effect of the conduct;
- 243 g. the evidence of rehabilitation;
- 244 h. the ~~applicant's~~ interpreter's positive social contributions since the conduct;
- 245 i. the ~~applicant's~~ interpreter's candor in the certification process; and
- 246 j. the materiality of any admissions or misrepresentations.

247  
248 **(c) Notification of Results of Character and Fitness Evaluation** ~~Application for~~  
249 ~~Certification.~~ The Coordinator shall notify ~~applicants~~ interpreters in writing ~~and by~~  
250 ~~regular mail~~ of the decision on the applicant's request for certification. ~~a determination~~  
251 that the interpreter failed to meet the character and fitness requirements for inclusion on  
252 the roster or for certification. A decision by the State Court Administrator's Office to not

253 add an applicant to the roster is not governed by Rule 8.08 and is not appealable or  
254 reviewable by any other entity. Suspension or removal from the Statewide Roster of  
255 interpreters included on the roster is governed by Rule 8.08.

256  
257 **(d) Information Disclosure.**

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

262 **2. Investigation Disclosures for Purpose of Character and Fitness Evaluation.**  
263 Information may be released to appropriate agencies for the purpose of obtaining  
264 information related to the applicant's character and fitness ~~competency~~.

265 **3. Confidentiality.**

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

272 **b. Applicant File Data:** All information contained in the files of ~~applicants for~~  
273 court interpreters certification in the State Court Administrator's Office except  
274 as otherwise provided in Rule 8.06(d)3 of these rules is confidential and will  
275 not be released to anyone except upon order of a court of competent jurisdiction  
276 or the consent of the ~~applicant~~ interpreter.

277 **c. Examination Information:** Examination Information shall be available as  
278 provided in Rule 8.05(a)(b).

279  
280 **Rule 8.07 ~~Appeal of Denial of Certification~~**

281 **~~(a) Appeal of Certification Denial.~~** A decision by the State Court Administrator's  
282 Office to not list an applicant on the Statewide Roster as a certified spoken language  
283 interpreter based on a failed certification exam is not governed by Rule 8.08 and is not  
284 appealable or reviewable by any other entity. A decision by the State Court  
285 Administrator's Office to not list an applicant on the Statewide Roster as a certified  
286 spoken language interpreter and to remove the applicant from the Statewide Roster based  
287 on the character and fitness standards in Rule 8.06 is governed by that rule and by Rule  
288 8.08. Any applicant who is denied certification by the State Court Administrator's Office  
289 may appeal to the Review Panel by filing a petition for review with the Review Panel  
290 within twenty (20) days of receipt by the applicant of a final decision by the State Court  
291 Administrator's Office.

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

295 ~~(b) Response From State Court Administrator's Office.~~ The State Court  
296 Administrator's Office shall submit to the Review Panel a response to the applicant's  
297 appeal of the denial of certification within a reasonable time after receipt of a copy of the  
298 applicant's petition for review. The response should set forth the reasons for the denial of  
299 certification.

300 ~~(c) Decision by the Minnesota Court Interpreter Review Panel.~~ The Review  
301 Panel shall give such directions, hold such hearings and make such order as it may deem  
302 appropriate.

### 303 304 **Rule 8.08 Complaints and Investigation**

305 ~~(a) Procedure.~~ Complaints of alleged unprofessional, illegal, or unethical  
306 conduct, Any complaint alleging a violation, or information that constitutes a violation,  
307 of Rule 8, the Court Interpreter Program policies, or the Code of Professional  
308 Responsibility for Court Interpreters by any certified or non-certified court interpreter on  
309 the Minnesota Court Interpreter Statewide Roster shall be governed by the procedures  
310 established published by the State Court Administrator's Office. These procedures shall  
311 include the following:

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

319  
320 ~~(b) Revocation or Suspension of Certification or Roster Status.~~ The  
321 certification or roster status of a ~~certified or non-certified~~ court interpreter on the  
322 Minnesota Court Interpreter Statewide Roster is subject to suspension or revocation by the  
323 State Court Administrator's Office in accordance with the procedures established by the  
324 State Court Administrator's Office.

### 325 326 **Rule 8.09 Expenses and Fees**

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

### 332 333 **Rule 8.10 Continuing Education Requirements**

334 The State Court Administrator's Office may establish continuing education  
335 requirements for certified and non-certified interpreters on the Minnesota Court  
336 Interpreter Roster ~~with the approval of the Supreme Court.~~ Failure to complete the



337 required education is grounds for suspension or revocation from the Statewide Roster  
338 under Rule 8.08.

339

340 **Rule 8.11 Confidentiality of Records**

341 Subject to exceptions in rules 8.01, ~~8.04(a)(3)~~, 8.05(a)(b)(3), 8.05(a)(b)(5), and  
342 8.06(d) of these rules, and the Enforcement Procedures for the Code of Professional  
343 Responsibility for Court Interpreters, all information in the files of the Coordinator, the  
344 Review Panel, and the State Court Administrator relating to court interpreters shall be  
345 confidential and shall not be released to anyone other than the Supreme Court except  
346 upon order of the Supreme Court.

347

348 **Rule 8.12 Interpreters to Assist Jurors**

349 Qualified interpreters appointed by the court for any juror with a sensory disability  
350 may be present in the jury room to interpret while the jury is deliberating and voting.

351

352 **Rule 8.13. Requirement for Notice of Anticipated Need for Interpreter**

353 In order to permit the court to make arrangements for the availability of required  
354 interpreter services, parties shall, in the Civil Cover Sheet, ~~Initial Case Management~~  
355 ~~Statement~~ or Joint Statement of the Case, and as may otherwise be required by court rule  
356 or order, advise the court of that need in advance of the hearing or trial where services are  
357 required.

358

359 When it becomes apparent that previously-requested interpreter services will not  
360 be required, the parties must advise the court.

361



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COURT SERVICES DIVISION  
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## MEMORANDUM

TO: Chief Justice Lorie Gildea and Justices of the Supreme Court

FROM: Jeff Shorba, State Court Administrator  
Court Services Division, Court Interpreter Program

DATE: October 24, 2019

RE: Minn. Gen. R. Prac. 8, Court Interpreters

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**Background:** The State Court Administrator's Office Court Interpreter Program was established to implement the provisions of General Rule of Practice 8, which was adopted in response to the 1993 report and recommendations of the Minnesota Supreme Court Task Force on Racial Bias in the Judicial System. The program oversees the training, certification, qualification, testing, and compensation of court interpreters, and maintains a statewide roster of qualified court interpreters available for appointment in district court proceedings as required by state and federal law.

In the years since the program was established, continuous improvements have been made in the oversight of court interpreters. Program policies have been established, and procedures for testing and qualification have evolved. As a result of the evolution of the program oversight and national standards, compliance with certain provisions in Rule 8 is no longer possible or practicable.

In an effort to ensure Minnesota district courts continue to follow the most current national standards and guidelines regarding court interpreter appointment, the Court Interpreter Program proposes amendments to Rule 8 that would: 1) update and clarify the language to eliminate outdated concepts and terminology; 2) amend the requirements governing the use of certified interpreters, and add provisions governing employee interpreters; and 3) replace certain rule requirements with language delegating responsibility for oversight to the State Court Administrator's Office.

**Proposed Changes to Rule 8:** The following summary addresses and explains the attached proposed amendments to Rule 8 in each of the 3 areas outlined above.

**1. Updated and Clarified Terminology and Concepts.** The term "foreign language" has been replaced with the more currently acceptable term "spoken language"

and references to “regular mail” have been removed to recognize the use of electronic communication. The definition of “Good Character” has been removed from the rule and the standards for character and fitness are now fully defined in Rule 8.06. The reference to transliteration is removed from Rule 8.05(b), paragraph 1, as testing in transliteration is no longer an industry standard.

Changes are made to Rule 8.01 to distinguish the roster and certification requirements for spoken language interpreters from the requirements for Sign Language interpreters, and reflect the current roster categories of Spoken Language, Certified Spoken Language, Sign Language, and Certified Sign Language. The National Association of the Deaf (NID) references are removed as that agency no longer manages American Sign Language (ASL) interpreter qualifications and the Registry of Interpreters of the Deaf (RID) is now the principal agency maintaining certifications for ASL interpreters. It is proposed in Rule 8.05 in the new clause (b), paragraph 1, that the reference to “sign” be removed as the Rule applies to spoken language only.

**2. Requirements and Appointment of Rostered, Certified, and Employee Interpreters.** A number of changes to Rule 8 are recommended to accurately reflect the current requirements for inclusion on the interpreter roster, to eliminate redundancy, to strengthen the character and fitness requirements for initial and continued inclusion on the statewide roster year after year, and to clarify that the only additional requirement for being listed as a certified interpreter on the roster is passing the certification exam.

The Program proposes that Rule 8.02 be revised to modify the process for the appointment of the most qualified interpreters. The rule currently requires that the court first make “diligent efforts” to appoint a certified court interpreter, and that a rostered or other qualified interpreter may only be appointed if a certified court interpreter is not found. The comments to the rule suggest that cases should be rescheduled if a certified court interpreter cannot be appointed. However, the courts have seen a steady increase in the number of languages that parties speak in district court proceedings, which was over 100 languages in 2018. There is also a shortage of certified interpreters in certain languages. These developments have required changes in how the district courts identify and appoint the most qualified interpreter for court proceedings to ensure that the courts are providing timely access to justice and making the best and most efficient use of the interpreter resources available.

The Court Interpreter Program recently implemented a small team of scheduling specialists responsible for scheduling interpreters statewide. The team works to ensure the most qualified interpreters are hired in accordance with court rule and program policies, but the current rule limits the team’s ability to fully optimize the qualified interpreters available around the state. Currently, the National Center for State Courts (NCSC) Oral Certification Examination for Court Interpreters is available in only 18 languages. The Somali Certification Exam was suspended by the NCSC in 2017. Minnesota has only three Certified Somali Interpreters on the roster but has over 6,000 hearings per year where a Somali interpreter is needed. There are other Somali interpreters available in the state and

although they may be qualified, they have no opportunity to achieve certification. A strict interpretation of the current rule would require all hearings for Somali-speaking parties statewide to be scheduled in a way that would allow the 3 certified interpreters to be present for all 6,000 proceedings. Such a requirement results in delayed access to justice, and is not feasible or cost-effective.

In light of these challenges, the proposal replaces the “diligent efforts” standard with a standard that authorizes the court to appoint an otherwise qualified interpreter if a certified interpreter is not “reasonably available.” This change will not diminish the quality of interpreters being appointed in district court proceedings, and does not alter the current requirement to use a certified interpreter whenever possible. The change does provide the court the needed flexibility to appoint the most qualified interpreter that is reasonably available for all proceedings, and allow the court to maximize the use of all qualified court interpreters available statewide.

Additionally, a new paragraph (e) recognizes the court’s increased reliance on employee interpreters. Employee interpreters are supervised by court administration which provides a high level of confidence in the interpreters’ skills, reliability, and professionalism. Use of employee court interpreters is also fiscally responsible. The Job Classification of Court Interpreter was revised effective December 27, 2017 and includes the following under Licensure and Certification Requirements:

- Designation as a Minnesota Certified Court Interpreter for language of assignment.
- When a certification test is not available for the assigned language to become a Certified Court Interpreter, designation as a Minnesota Rostered Court Interpreter and court interpreting experience may be supplemented in lieu of designation. When a certification test becomes available, current incumbents without the designation of Minnesota Certified Court Interpreter are expected to obtain certification within a designated time frame.

The proposed Rule 8.02(e) recognizes that certification is not possible for all employee interpreters, as explained above, and allows the court to presume the qualification of the court’s two Somali Employee Interpreters who have no opportunity to achieve certification due to the suspension of the examination.

**3. Delegation to the State Court Administrator.** A proposed amendment to the introduction to Rule 8 eliminates the definition of “review panel,” and an amendment to Rule 8.07 removes the ability for applicants denied certification to appeal to a review panel. Instead, if the denial is based on a failed certification exam, the decision is not appealable or reviewable. If the denial is based on a character and fitness issue, the decision and process is governed by Rule 8.06 and 8.08. In Rule 8.09 the language has been updated to accurately describe the fees currently imposed and collected by the Program, and to allow the State Court Administrator to revise program fees as necessary. *See* Minn. Stat. § 480.175, subd. 2 (providing that fees collected by the program are appropriated to the court for the cost of training, testing, certifying, and registering court interpreters). Rule

8.10 allows the State Court Administrator to establish continuing education requirements of court interpreters on the roster. Removing the requirement of Supreme Court oversight in Rules 8.09 and 8.10 is respectfully requested in order to provide the needed flexibility as requirements may periodically be updated and modified by the program and it would be beneficial to publish these without the need for amendment to the Rule.

**Conclusion:** Equal access to justice is central to the Minnesota Judicial Branch mission statement. The training, qualification, and compensation of court interpreters is essential to providing access to justice. To continue its long tradition of striving to meet these goals, the Court Interpreter Program respectfully requests the Supreme Court adopt the Program's attached proposed rule changes. Additionally, the Program recommends that the Supreme Court consider eliminating from the published rules any outdated commentary that may confuse the issues or the standards the court is required to follow when appointing court interpreters in district court proceedings.

Interpreter Rule 8 Reorganization Thoughts for Future Reference:

In its September 6, 2019, report the advisory committee recommended that the court retain in rule 114 only the court procedural aspects of ADR and then move the rest of rule 114 into separate sets of rules akin to that governing licensed attorneys:

- RULES OF MINNESOTA SUPREME COURT FOR ADR ROSTERS AND TRAINING
- CODE OF ETHICS FOR COURT-ANNEXED ADR NEUTRALS
- RULES OF THE MINNESOTA ADR ETHICS BOARD

Regarding interpreters, two of the three separate sets of rules already exist; they are:

- CODE OF PROFESSIONAL RESPONSIBILITY FOR INTERPRETERS IN THE MINNESOTA STATE COURT SYSTEM
- MINNESOTA SUPREME COURT STATE COURT ADMINISTRATOR'S OFFICE ENFORCEMENT PROCEDURES FOR THE CODE OF PROFESSIONAL RESPONSIBILITY FOR COURT INTERPRETERS

Thus, the Court might consider:

- retaining proposed changes to rules 8.02, 8.03, 8.12, and 8.13 in Gen. R. Prac. 8 as these are purely court procedural rules; and then:
- carve out most of the remaining parts of rule 8 into a separate set of rules on Rosters and training:

RULES OF MINNESOTA SUPREME COURT FOR INTERPRETER ROSTERS AND TRAINING, which would include the definitions, 8.01, 8.04, 8.05, 8.06, 8.07, 8.08, 8.09, 8.10, and 8.11.

Additional reorganization is also suggested in rule 8.02, paragraphs (a) and (e) to restate more clearly and break out in separately numbered paragraphs issues of presumptions and objections. For example, in Rule 8.02(e), the first long sentence could be broken down, and the operative clause (now last) begin the sentence. Make it read:

The Minnesota Judicial Branch may employ qualified and competent interpreters to perform interpreter services for the courts. This employment recognizes that certification is not available for all languages and that non-certified interpreters can nevertheless be competent and qualified to perform interpretation services for the courts, and that availability of court interpreters on a statewide basis is a critical need,

It may make sense to make the next three numbered points a separate bulleted list, followed by subparagraphs, for Oath Required, Presumption of Competence, and Objections.

Other grammatical edits suggested by members include:

- Using "Statewide Roster" in the Definition section as that is the term used more consistently throughout the rule, as opposed to the term "Roster."

- 8.01(a)(4) should start with the word “met” not “meet”
- 8.01(c)(3) should say “possess certificate(s) that demonstrate minimum competency in sign language from RID or another equivalent valid qualification approved by the State Court Administrator.” I think rather than saying “equivalent valid qualification” it would be better to say “or the equivalent.”
- 8.01(d), second line from end of the paragraph, a stray “a” appears in front of “another” and should be deleted.
- Rule 8.02(d) – the word “exhausting” doesn’t really work there. It should be “determining that no interpreter is available who meets the requirements of Rule 8.02(a) and (b),” should the court appoint ...
- Rule 8.05(b)(3) – I think it’s odd to say the results will be “released to examinees to the address.” I would put in “delivered” to the address.
- Rule 8.06(c) – Fix references to the “roster” and change “applicant” to “interpreter” to be consistent. In the last sentence delete “of interpreters included on the roster” after “Statewide Roster.”
- Rule 8.10 – fix reference to “Minnesota Court Interpreter Roster”
- Use consistent outline (e.g., rule 8.0X (a)(1)(i) rather than 8.0x(a)3, or 8.0X(a)a. This occurs in the definitions and in Rules 8.04, 8.05, 8.06, and 8.08.