

FILED

February 28, 2020

**OFFICE OF
APPELLATE COURTS**

STATE OF MINNESOTA
IN SUPREME COURT

ADM09-8009

**ORDER PROMULGATING AMENDMENTS TO THE
GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS**

The State Court Administrator proposed amendments to Rule 8 of the General Rules of Practice for the District Courts, which governs the use of interpreters in court proceedings. Amendments were proposed to update and clarify the rule, clarify the requirements regarding the use of certain interpreters, and delegate certain responsibilities for court interpreters to the State Court Administrator's office.

We referred the State Court Administrator's proposed amendments to the Advisory Committee for the General Rules of Practice for the District Courts, requesting an expedited review. The committee reviewed the proposed changes and unanimously recommends the amendments to the court for adoption. The advisory committee also proposed other minor amendments, in the nature of clarifying or housekeeping amendments. We opened a public comment period. No comments were filed.

Based on all of the files, records, and proceedings herein,

IT IS HEREBY ORDERED that the attached amendments to the General Rules of Practice for the District Courts are prescribed and promulgated to be effective as of July 1, 2020. The amendments to Rules 8.02, 8.03, and 8.13 shall apply to all court proceedings held on or after the effective date, unless the district court concludes that application of the rules as amended to a case pending on the effective date will work a manifest injustice, *see*

Minn. Gen. R. Prac. 1.02. All other amendments to Rule 8 that are promulgated by this order apply to applications for roster and certification status, to complaints filed, and to investigations initiated on or after the effective date.

Dated: February 28, 2020

BY THE COURT:

A handwritten signature in black ink, appearing to read "Lorie S. Gildea". The signature is written in a cursive style with a large initial "L".

Lorie S. Gildea
Chief Justice

AMENDMENTS TO THE GENERAL RULES OF PRACTICE FOR THE DISTRICT COURTS

[*Note: In the following amendments, deletions are indicated by a line drawn through the words and additions are indicated by a line drawn under the words.*]

TITLE I. RULES APPLICABLE TO ALL COURT PROCEEDINGS

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RULE 8. INTERPRETERS

Definitions

1. ~~“Review Panel” means the Minnesota Court Interpreter 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. “Coordinator” means the Court Interpreter Program Coordinator assigned to the State Court Administrator’s Office.

3. ~~“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.~~

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

Rule 8.01 Statewide Roster

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

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

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

~~(b) Non-certified Foreign Language Court Interpreters: To be included on the Statewide Roster, foreign language court interpreters must have: (1) completed the interpreter~~

~~orientation program sponsored by the State Court Administrator; (2) filed with the State Court Administrator a written affidavit agreeing to be bound by the Code of Professional Responsibility for Interpreters in the Minnesota State Court System as the same may be amended from time to time; (3) received a passing score on a written ethics examination administered by the State Court Administrator; and (4) demonstrated minimal language proficiency in English and any foreign language(s) for which the interpreter will be listed, as established by protocols developed by the State Court Administrator.~~

(c) ~~Non-certified Sign Language Court Interpreters:~~ To be included on the Statewide Roster, ~~non-certified sign language court interpreters must:~~

- ~~(1) have satisfied the three all requirements set forth about in paragraph (a) Rule 8.01(b);~~
- ~~(2) be a member in good standing with the Registry of Interpreters for the Deaf (RID) or with the National Association of the Deaf (NAD); and~~
- ~~(3) possess certificate(s) from RID that demonstrate minimum competency in sign language~~
 - ~~(i) both a valid Certificate of Transliteration (CT) and a Certificate of Interpretation from RID; or~~
 - ~~(ii) a valid Comprehensive Skills Certificate (CSC) from RID or~~
 - ~~(iii) a valid Level 5 certificate from NAD; or~~
 - ~~(iv) a valid Certified Deaf Interpreter (CDI) or Certified Deaf Interpreter Provisional (CDIP) certificate from RID; or~~
 - ~~(v) another equivalent valid qualification certification approved by the State Court Administrator.~~

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

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

(a) Use of Certified Court Interpreter. Whenever an interpreter is required to be appointed by the court, the court shall appoint ~~only~~ a certified court interpreter who is listed on the statewide roster of interpreters established by the State Court Administrator under Rule 8.01, except as provided in Rule 8.02(b), (c), ~~and (d), and (e).~~ A certified court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular certified court interpreter. By objection made at the commencement of a proceeding, or by motion made appropriately in advance of a proceeding, Objections made by a party regarding special circumstances which render the certified court interpreter unqualified to interpret in the proceeding must be presented to the court made in a timely manner. The court shall use a certified court interpreter except when no certified court interpreter is reasonably available. A certified interpreter is not reasonably available if the hearing would have to be unreasonably delayed to secure the presence of the interpreter, or if the interpreter is unwilling to provide interpreting services at the request of the court.

(b) Use of Non-Certified Court Interpreter on Statewide Roster. ~~If the court has made diligent efforts to obtain a certified court interpreter as required by Rule 8.02(a) and found none to be no certified or employee court interpreter is reasonably available,~~ the court shall appoint a non-certified court interpreter who is otherwise competent and is listed on the Statewide Roster established by the State Court Administrator under Rule 8.01. If the Roster includes additional information regarding an interpreter's level of experience, competency, and qualification, the court shall appoint from among the highest ranked interpreters available. In determining whether a non-certified court interpreter is competent, the court shall apply the screening standards published developed by the State Court Administrator.

(c) Use of ~~Non-certified Foreign Spoken Language~~ Court Interpreter not on the Statewide Roster. Only after the court has ~~exhausted~~ determined that the requirements of Rule 8.02(a) and (b) cannot be met may the court appoint a ~~non-certified foreign spoken~~ language interpreter who is not listed on the Statewide Roster and who is otherwise competent. In determining whether a ~~non-certified foreign spoken~~ language interpreter is competent, the court shall apply the screening standards published developed by the State Court Administrator. The court may appoint an interpreter certified in another state.

(d) Use of Non-certified Sign Language Court Interpreter not on the Statewide Roster. Only after ~~exhausting~~ determining that the requirements of Rule 8.02(a) and (b) cannot be met may the court appoint a non-certified sign language interpreter(s) who is not listed on the Statewide Roster. The court must appoint an interpreter(s) who can establish effective communication and who meets the requirements of Rule 8.01(c), paragraphs (2) and (3), is (are):

- ~~(1) — an interpreter who is a member in good standing with RID or NAD who possesses both a valid CT and a valid CI; or a valid CSC from RID; or a valid Level 5 certificate from NAD; or a valid CDI or CDIP certificate; or another equivalent valid certification approved by the State Court Administrator. If no such interpreter is available,~~
- ~~(2) — a team including an interpreter with a valid CDI or CDIP certificate and an interpreter who has a valid CI or a valid CT form RID. If no such interpreters are available, as a last resort,~~
- ~~(3) — an interpreter with a valid CI from RID.~~

(e) Use of Employee Court Interpreter. In recognition 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 in recognition that availability of court interpreters on a statewide basis is a critical concern, the Minnesota Judicial Branch may employ qualified and competent interpreters to perform interpreter services for the courts. Employee interpreters must have (1) satisfied all requirements in Rule 8.01(a); (2) satisfied all requirements for certification in Rule 8.05, or met the competency standards established by the State Court Administrator; and (3) been found to be qualified and competent by the Chief Judge in the judicial district of primary employment and taken the oath required by Minn. Stat. §§ 546.44, subd. 2, and 611.33, subd. 2. An employee interpreter who has taken the required oath is not required to take the oath at any subsequent court proceedings. An employee court interpreter shall be presumed competent to interpret in all court proceedings. The court may, at any time, make further inquiry into the appointment of a particular employee court interpreter. By objection made at the

commencement of the proceeding, or by motion made appropriately in advance of a proceeding, special circumstances which render the employee court interpreter unqualified to interpret in the proceeding must be presented to the court.

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

Rule 8.03 Disqualification from Appointment or Proceeding

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

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

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

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

Rule 8.04 General Requirement for Court Interpreter Certification

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

~~(1) age of at least 18 years;~~

~~2. good character and fitness;~~

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

4. (2) receives a passing score on the court legal interpreting competency examination under Rule 8.05 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 8.05 Court Interpreter Certification Examination for Legal Interpreting Competency

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

- (1) meets the requirements under Rule 8.01 and is included on the Statewide Roster;**
- (2) has paid the examination fee; and**
- (3) has registered to take the examination and met all other requirements for examination as determined by the State Court Administrator.**

(b) Examination. Examinations for legal court interpreting competency in specific languages 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; and
- 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~~ delivered 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 State Court Administrator's Office may be released at the discretion of the State Court Administrator's Office. Pass/fail examination results may be released to (1) District Administrators by the State Court Administrator's Office for purposes of assuring that interpreters are appointed in accordance with Rule 8.02, and (2) any state court interpreter certification authority, including the National Center for State Courts.

(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 or other written documentation, from the applicant prior to providing accommodations to the applicant.

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

(c) Notification of Certification. The Coordinator shall notify applicants in writing, including by electronic means, regarding whether the applicant has passed the examination and has met all other requirements for certification.

Rule 8.06 ~~Application for Certification~~ Character and Fitness Standards for Inclusion on the Statewide Roster.

~~(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 including on the Statewide Roster~~ only those who qualify and who meet character and fitness standards. 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 inclusion on the Statewide Roster certification.

~~2.(a) 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 interpreter applicant possesses the character and fitness to qualify for inclusion on the Statewide Roster certification to interpret in the courtroom:

- ~~(1)a.~~ conviction of a crime which resulted in a sentence or a suspended sentence;
- ~~(2)b.~~ misconduct involving dishonesty, fraud, deceit or misrepresentation;
- ~~(3)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
- ~~(4)d.~~ acts that indicate abuse of or disrespect for the judicial process.

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

- ~~(1)a.~~ the interpreter's applicant's age at the time of the conduct;
- ~~(2)b.~~ the recency of the conduct;
- ~~(3)c.~~ the reliability of the information concerning the conduct;
- ~~(4)d.~~ the seriousness of the conduct;
- ~~(5)e.~~ the factors underlying the conduct;
- ~~(6)f.~~ the cumulative effect of the conduct;
- ~~(7)g.~~ the evidence of rehabilitation;
- ~~(8)h.~~ the interpreter's applicant's positive social contributions since the conduct;
- ~~(9)i.~~ the interpreter's applicant's candor in the certification process; and
- ~~(10)j.~~ the materiality of any admissions or misrepresentations.

~~(c) Notification of Results of Character and Fitness Evaluation Application for~~

Certification. The Coordinator shall notify interpreters applicants in writing and by regular mail of a determination that the interpreter failed to meet the character and fitness requirements for inclusion on the roster or for certification. A decision by the State Court Administrator's Office to not add an applicant to the roster is not governed by Rule 8.08 and is not appealable or reviewable under these rules. Suspension or removal from the Statewide Roster of Interpreters included on the roster is governed by Rule 8.08 ~~the decision on the applicant's request for certification.~~

(d) Information Disclosure.

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

(2) Investigation Disclosures for Purposes of Character and Fitness Evaluation. Information may be released to appropriate agencies for the purpose of obtaining information related to the applicant's character and fitness competency.

(3) Confidentiality.

ia. Investigative Evaluation Data: Information obtained by the Coordinator and the State Court Administrator's Office during the course of their evaluation 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.

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

iiie. Examination Information: Examination Information shall be available as provided in Rule 8.05(a)(b).

Rule 8.07 Appeal of Denial of Certification

(a) Appeal of Certification Denial. ~~A decision by the State Court Administrator's Office to not list an applicant on the Statewide Roster as a certified spoken language interpreter based on a failed certification exam is not governed by Rule 8.08 and is not appealable or reviewable under these rules. A decision by the State Court Administrator's Office to not list an applicant on the Statewide Roster as a certified spoken language interpreter and to remove the applicant from the Statewide Roster based on the character and fitness standards in Rule 8.06 is governed by that rule and by Rule 8.08. Any applicant who is denied certification by the State Court Administrator's Office may appeal to the Review Panel by filing a petition for review with the Review Panel within 21 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 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 the Minnesota Court Interpreter Review Panel. The Review Panel shall give such directions, hold such hearings and make such order as it may deem appropriate.~~

Rule 8.08 Complaints and Investigation

~~(a) Procedure. Complaints of alleged unprofessional, illegal or unethical conduct. Any complaint alleging a violation, or information that constitutes a violation, of Rule 8, the Court Interpreter Program policies, or the Code of Professional Responsibility for Court Interpreters by any certified or non-certified court interpreter on the Statewide Minnesota Court Interpreter Roster shall be governed by procedures published established by the State Court Administrator's Office. 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) Revocation or Suspension of Certification or Roster Status. The certification or roster status of a court certified or non-certified interpreter on the Statewide 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.~~

Rule 8.09 Expenses and Fees

~~The expenses for administering the certification requirements, including the complaint procedures, may be paid from initial application, examination, fees training, and orientation 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 8.10 Continuing Education Requirements

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

suspension or revocation from the Statewide Roster under Rule 8.08.

Rule 8.11 Confidentiality of Records

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

Rule 8.12 Interpreters to Assist Jurors

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

Rule 8.13. Requirement for Notice of Anticipated Need for Interpreter

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

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