

Rule 42: Standards for Court Interpreters.

Supreme Court

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RULE 42: STANDARDS FOR COURT INTERPRETERS.

Section 1. Scope

This rule, except where noted, shall apply to all courts in this state, including without limitation, municipal court, general sessions court, juvenile court, probate court, circuit court, chancery court, criminal court, and appellate court.

Commentary

This rule recognizes that for most people living in the United States, English is their native language, or they have learned to read, speak, and understand English. There are others for whom English is not their primary language. For them language can be a barrier to understanding and exercising their legal rights, and to securing meaningful access to the judicial system.

This rule is promulgated to assist the courts in this state in providing equal access to the courts to participants who have a limited ability to speak or understand the English language.

Section 2. Definitions

(1) **State Certified Court Interpreter** - an interpreter who possesses the qualifications outlined in Section 5(b) of this rule.

(2) **State Registered Court Interpreter** - an interpreter who possesses the qualifications outlined in Section 5(a) of this rule.

(3) **Interpretation** - the unrehearsed transmission of a spoken message from one language to another.

(4) **Limited English Proficient ("LEP") Person** - a participant in a legal proceeding who has limited ability to speak or understand the English language.

(5) **Non-Credentialed Interpreter** - a court interpreter who is not certified or registered as provided in this rule.

(6) **Participant** - a party, witness, or other person in a legal proceeding.

(7) **Sight Translation** - oral translation of a written text.

(8) **Written Translation** - the rendering of a written document from one language into a written document in another language.

(9) **Audio or Video Transcription and Translation** - written transcription of the entire verbal content and translation of the non-English verbal content of an audio or video recording.

(10) **Court Proceedings** - any hearing, trial, or other appearance before any Tennessee general sessions court, or municipal court exercising general sessions jurisdiction, or any juvenile, probate, circuit, chancery, criminal, or appellate court, in an action, appeal, or other proceeding, including any matter conducted by a judicial magistrate.

(11) **Indigent Party** - a party found by a court to be indigent pursuant to the provisions of Tennessee Code Annotated section 40- 14-202 or other applicable statute, which finding shall be evidenced by a court order.

Section 3. Determining Need for Interpretation

(a) Appointing an interpreter is a matter of judicial discretion. It is the responsibility of the court to determine whether a participant in a legal proceeding has a limited ability to understand and communicate in English. If the court determines that a participant has such limited ability, the court should appoint an interpreter pursuant to this rule.

(b) Recognition of the need for an interpreter may arise from a request by a party or counsel, the court's own voir dire of a party or witness, or disclosures made to the court by parties, counsel, court employees or other persons familiar with the ability of the person to understand and communicate in English.

(c) The court shall appoint an interpreter according to the preference listed below:

1. State certified court interpreter;
2. State registered court interpreter;

3. Non-credentialed court interpreter.

(d) The court may appoint an interpreter of lesser preference (i.e., registered instead of certified or non-credentialed instead of registered) only upon a finding that diligent, good faith efforts to obtain the certified or registered interpreter, as the case may be, have been made and none has been found to be reasonably available. A non-credentialed interpreter may be appointed only after the court has evaluated the totality of the circumstances including the gravity of the judicial proceeding and the potential penalty or consequence involved.

(e) Before appointing a non-credentialed interpreter, the court shall make the following findings:

(i) that the proposed interpreter appears to have adequate language skills, knowledge of interpreting techniques, familiarity with interpreting in a court setting; and

(ii) that the proposed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

(f) A summary of the efforts made to obtain a certified or registered interpreter and to determine the capabilities of the proposed non-credentialed interpreter should be made in open court.

(g) The court shall use the services of multiple interpreters where necessary to aid interpretation of court proceedings.

Commentary.

The Administrative Office of the Courts distributes photo identification cards to all state certified and registered interpreters. A court can determine an interpreter's credentialing status by viewing this card, which differentiates between registered and certified interpreters, and by consulting the credentialed interpreter roster, which can be found on the AOC's website (www.tncourts.gov).

Section 3(g). The court may wish to consider using multiple interpreters in legal proceedings where one or more of the following situations exist:

(1) Legal proceedings lasting more than 2 hours—Generally, in legal proceedings lasting more than two hours a team of two interpreters should be designated to ensure the accuracy and completeness of the record by allowing interpreters to alternate work and rest in short shifts, thus avoiding fatigue. Although it may not be necessary to use multiple interpreters for short hearings, studies have shown that interpreters' accuracy rates greatly decrease after 20-30 minutes of continuous interpretation. Therefore, courts should be aware that interpreters may need breaks during relatively short hearings.

(2) Multiple defendants—One or more interpreters may be appointed (apart from the interpreter(s) who are interpreting the legal proceedings) in order to provide interpreting services for attorney-client communications during the proceeding. However, courts should be aware that ethical considerations do not preclude interpreters from facilitating in-court and out-of-court communication for both the court and one or more parties in the same proceeding. Moreover, the Administrative Office of the Courts has provided many courts with simultaneous interpreting equipment, which will allow one interpreter to interpret for multiple defendants during a single proceeding.

See the commentary to Canon 8 of Tennessee Supreme Court Rule 41 for additional information regarding circumstances in which it may be advisable to use multiple interpreters.

Section 4. Procedures

(a) Scheduling Interpreter Services. - Interpreter services will be scheduled as determined by local rules or at the direction of the court.

(b) Waiver of Interpreter. - The LEP participant may at any point in the proceeding waive the services of an interpreter. The waiver of the interpreter's services must be knowing and voluntary, and with the approval of the court. Granting such waiver is a matter of judicial discretion, subject to the procedural requirements of section 4(b)(1).

(1) *Waiver Procedure.*

(i) Before approving the waiver, the judge, in open court, must first explain to the LEP person through an interpreter the nature and effect of the waiver; and

(ii) the judge must determine in open court that the waiver has been made knowingly, intelligently, and voluntarily.

(iii) If the LEP person is the defendant in a criminal matter, the court must further determine that the defendant has been afforded the opportunity to consult with his or her attorney.

(2) At any point in any proceeding, for good cause shown, the LEP person may retract his or her waiver and request an interpreter.

(c) Interpreter Oath. All interpreters, before commencing their duties, shall take an oath that they will make a true and impartial interpretation using their best skills and judgment in accordance with the standards and ethics of the interpreter profession. The court shall use the following oath:

"Do you solemnly swear or affirm that you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts; that you will follow all official guidelines established by this court for legal interpreting or translating, and discharge all of the solemn duties and obligations of legal interpretation and translation?"

Commentary.

Section 4(a). Comment. The person(s) responsible for arranging for the services of the interpreter and making sure the interpreter is available for appointment to provide services for the court hearing(s) shall be left to the local courts to decide. It is recommended that local rules reflect the arrangement process to assist those appearing before the courts.

Section 4(c). Comment 1. It is common practice for interpreter oaths to be sworn to and maintained on file for all interpreters who are regularly employed by a court. This simplifies the court's inquiries in open court during procedural hearings. It is recommended, however, that an oath be read and sworn to in open court in all proceedings conducted before a jury.

Section 4(c). Comment 2. The Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts address the various ethical responsibilities of interpreters for accuracy and completeness, impartiality, confidentiality, and other matters relating to the professional conduct of interpreters. The court should be alerted to potential conflicts of interest or other violations of the Rules of Ethics. The sanction of removal from the case is justified for any violations of the Rules of Ethics. See Tennessee Supreme Court Rule 41 for additional information.

Section 5. State Certified and Registered Court Interpreters

(a) To receive designation as a state registered court interpreter, the candidate shall:

- (1) Submit to a criminal background check. Convictions for any felony or for a misdemeanor involving dishonesty or false statement shall disqualify a candidate from certification if such conviction is ten years old or less as provided in Tennessee Rule of Evidence 609;
- (2) Attend an approved ethics and skill building workshop;
- (3) Pass an approved criterion-referenced written examination;
- (4) Provide verification of United States citizenship or the legal right to work and remain in the United States;
- (5) Complete any required forms and pay any required fees; and
- (6) Complete any additional requirements established by the Administrative Director of the Courts pursuant to subsection (d).

If an oral performance examination is available, a registered court interpreter must sit for the examination at least once every twelve months from the date he/she is designated as a registered court interpreter until he/she receives a passing grade to become a certified court interpreter. Failure to sit for the oral examination as required by this section shall result in the loss of designation as a registered court interpreter and the interpreter shall be required to begin the credentialing process anew.

(b)(1) To receive designation as a state certified court interpreter, the candidate shall:

- (i) Successfully meet the requirements to be designated as a state registered court interpreter;
- (ii) Pass an approved criterion-referenced oral performance examination; and
- (iii) Complete any additional requirements established by the Administrative Director of the Courts pursuant to subsection (d).

(2) Interpreters with certification as a federal court interpreter shall be granted reciprocity as a state certified court interpreter after successfully meeting the requirements of (a)(1), (a)(2), (a)(4), (a)(5), and (a)(6) above. Interpreters with any other type of certification will be reviewed on a case-by-case basis to determine what steps the interpreters must take to be granted state court interpreter certification.

(c)(1) Once credentialed, certified and registered court interpreters shall be required to renew their credentials every three years. The three-year effective period begins on July 1 following the date of credentialing. Renewals are from July 1 of one year to June 30 of the third year for three-year periods.

(2) Renewing credentials requires the following:

- (i) Providing documentation of 18 hours of approved continuing education (CE) credits received during the three-year period. A CE credit is equal to one contact hour in the classroom. A minimum of 12 of the 18 hours must consist of foreign language or interpreting skills training. The Administrative Director of the Courts is authorized to adopt policies and procedures necessary to implement this provision of the rule; and
- (ii) Completing any required forms and paying any required fees.

(d) The Administrative Director of the Courts shall determine appropriate examination registration fees as well as examination eligibility requirements, requirements for successful completion of examinations, and penalties for unsuccessful completion of examinations. The Administrative Director of the Courts also has the authority to impose additional requirements for an interpreter to earn, retain, or reinstate status as a registered or certified interpreter. The director is authorized to adopt policies and procedures necessary to implement this provision of the rule.

Commentary.

Comment 1. Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess, including language instructors. The knowledge and skills of a court interpreter differ substantially from or exceed those required in other interpretation settings, including social service, medical, diplomatic,

and conference interpreting. Due to the highly specialized knowledge and skills required in this profession, the Court has promulgated this rule to adopt uniform qualifications for interpreters serving in Tennessee's courts.

Comment 2. A "criterion-referenced" performance examination is one in which the required score is based on an absolute standard rather than one on the relative performance of examinees as measured against one another.

Comment 3. Interpreters are responsible for familiarizing themselves with the credentialing and renewal requirements. For additional information, interpreters should consult the interpreter page of the Administrative Office of the Courts' website, which can be accessed at www.tncourts.gov, or contact the Administrative Office of the Courts.

Section 6. Removal of an Interpreter in Individual Cases

Any of the following actions shall be good cause for a judge to remove an interpreter from a case:

- (1) Incompetence;
- (2) Being unable to interpret adequately, including where the interpreter self-reports such inability;
- (3) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (4) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (5) Misrepresentation of credentials;
- (6) Failure to reveal potential conflicts of interest; or
- (7) Failing to follow other standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

Commentary.

It is important to recognize that interpreters are sometimes called to court to interpret for someone who speaks a different language or dialect from that spoken by the interpreter. This section authorizes the court to remove interpreters who are not competent to interpret for this or any other reason, or who violate the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts.

Section 7. Cost of Interpreter/Translator Services

The reasonable costs associated with an interpreter's and/or translator's services will be compensated when a court finds, upon motion of counsel or on the court's own initiative, that a participant has limited English proficiency ("LEP"). The term "interpret" refers to the process of transmitting the spoken word from one language to another. The term "translate" refers to the process of transmitting the written word from one language to another. When it is necessary for a court to utilize the services of an interpreter to determine if an individual is LEP, the AOC will compensate the interpreter for this service. The reasonable costs will be compensated pursuant to this section 7 when a general sessions court, or a municipal court exercising general sessions jurisdiction, or a juvenile, probate, circuit, chancery, criminal, or appellate court, finds, on motion of a party or on the court's own initiative, that a party has limited English proficiency. Reasonable compensation shall be determined by the court in which services are rendered, subject to the limitations in this rule, which limitations are declared to be reasonable.

(a) Rates of Compensation. Compensation rates for services provided by spoken Spanish foreign language interpreters shall not exceed the following: Certified Interpreter - \$50 per hour; Registered Interpreter - \$40 per hour; Non-Credentialed Interpreter - \$25 per hour. Compensation rates for services provided by spoken foreign language interpreters for languages other than Spanish shall not exceed \$75 per hour. Compensation for interpreters or translators shall not exceed the following: Certified Interpreter - \$500 per day; Registered Interpreter - \$400 per day; Non-Credentialed Interpreter - \$250 per day. If the court finds that these maximum rates are inadequate to secure the services of a qualified interpreter in a language other than Spanish, the court shall make written findings regarding such inadequacy and determine a reasonable maximum rate for a qualified interpreter. Interpreters shall be compensated for in-court interpretation time and travel time at the compensation rate approved by the court. If the in-court interpretation time and travel time total less than two (2) hours, a minimum of two (2) hours will be compensated for the day.

(b) Translation of Documents. The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of an indigent party with LEP. Document translation shall be compensated at a rate of twenty cents (\$.20) per word. If the court finds that this rate is inadequate to secure the services of a qualified translator, the court shall make written findings regarding such inadequacy and determine a reasonable per-word translation rate.

(c) Translation of Audio or Video Media. Services associated with the review or transcription/translation of audio or video tapes that include languages other than English shall be compensated at the same rate provided for spoken foreign language interpreters in section 7(a) of this rule.

(d) Expenses. The following expenses shall be paid as indicated:

- (1) Mileage for travel within the state in accordance with Judicial Department travel regulations, if supported by a log showing the mileage, the purpose of the travel, and the origination and destination cities; however mileage will not be paid for travel from residence/office to courthouse within the same county;
- (2) Lodging where an overnight stay is required, at actual costs, if supported by a receipt, not to exceed the current authorized executive branch rates;

(3) Meals in accordance with the Judicial Department travel regulations, if supported by a receipt, where an overnight stay is required;

(4) Parking at actual costs up to ten dollars per day, if supported by a receipt.

(5) Time spent traveling shall be compensated at the same rates provided for spoken language interpreters in Section 7(a), except that interpreters compensated at a rate of one hundred dollars (\$100) per hour or more shall be compensated for travel time at no greater than fifty percent (50%) of the interpreter's approved hourly rate.

(6) Other expenses not listed in section (d) above, including travel outside the state, will be reimbursed only if prior authorization is obtained from the court.

(e) Prior Approval Required for Services Exceeding \$5,000. If the court approves an amount in excess of five thousand dollars (\$5,000) for interpreter/translator services, the order(s) and any attachments must be submitted to the director for prior approval. If the director denies prior approval of the request, the claim shall be transmitted to the chief justice for disposition. The determination of the chief justice shall be final.

(f) Claims Procedures. Claims for compensation of interpreters and translators shall be submitted utilizing the system established by the AOC for electronic submission. The interpreter/translator's submission to the AOC must also include a copy of the court's order appointing the interpreter/translator.

(1) Claims that total \$200 or more for compensation and expenses shall be reviewed and approved by the judge who presided over the final disposition of the case prior to payment of the claim by the AOC.

(2) Claims that total less than two hundred dollars (\$200.00) shall be exempt from the judicial review and approval requirement. Such claims, however, shall be subject to the AOC's examination and audit pursuant to section 7(f)(4).

(3) Time for Submitting Claims. Claims for compensation under this rule shall be submitted within 180 days of the day the services were rendered. Claims submitted more than 180 days after the services were rendered shall be deemed waived and shall not be paid.

(4) Examination and Audit by AOC.

(i) The AOC shall examine and audit all claims for compensation and reimbursement to insure compliance with this rule and any other applicable rule or statute(s). The AOC may decline to make any payment should there be a failure to comply with the requirements of this Rule or any other Rule or statutory requirements.

(ii) After such examination and audit, and giving due consideration to state revenues, the director shall make a determination as to the compensation and/or reimbursement to be paid and cause payment to be issued in satisfaction thereof.

(iii) Payment may be made directly to the person, agency, or entity providing the services.

(iv) The determination by the director shall be final, except where review by the chief justice also is required. In those instances, the determination of the chief justice shall be final. The chief justice may designate another justice to perform this function if the chief justice determines that a designation is appropriate or necessary.

(v) If the director denies a fee claim in whole or substantial part, such denial shall be forwarded to the chief justice for review. The determination of the chief justice shall be final. Reductions made during the process of auditing a fee claim which are due to mathematical miscalculations or result from requests for payments not permitted by this rule shall not be forwarded to the chief justice for review.

(vi) The payment of a claim by the AOC shall not prejudice the AOC's right to object to or question any claim or matter in relation thereto. Claims shall be subject to reduction for amounts included in any claim or payment previously made which are determined by the AOC not to constitute proper remuneration for compensable services. The AOC reserves the right to deduct from claims which are or shall become due and payable any amounts which are or shall become due and payable to the AOC.

(g) Contract Services and Pilot Projects. To facilitate the prompt and efficient disposition of proceedings which involve individuals with LEP, the AOC director may contract with interpreters that are credentialed pursuant to this Rule. Courts shall use the contracted interpreters unless they are unavailable. Counties may wish to utilize credentialed interpreters on a full-time or part-time basis with reimbursement for those services from the AOC. The rate of compensation shall not exceed, under any circumstances, the rates provided for in this rule. Counties wishing to be reimbursed for these expenses shall contact the AOC, which will determine in what amounts and by what method said reimbursement shall be made. In addition, the AOC is authorized to establish pilot projects that may include, but are not limited to, video or audio remote interpretation and regional interpretation centers.

(h) Eligible Cases and Covered Proceedings. The following provisions govern the payment of interpreter/translator costs pursuant to this rule.

(1) In cases in which an indigent party has a statutory or constitutional right to appointed counsel as outlined in Supreme Court Rule 13, Section 1(d)(1) and (2), interpreter costs will be paid for the following proceedings:

(i) All court hearings;

(ii) Pre-trial conferences between defendants and district attorneys in order to relay a plea offer immediately prior to a court appearance or to discuss a continuance;

(iii) Communication between client and state funded counsel appointed pursuant to Supreme Court Rule 13; and communication between client, state funded counsel and others for the purpose of gathering background information, investigation, trial preparations, and witness interviews.

(2) In cases where a party has a statutory or constitutional right to appointed counsel, as defined in section 7(h)(l), and is not found to be indigent, interpreter costs will only be paid for "court proceedings," as defined in section 2.

(3) If a party does not have a statutory or constitutional right to appointed counsel, interpreter costs will only be paid for "court proceedings," as defined in section 2, and at no time will the AOC pay for the costs of interpreters in the following situations:

(i) Communication with attorneys, prosecutors, or other parties related to a case involving LEP individuals for the purpose of gathering background information, investigation, trial preparation, witness interviews, or client representation at a future proceeding unless pursuant to section 7(h)(l) above;

(ii) Communications relating to probation treatment services;

(iii) Any other communication which is not part of a court proceeding or immediately preceding or following a court proceeding.

(4) Pursuant to Article 1, Section 35 of the Tennessee Constitution, interpreter costs shall be paid pursuant to this rule for services to victim(s) of crime during court proceedings in which the victim(s), or in the case of a homicide, the next-of-kin, are present.

Commentary.

Interested persons should contact the Tennessee Administrative Office of the Courts to determine the circumstances in which interpreter services may be approved and paid for by the Administrative Office of the Courts.

[Adopted by order filed April 25, 2002, amended by order filed April 27, 2005; by orders filed December 16, 2011; June 27, 2012; June 29, 2012, effective July 1, 2012; February 6, 2013, effective July 1, 2013 and as amended by order on December 4, 2015, effective the same.]

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