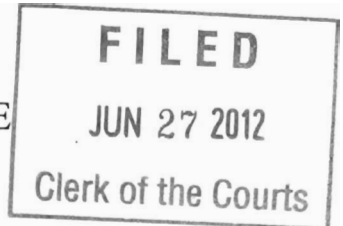


IN THE SUPREME COURT OF TENNESSEE  
AT NASHVILLE



**IN RE: AMENDMENT OF RULE 42,  
RULES OF THE TENNESSEE SUPREME COURT**

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**No. M2012-01045-SC-RL2-RL - Filed: June 27, 2012**

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**ORDER**

The Administrative Office of the Courts (“AOC”) has proposed expanding and updating the provisions of Rule 42, Rules of the Supreme Court, governing the appointment and compensation of court interpreters and translators in this state. To that end, the AOC has proposed substantial revisions to the current Rule 42, as well as a related amendment to Rule 13, section 4(d).

On May 18, 2012, the Court filed an order setting out the AOC’s proposed amendments and soliciting written comments concerning the amendments from the bench, the bar, interested organizations, and the public. The public comment period expired on June 15, 2012.

The Court received many written comments concerning the proposed amendments. As a result of the comments received, the AOC recommended to the Court a number of modifications to the proposed amendments. After careful consideration of the proposed amendments, the written comments submitted, and the AOC’s recommended modifications, the Court hereby adopts the amendments contained in the attached Appendices. Appendix A sets out the amendments to Rule 42, and Appendix B sets out the amendments to Rule 13, Section 4(d). The effective date of the amendments to both rules is July 1, 2012.

The Clerk shall provide a copy of this order to LexisNexis and to Thomson Reuters. In addition, this order shall be posted on the Tennessee Supreme Court’s website.

**IT IS SO ORDERED.**

**PER CURIAM**

## *APPENDIX A*

### *Amendments to Tenn. Sup. Ct. R. 42*

Rule 42, Rules of the Tennessee Supreme Court, is amended as indicated below. The remaining provisions of the current Rule 42 are not changed.

**[Amend Section 1 to read, in its entirety:]**

**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 the appellate courts.

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**[Amend Section 2, Definitions, by adding the following two new definitions:]**

(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.

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**[Amend Section 4 to read, in its entirety:]**

**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 a 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.

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**[Amend Section 7 to read, in its entirety:]**

**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. 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. 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. 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 (\$0.20) 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 3 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.

(1) Claims for compensation of interpreters and translators shall be submitted by the interpreter/translator to the AOC on forms (electronic or paper) as determined by the AOC. The forms must be signed by the court or counsel. The interpreter/translator's submission to the AOC must also include a copy of the court's order appointing the interpreter/translator. 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).

(2) The AOC is authorized to establish and implement a system for the electronic submission of claims for payment of fees and expenses incurred pursuant to this rule.

(i) Electronic 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).

(ii) Until the electronic claims system is implemented, claims for payment of fees and expenses under this rule may be filed by using paper claim forms. The AOC, however, is authorized to require the use of the electronic claims system for all claims submitted after implementation of the system, unless the AOC authorizes the submission of a claim in some other form because of exigent circumstances in a particular case.

(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. The time limitation imposed by this section shall become effective on October 1, 2012.

(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), 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)(1), 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)(1) 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.

## *APPENDIX B*

### *Amendments to Tenn. Sup. Ct. R. 13, Section 4(d)*

Rule 13, Section 4(b) is amended as indicated below.

**[Delete section 4(d) in its entirety and replace it with the following new section 4(d):]**

(d) Foreign Language Interpreters and Translators. The appointment of interpreters and/or translators, and the compensation by the AOC for costs associated with an interpreter's and/or translator's services, are governed by Rule 42, Rules of the Tennessee Supreme Court.

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**[Amend the Explanatory Comment to Rule 13, § 4 as indicated below (new text indicated by underlining, deleted text indicated by overstriking):]**

**EXPLANATORY COMMENT:** Section 4(a) provides uniform guidelines and certainty as to expenses that will be reimbursed and delineates the documentation that must accompany a claim for reimbursement. Section 4(a)(3) permits reimbursement without prior approval of certain expenses and is intended to eliminate time previously spent by attorneys and judges considering such expenses. Section 4(a)(3)(F)(iv) clarifies that attorneys will not be reimbursed for the costs of copying the record since the record belongs to the indigent party. Section 4(b) delineates the expenses for which prior approval is required and sets out the requirements and procedure for obtaining prior approval. Section 4(b) dispenses with the former requirement that prior approval be obtained from both the director and the chief justice and makes prior approval of the director essential and final. Section 4(d) cross-references Tenn. Sup. Ct. R. 42, which provides the mechanism and method for compensating spoken foreign language interpreters and translators. ~~Section (4)(d)(10) provides a mechanism for reimbursing counties that choose to utilize credentialed interpreters on a full-time or part-time basis.~~