

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

FILED 05/01/2026 Clerk of the Appellate Courts
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**IN RE: PETITION OF THE TENNESSEE SUPREME COURT ACCESS TO
JUSTICE COMMISSION TO AMEND TENNESSEE SUPREME
COURT RULES 41 AND 42**

No. ADM2026-00468

ORDER

On March 31, 2026, the Tennessee Supreme Court Access to Justice Commission (“ATJC”) filed a petition asking this Court to consider amendments to Tennessee Supreme Court Rules 41 and 42. These rules govern the Tennessee Language Access Program, including the Court Interpreter Program.

The Court hereby publishes the ATJC’s petition for public comment and solicits written comments on the proposed amendments from judges, lawyers, bar associations, members of the public, and any other interested parties. The petition is attached as an Appendix.

The deadline for submitting written comments is June 30, 2026. Written comments should reference the docket number above and may be emailed to appellatecourtclerk@tncourts.gov or mailed to:

James Hivner, Clerk
Re: Tennessee Supreme Court Rules 41 and 42
401 Seventh Avenue North, Suite 321
Nashville, TN 37219-1407

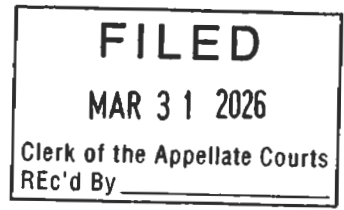
The Clerk shall provide a copy of this order, including the Appendix, to LexisNexis and to Thomson Reuters. In addition, this Order, including the Appendix, shall be posted on the Tennessee Supreme Court’s website.

It is so ORDERED.

PER CURIAM

APPENDIX

**Petition of the Tennessee Supreme Court Access to Justice Commission to Amend
Tennessee Supreme Court Rules 41 and 42**



IN THE SUPREME COURT OF TENNESSEE

AT NASHVILLE

PETITION OF THE TENNESSEE SUPREME COURT ACCESS TO JUSTICE COMMISSION TO AMEND TENNESSEE SUPREME COURT RULES 41 AND 42

No. ADM 2026-00468

The Tennessee Supreme Court Access to Justice Commission (the “Commission”) respectfully petitions this Court to amend Tennessee Supreme Court Rules 41 and 42 that govern the Tennessee Language Access Program. The proposed amendments are described more fully below and set forth in the attached Exhibits. The proposed amendments provide clarity to court interpreters, judges and court clerks, attorneys, court users with Limited English Proficiency, and other stakeholders regarding situations when court interpreters are needed and used in the court system. The proposed amendments authorize the Commission to assist in the grievance procedure to process complaints against court interpreters.

Introduction

The Administrative Office of the Courts (the “AOC”) requested that the Commission oversee a project to review Tennessee Supreme Court Rules 41 and 42 which oversee the Court Interpreter Program. The rules had not been extensively reviewed in their entirety since they were adopted by the Tennessee Supreme Court in 2012. The AOC frequently encountered issues with the definitions or lack of definitions in the rules, identified potential contradictions within Rule 42, and experienced a growing number of questions from stakeholders. The Commission was asked to lead the review of these rules. Leveraging its network of partners, the Commission formed a working group to revise the rules. Language access overlaps with the Commission’s

vision to provide access to justice for all. Stakeholders such as attorneys, judges, court clerks, and interpreters were invited to engage in the process.

The initial review by a working group took approximately twenty-four months to complete. The AOC staff then conducted a secondary review of the edits, comments, and notes from the initial review and developed drafts for the Commission to review. Additional issues and opportunities to further clean up the rules were identified during this second review. The Commission held special meetings throughout 2024 and 2025 to review the rules, allowing the Commission members to fully examine the proposed changes to rules and pose questions to the AOC staff. The Commission reviewed the initial recommendations of the working group and the recommendations of the AOC staff and heard recommendations from its members with experience and expertise in this area. The proposed amendments attached to this petition are the result of multiple years of time and effort by many volunteers dedicated to providing language access to all in Tennessee's court system. The Commission thanks all these volunteers and submits the attached proposed amendments to the Tennessee Supreme Court for its consideration.

Tennessee Supreme Court Rule 41

Rule 41 provides the ethical canons that court interpreters must follow. Most of the proposed amendments to Rule 41 provide clarity, address issues which the AOC frequently receives questions on, or were identified during the multiple review processes. Exhibit A and Exhibit B provide the proposed detailed changes. The highlights of the substantive proposed amendments are outlined below.

To begin with, there are proposed changes to the sections prior to the first canon. Language was added to the Applicability and Enforcement section to clarify that the AOC has

the authority to adopt a grievance procedure, create and expand educational resources, and provide guidance to stakeholders. This section was also expanded to provide guidance that violations by members of other professions should be reported to the appropriate judicial authorities that oversee that profession. A definition was added to the Terminology section to define “LEP Person” as this term is used throughout the Rule.

CANON 1. Accuracy and Completeness. The commentary was edited to emphasize the importance of preserving the meaning of what is said in court, including the style or register of speech, especially when the LEP person is testifying. When the LEP person is not testifying and register and understanding come into conflict, the LEP person’s understanding of the proceeding outweighs the importance of preserving the register. The LEP person’s understanding is the goal.

CANON 2. Representation of Qualifications. A sentence was removed from the commentary about being asked to withdraw from a case after it begins. The sentence indicated that this can be disruptive and a waste of resources. While informative, the working group recommended removing this sentence as it did not add guidance or actionable information to this Canon.

CANON 3. Impartiality and Avoidance of Conflict of Interest. Section A of this Canon was revised to remove that the interpreter must disclose conflicts of interest before providing services. While that might be the situation, there may be situations when the interpreter does not become aware of the conflict until after they take an assignment. The proposed amendment provides that the interpreter must provide notification of the conflict as soon as the conflict of interest becomes apparent. A sentence that was an example of a conflict of interest was removed from Section A and added to the list of situations that shall be presumed to create an actual or apparent conflict of interest in Section B. The commentary has been modified for situations when

interpreters are familiar with other professionals in the courtroom. Language stating that interpreters should not have casual or personal conversations with anyone in the court has been removed. It is more important for interpreters to strive to avoid the appearance of a special relationship or impartiality than to not engage in casual or familiar conversation with colleagues or others that they frequently encounter.

Canon 5. Confidentiality. The commentary has been modified to specify that the interpreter may be required to divulge information received from the attorney's client if it is obtained when the attorney is not present, as there is no attorney client privilege when the attorney is not present. The paragraph pertaining to situations when an interpreter learns of a threat of imminent harm has been modified for clarity. Lastly, instructions have been added for interpreters to establish a protocol for disposing of their notes.

Canon 7. Scope of Practice. Most of the changes are to the commentary, which has been divided into sections to clarify the scope of practice for different situations. When an interpreter has been appointed, they should not explain the purpose of forms, services, or otherwise act as counselors or advisors. They should not give legal advice. They may interpret communications from the attorney to any party and still maintain confidentiality. Interpreters may sign translate a form in the presence of an attorney or authorized legal personnel for a person who is filling out the form, but again, they cannot explain the purpose of the form.

The commentary provides general cautionary language for interpreters when they have not been appointed to avoid giving legal advice and engaging in the unauthorized practice of law. There is an exception. Interpreters are allowed to help LEP persons complete the Affidavit of Indigency form in all situations. In virtual hearings, interpreters may assist LEP persons directly with connectivity issues so that the LEP person may effectively participate in the hearing.

Interpreters cannot directly refer a specific attorney or law firm but are allowed to share information on whether an attorney or law firm has bilingual staff, if specifically asked. The paragraph addressing referrals notes the specific situation that it is attempting to preclude; one where the interpreter recommends a specific attorney or law firm in exchange for the attorney or firm agreeing to use that interpreter.

Canon 8. Assessing and Reporting Impediments to Performance. Language has been added to the commentary to assist interpreters to determine if they have the necessary understanding and skills to handle an assignment. Attorneys and court clerks are encouraged to respond to the interpreter's inquiries to the best of their capabilities, without sharing confidential information, as to the nature of the case or if there may be specialized terminology in the proceedings.

Canon 9. Misconduct. The Canon was modified to add that a conviction of a misdemeanor involving dishonesty, false statement, or moral turpitude, or any felony shall immediately disqualify the interpreter from all current appointments and from continuing to serve for the court. The AOC will review the conviction and determine the length of the suspension. The AOC will decide if any additional sanctions are warranted. The interpreter may not accept any appointments until the AOC has made a determination.

Tennessee Supreme Court Rule 42

Rule 42 provides for the overall administration of the court interpreter program. There is information on how to determine the need for an interpreter and when it may be necessary to remove an interpreter. Information on the credentialing process is contained in the Rule. It also contains the grievance procedure, the types of interpretation services that the AOC will reimburse, and the rates of reimbursement. The working group, AOC staff, and Commission spent most of the

time during the review sessions focused on this rule, and this rule has been substantially modified. Exhibits C and D provide more details.

Preamble. Additional language was added to the preamble to bring attention to the skills and knowledge that court interpreters must possess. Court interpreting differs from language interpretation in other professions.

Section 1. Scope. The scope of the rule has been expanded to include specialty courts that did not exist or were in their infancy when the rule was last amended. The Commentary was revised to provide that specialty courts include many different types of wrap-around services. These service providers should have their own language access plans and means to provide their own foreign language interpreters. Courts are instructed to consider the availability of interpreters before ordering court participants to engage with wrap-around service providers.

Section 2. Definitions. The first nine listed definitions were modified slightly to update the rule and provide more clarification. The more substantive modifications are to the definition for Court Proceedings. See Exhibit B, proposed Rule 42, Section 2(j). The definition for court proceedings is expanded to include communications that occur immediately preceding, or immediately following, a court proceeding for the purposes of communicating with judicial staff, court clerks, probation officers, or other court personnel and/or staff to facilitate a court-mandated service or program operated and/or managed by the Courts. This language was added to provide for the reality that court interpreters are often instructed by the court to facilitate a smooth handoff to the court-mandated or court-operated and/or managed service following a hearing.

New definitions for Court Operations, Covered Proceedings, Out-of-Court Communications, and Party-of-Interest. Court operations services and programs, excluding court proceedings, which involve contact with the public or parties in interest, and are conducted by

judicial officials, court personnel or court contractors. Covered Proceedings are all court proceedings and court operations for which language interpretation and translation services should be provided to a LEP person at no cost to the LEP person. Out-of-court communications are communications between a Party in Interest or individual and others that do not occur within a court proceeding and do not involve court operations. Party-of-Interest is a party to a case; a victim, or in the case of homicide, a next-of-kin; a witness; the parent, legal guardian, or custodian of a minor party; or the legal guardian or custodian of an adult party. This definition was added to clarify that a court interpreter might be interpreting for different individuals during a hearing.

Two definitions were added to provide for the instances when two interpreters might be needed simultaneously. One would serve as the proceeding's interpreter, interpreting everything being said in the courtroom. The second would serve as the table interpreter and only interpreting between the attorney and the party needing interpretation.

Section 3. Determining Need for Interpreter. This section was modified to provide guidance that when any person is made aware of the need for an interpreter, they should notify the court immediately. The drafting group heard many accounts of instances when the court was not notified of the need for an interpreter until the day of the hearing, resulting in the judge having to continue the matter because there were no arrangements made to have an interpreter in court. Different stakeholders will be made aware of the need for an interpreter at different stages of a case. The proposed amendment alerts all stakeholders that they must notify the court when that need is identified.

The commentary was modified to provide additional guidance for court staff and court clerks when securing an interpreter. They should work to secure a certified interpreter first, before securing a registered or non-credentialed interpreter. Court staff and court clerks should also

consider the location of the interpreter and make their best efforts to secure an interpreter from within their county. Further, the comment specifically states that interpreters are entitled to request breaks at any time. Interpreters are sometimes reluctant to request breaks, fearing they will be perceived as delaying the hearing. Breaks are necessary for interpreters to maintain mental and physical alertness. Guidance is also included to alert all stakeholders that interpreters should encourage and recommend the use of team interpreting for lengthy or complicated cases.

Section 4. Procedures. Language has been added to this section to state that when one or both parties have attorneys, the attorney(s) should notify the court or court clerks when an interpreter is needed. When there is counsel, they are generally the first stakeholder made aware that an interpreter will be needed. Therefore, counsel should notify the court or court clerk so that they may secure an interpreter for all upcoming hearings. When there are self-represented parties, the court and court clerks are instructed to work together to ensure that they have access to interpreters.

The Commission added language to this section regarding when a LEP participant waives the services of an interpreter. The LEP person must waive interpreter services knowingly and voluntarily. An interpreter must be used to explain the waiver process to the LEP participant, and this must be done in open court. Subsequently, the judge must make a finding in open court that the waiver has been made correctly. If the waiver has been approved, the judge must inform the LEP participant that they can request that the waiver be retracted.

The commentary provides additional guidance for local jurisdictions, suggesting that the court and court clerks determine a local point of contact for the court interpreter program. Frequently there is no known contact for court interpreters, causing delays in scheduling

interpreters and reimbursing interpreters after services are provided. Establishing a local point of contact ensures a more efficient process for all stakeholders.

Section 5. State Certified and Registered Court Interpreters. The changes in this section surround the process of becoming a certified or registered interpreter. The changes do not alter the current process much but list the steps in order and clarify sections to address questions that the Administrative Office of the Courts frequently receives. The first paragraph in the commentary was deleted and pasted into the Preamble.

Section 6. Removal of an Interpreter in Individual Cases. The changes to this section provide clarification to address questions that the Administrative Office of the Courts frequently receives. Judges may make inquiries if an LEP person requests that an interpreter be removed and are required to decide when a request is made. The commentary adds that incompetence is distinguished from the other listed reasons why an interpreter may be removed. Interpreters may not knowingly be acting to deceive or mislead the court in these situations and therefore may not self-report.

Section 7. Non-credentialed Interpreters. This is a new section. The Commission, with assistance from the Administrative Office of the Courts, identified a need to oversee the usage of non-credentialed interpreters more than the current rule provides. Non-credentialed interpreters who submit more than 12 claims for reimbursement from the Administrative Office of the Courts in a 12-month period will be required to take an ethics and skill building workshop at least once over three years. Non-credentialed interpreters who are regularly serving as court interpreters should have a minimum understanding of the court interpreter program and court system.

Section 8. Proceedings for Discipline of Court Interpreters. This is an entirely new section regarding the grievance process when a complaint is filed against a court interpreter. Most of the

language was pulled from TN Supreme Court Rule 31 that oversees the court mediation program. Commission members who have been involved in the disciplinary process and the Administrative Office of the Courts have identified a need for more structure, continuity, and guidance in the court interpreter grievance procedure. Since no commission or board administers the court interpreter program, the Commission decided that it will assist the Administrative Office of the Courts when a grievance is filed against a court interpreter. The Chair of the Commission will appoint a grievance committee, when warranted. The grievance committee will include one member of the Commission. Any appeals of the grievance committee will go to the full Commission. Any recommendations for immediate suspension or disqualification during any stage of the grievance process must be forwarded to the Tennessee Supreme Court for a cursory review of the grievance and an approval or modification of the recommendation. The Commission felt that it was possible to handle these grievances because to date, there has not been a large volume of grievances filed. If there is an uptick in the number of grievances filed, the Commission may not be able to handle the volume, and another alternative body might need to be identified.

Section 9. Cost of Interpreter/Translator Services. The Commission did not recommend an increase in the pay rates for certified, registered, and non-credentialed Spanish interpreters. The Commission supports further review of the rates of reimbursement for interpreters and may make future recommendations regarding rates at a more appropriate time. The Commission did not recommend the expansion of the court interpreter program to cover reimbursement for other activities at this time, but again, supports further study of expanding the court interpreter program and may make future recommendations.

The Commission did provide that interpreters will receive the daily cap, plus any travel time they would be entitled to be reimbursed for under the Rule. The Commission clarified the

provision on the two-hour minimum. If the time spent interpreting and/or travel time is less than two hours, the interpreter may submit reimbursement to the Administrative Office of the Courts for the two-hour minimum. Travel time will be considered. The Commission added this provision to account for instances when an interpreter travels to a court for an assignment, only to learn when they arrive that their interpretation services are no longer needed because the matter has been settled or continued and the interpreter was not notified. Guidance is provided in the commentary that interpreters must confirm with the court the business day prior to the hearing or prior to travel that their services are still needed. The Commission proposed that parking reimbursement be raised from \$10 a day to \$20 a day, to be uniform with Tennessee Supreme Court Rule 13. A receipt is required for parking reimbursement.

Conclusion

The Commission petitions that the Tennessee Supreme Court adopt the proposed amendments to Tennessee Supreme Court Rules 41 and 42 to provide clarity to court interpreters, judges and court clerks, attorneys, court users with Limited English Proficiency, and other stakeholders regarding the court interpreter program. The Commission believes the proposed modifications are necessary to increase access to the judicial system for all.

Respectfully Submitted,



Joy Radice, Esq.
Access To Justice Commission Chair

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ATTACHMENT A

Rule 41: Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts

Preamble

Many persons/individuals who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency (~~“(“LEP”)~~). It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. ~~As~~ impartial officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. ~~Interpreters~~ are highly skilled professionals who fulfill an essential role in the administration of justice.

Applicability and Enforcement

This ~~code~~rule shall guide and be binding upon all persons, agencies and organizations who administer, supervise, use, deliver, or attempt to become credentialed to deliver spoken foreign language interpreting services to the judicial system. ~~The Canons and any subparts are mandatory upon persons who are bound by this code.~~ rule. The commentary is not mandatory and exists to provide guidance in interpreting the ~~code.~~ rule. Interpreters for the deaf and hard of hearing are not covered by this ~~code.~~ rule. See Tenn. Code Ann. § 24-1-211 regarding guidelines for such interpreters.

Violations of this ~~code~~rule may result in the interpreter being removed from a case, ~~or~~ being denied future appointments by the courts, ~~losing~~. Additional sanctions include the loss of credentials if the interpreter has been credentialed pursuant to the rules of the Supreme Court and Tenn. Code Ann. § 16-3-813, or any other sanctions deemed appropriate by the Administrative Director/Office of the Courts. Violations by other persons should be reported to the appropriate judicial authorities that oversee that person's profession.

The Administrative ~~Director/Office~~ of the Courts is authorized to adopt policies and procedures (including a grievance procedure), create and expand educational resources, and provide guidance to stakeholders necessary to enforce the ~~code~~rule pursuant to Tenn. Code Ann. § 16-3-813.

Terminology

- (~~1A~~) Consecutive Interpretation - providing the target-language message after ~~the~~each speaker has finished speaking.
- (~~2B~~) Sight Translation - oral translation of a written text.
- (~~3C~~) Simultaneous Interpretation - providing the target-language message at approximately the same time the source-language message is being produced.
- (~~4D~~) Source Language - the input language requiring interpretation.

(SE) Target Language - the output language into which the utterance is being interpreted.

(F) LEP Person – a person who does not speak English as their primary language and has a limited ability to read, write, speak, or understand English.

CANON 1. Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or translation without altering, omitting, or adding anything to what is stated or written, and without explanation.

A. The interpreter has a twofold duty: -1) to ensure that the proceedings in English reflect precisely what was said by the LEP person; and 2) to place the LEP person on an equal footing with those who understand and speak English. – This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

B. The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. – Interpreters shall demonstrate their professionalism by objectively analyzing any challenge to their performance.

Commentary.

Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech. – especially when the LEP person is testifying. When the LEP person is not testifying and register and understanding come into conflict, the ultimate purpose is for the LEP person to understand the proceeding. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. – This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions. – If unless the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify), the interpreter should ask the court's permission to provide an explanation. Interpreters should convey the emotional emphasisintonation of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

CANON 2. Representation of Qualifications

Interpreters shall accurately and completely represent and document their credentials, training, and pertinent experience, and make such documentation available to each and every court to be maintained on file by such court, if desired.

Commentary.

Acceptance of a case by an interpreter is a representation to the court of linguistic competency in legal settings. ~~–Withdrawing or being asked to withdraw from a case after it begins causes a disruption of court proceedings and is wasteful of scarce public resources.–~~ It is therefore essential that interpreters present a complete and truthful account of their training, credentials and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

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 Administrative Office of the Court's website (www.tncourts.gov).

CANON 3. Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. –Interpreters shall disclose any real or perceived conflict of interest.

A. Any condition, situation or relationship that interferes with the objectivity of an interpreter constitutes a conflict of interest. ~~–Before providing services in~~ When a matter real or perceived conflict of interest becomes apparent, court interpreters shall disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be reasonably construed as a conflict of interest. ~~–Such disclosure(s) shall include, but not be limited to, the fact that the interpreter has previously been retained by one of the parties for private employment.–~~ Such disclosure(s) shall not include privileged or confidential information.

B. Whenever an interpreter has an actual or apparent conflict of interest, the interpreter shall declare in open court before appointment, when possible, such conflict, and the court shall determine whether the interpreter may continue to serve in the case. Situations, including but not limited to the following, shall be presumed to create an actual or apparent conflict of interest:

(1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

(2) The interpreter has served in an investigative capacity for any party involved in the case;

(3) The interpreter has previously been retained by a law enforcement agency or any party to assist in the preparation of the case at issue;

(4) The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that would be affected by the outcome of the case;

(5) The interpreter has been involved in the choice of counsel or law firm for that case; ~~or~~

~~(6) The interpreter has been previously retained by any party for private employment; or~~

(7) Any other situation in which the interpreter thinks ~~his or her~~ the interpreter's impartiality may be questioned or compromised.

C. Interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

Commentary.

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. –This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties. –Although an interpreter must disclose the fact that the interpreter interpreted for a party during out-of-court meetings, interviews, or other proceedings in the case at issue, ethical considerations do not preclude the interpreter from serving as the interpreter for multiple parties or for both the court and one or more parties in that case.

An individual who is, or may become, a witness is not permitted to serve as an interpreter in that same matter.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, ~~refrain from casual and personal conversations with anyone in court that may~~ take care not to convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. –Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary.

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. –When interpreting testimony or making comments to be included in the record, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom, ~~but the interpreter's presence should otherwise be as unobtrusive as possible.~~ – Interpreters should work without drawing undue or inappropriate attention to themselves. – Interpreters should dress in a manner that is consistent with the dignity

of the proceedings of the court. –Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings.

Interpreters are encouraged to avoid ~~personal or both~~ professional and personal conduct that could discredit the court.

CANON 5. Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary.

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of ~~her or his~~ their duties. – It is especially important that the interpreter understands and upholds the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. –It is equally important for the interpreter to be aware that when the attorney is not present, there is no attorney-client privilege, and the interpreter may be held required to divulge any information ~~gained, received from the attorney's~~ client. The interpreter, therefore, must avoid any such situation. ~~This rule also applies to other types of privileged communications.~~

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of ~~their employment~~ the proceedings that may be relevant to the legal proceeding.

~~In the event that~~ During the course of the proceedings, if an interpreter becomes aware of information that suggests the threat of imminent harm to the client, the interpreter, or someone ~~or relates to a crime being committed during the course of the proceedings~~ else, the interpreter should immediately disclose the information to an appropriate authority within the judicial system and seek advice in regard to the potential conflict in professional responsibility.

Interpreters should establish a protocol for how to dispose of their notes that may include confidential information. Guidance and best practices are available on the Administrative Office of the Courts website.

CANON 6. Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning ~~a matter~~ proceedings in which they are ~~or have been~~ engaged pursuant to this Rule, even when that information is not privileged or not required by law to be confidential.

CANON 7. Scope of Practice

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions ~~to individuals for whom they are interpreting~~, or engage in any other activities ~~which that~~ may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary.

Initiating communications. Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting at all times except as set out below.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should refer to themselves in the third person as "the interpreter," making it clear and on the record that they are speaking for themselves.

~~At no time can an interpreter give advice, but an interpreter may interpret legal advice from an attorney to any party while that attorney is giving it.~~

When an interpreter has been appointed.

(a) An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors. ~~The interpreter may in proceedings where they have been appointed to interpret.~~

(b) ~~An interpreter should not give any legal advice.~~

~~(b) An interpreter may interpret communications from an attorney to any party while that attorney is giving it while maintaining confidentiality.~~

(c) ~~They may sight~~ translate language on a form in the presence of an attorney or authorized legal personnel for a person who is filling out the form, ~~but. They~~ may not explain the form or its purpose for such a person.

Situations when not appointed. Interpreters should avoid situations where they may ~~inadvertently provide legal advice and engage in the unauthorized practice of law. Interpreters should be cautious when explaining the purpose of forms and assisting in filing forms for an LEP person in situations where the interpreter has not been appointed to interpret in the proceedings and they are not in the presence of an attorney or authorized legal personnel. This type of activity must be disclosed as a conflict of interest if the interpreter subsequently is appointed to interpret for the same LEP person.~~

Affidavit of Indigency. Interpreters are allowed to assist LEP persons to ~~complete the affidavit of indigency form.~~

Official Acts Outside of Interpreter Responsibilities. The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation officers, except as required by and in the presence of such officials.

Virtual Hearings. Interpreters may provide assistance directly to the LEP person in virtual proceedings to assist the LEP client with connectivity issues so that the LEP client may effectively participate in the virtual hearing.

Attorney or Law Firm Recommendations. Under no circumstances, should an interpreter recommend a specific attorney or law firm. This language is intended to prevent situations where there is a conflict of interest, including but not limited to an interpreter recommending an attorney or law firm in exchange for the law firm agreeing to use that interpreter. Interpreters may share information on whether or not an attorney or firm has bilingual staff, if specifically asked.

CANON 8. Assessing and Reporting Impediments to Performance

Interpreters shall familiarize themselves as thoroughly as possible with the nature and length of a proceeding beforehand, to assess their ability to deliver adequate services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority even when the proceeding is in progress.

Commentary.

If the communication mode or language of the LEP person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the LEP speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret).

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. –Interpreters should recommend and encourage the use of team interpreting whenever necessary, such as **during** trials, complex and technical proceedings, proceedings over two hours in length and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). –See the commentary to Section 3 of Tennessee Supreme Court Rule 42 for additional information.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. **-Attorneys and court clerks are encouraged to respond to the interpreters' inquiries to the best of their capabilities, without sharing any confidential or**

privileged information. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). -Attorneys and court clerks are encouraged to inform the interpreter when there may be technical or specialized terminology in the proceedings as soon as they realize the proceedings will not be routine. When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. -If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. -Interpreters should feel no compunction/hesitation about notifying the court if they feel unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant. -Court personnel and parties are encouraged to provide interpreters with copies of all documents referred to in a proceeding, such as witness lists, indictment, exhibit lists, criminal complaint, investigative reports, tape transcripts, telephone logs and bank records.

Interpreters should notify the court of any personal bias they may have involving any aspect of the proceedings. -For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9. Misconduct

An interpreter shall not commit a criminal act that reflects adversely on the interpreter's honesty, trustworthiness, or fitness as an interpreter in other respects. A conviction of a misdemeanor involving dishonesty, false statement, or moral turpitude, or any felony shall immediately disqualify the interpreter from all current appointments and from continuing to serve as an interpreter for the Tennessee courts. The Administrative Office of the Courts will review the conviction, determine the length of the suspension, and decide if other sanctions are warranted. The interpreter cannot accept any new appointments until the Administrative Office of the Courts has made a determination. Likewise, an interpreter shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Commentary.

See Section 6 of Tennessee Supreme Court Rule 42 regarding convictions. This language is intended to put interpreters on notice that inappropriate conduct before, during, and after successful completionthe conclusion of the credentialing processa case or matter may have professional ramifications.- The conduct at issue includes, but is not limited to, inappropriate behavior in which an interpreter engages during one or more of the required credentialing examinations.

CANON 10. Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary.

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, specific instructions from the bench, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of ~~his or her~~their professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should request the judge or appropriate official with jurisdiction over interpreter matters to resolve the situation.

CANON 11. Professional Development

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary.

Interpreters must continually strive to increase their knowledge of the languages in which they professionally interpret, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

CANON 12. Pro Bono ~~Public~~Public Service.

Interpreters should aspire to render a reasonable amount of pro bono ~~public~~public interpretive services per year. In fulfilling this responsibility, interpreters should:

- (a) provide a substantial portion of such services without fee or expectation of fee to persons of limited means; or
- (b) provide interpretive services at a substantially reduced fee to persons of limited means.

Commentary.

Personal Direct involvement in the problems of the disadvantaged can be a rewarding experience in the life of an interpreter. This Canon ~~urges~~**encourages** all interpreters to provide a reasonable number of hours of pro bono service annually.

Under paragraph (a), **for service to qualify as pro bono, it** must be provided without fee or expectation of fee. The intent of the interpreter to render free services is essential for the work performed to fall within the meaning of paragraph (a); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected. Paragraph (b) permits the pro bono interpreter to accept a substantially reduced fee for services to persons of limited means; again, however, the intent of the interpreter to render reduced-fee services is essential for the work performed to fall within the meaning of paragraph (b); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected.

Because this Canon states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

[Adopted by order filed April 25, 2002; amended by order filed April 27, 2005; and amended by order filed December 16, 2011, effective July 1, 2012.]

ATTACHMENT B

Rule 41: Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts

Preamble

Many individuals who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency (“LEP”). It is essential that the resulting communication barrier be removed, as far as possible, so that these persons are placed in the same position as similarly situated persons for whom there is no such barrier. As impartial officers of the court, interpreters help assure that such persons may enjoy equal access to justice and that court proceedings and court support services function efficiently and effectively. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice.

Applicability and Enforcement

This rule shall guide and be binding upon all persons, agencies and organizations who administer, supervise, use, deliver, or attempt to become credentialed to deliver spoken foreign language interpreting services to the judicial system. The Canons and any subparts are mandatory upon persons who are bound by this rule. The commentary is not mandatory and exists to provide guidance in interpreting the rule. Interpreters for the deaf and hard of hearing are not covered by this rule. See Tenn. Code Ann. § 24-1-211 regarding guidelines for such interpreters.

Violations of this rule may result in the interpreter being removed from a case or being denied future appointments by the courts. Additional sanctions include the loss of credentials if the interpreter has been credentialed pursuant to the rules of the Supreme Court and Tenn. Code Ann. § 16-3-813, or any other sanctions deemed appropriate by the Administrative Office of the Courts. Violations by other persons should be reported to the appropriate judicial authorities that oversee that person’s profession.

The Administrative Office of the Courts is authorized to adopt policies and procedures (including a grievance procedure), create and expand educational resources, and provide guidance to stakeholders necessary to enforce the rule pursuant to Tenn. Code Ann. § 16-3-813.

Terminology

- (A) Consecutive Interpretation - providing the target language message after each speaker has finished speaking.
- (B) Sight Translation - oral translation of a written text.
- (C) Simultaneous Interpretation - providing the target language message at approximately the same time the source-language message is being produced.
- (D) Source Language - the input language requiring interpretation.

(E) Target Language - the output language into which the utterance is being interpreted.

(F) LEP Person – a person who does not speak English as their primary language and has a limited ability to read, write, speak, or understand English.

CANON 1. Accuracy and Completeness

Interpreters shall render a complete and accurate interpretation or translation without altering, omitting, or adding anything to what is stated or written, and without explanation.

A. The interpreter has a twofold duty: 1) to ensure that the proceedings in English reflect precisely what was said by the LEP person; and 2) to place the LEP person on an equal footing with those who understand and speak English. This creates an obligation to conserve every element of information contained in a source language communication when it is rendered in the target language.

B. The obligation to preserve accuracy includes the interpreter's duty to correct any error of interpretation discovered by the interpreter during the proceeding. Interpreters shall demonstrate their professionalism by objectively analyzing any challenge to their performance.

Commentary.

Interpreters are obligated to apply their best skills and judgment to preserve faithfully the meaning of what is said in court, including the style or register of speech, especially when the LEP person is testifying. When the LEP person is not testifying and register and understanding come into conflict, the ultimate purpose is for the LEP person to understand the proceeding. Verbatim, "word for word," or literal oral interpretations are not appropriate when they distort the meaning of the source language, but every spoken statement, even if it appears non-responsive, obscene, rambling, or incoherent should be interpreted. This includes apparent misstatements.

Interpreters should never interject their own words, phrases, or expressions unless the need arises to explain an interpreting problem (e.g., a term or phrase with no direct equivalent in the target language or a misunderstanding that only the interpreter can clarify). The interpreter should ask the court's permission to provide an explanation. Interpreters should convey the intonation of the speaker without reenacting or mimicking the speaker's emotions or dramatic gestures.

CANON 2. Representation of Qualifications

Interpreters shall accurately and completely represent and document their credentials, training, and pertinent experience, and make such documentation available to each and every court to be maintained on file by such court, if desired.

Commentary.

Acceptance of a case by an interpreter is a representation to the court of linguistic competency in legal settings. It is therefore essential that interpreters present a complete and truthful account of

their training, credentials and experience prior to appointment so the officers of the court can fairly evaluate their qualifications for delivering interpreting services.

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 Administrative Office of the Court's website (www.tncourts.gov).

CANON 3. Impartiality and Avoidance of Conflict of Interest

Interpreters shall be impartial and unbiased and shall refrain from conduct that may give an appearance of bias. Interpreters shall disclose any real or perceived conflict of interest.

A. Any situation or relationship that interferes with the objectivity of an interpreter constitutes a conflict of interest. When a real or perceived conflict of interest becomes apparent, court interpreters shall disclose to all parties and presiding officials any prior involvement, whether personal or professional, that could be construed as a conflict of interest. Such disclosure(s) shall not include privileged or confidential information.

B. Whenever an interpreter has an actual or apparent conflict of interest, the interpreter shall declare in open court before appointment, when possible, such conflict, and the court shall determine whether the interpreter may continue to serve in the case. Situations, including but not limited to the following, shall be presumed to create an actual or apparent conflict of interest:

(1) The interpreter is a friend, associate, or relative of a party or counsel for a party involved in the proceedings;

(2) The interpreter has served in an investigative capacity for any party involved in the case;

(3) The interpreter has previously been retained by a law enforcement agency or any party to assist in the preparation of the case at issue;

(4) The interpreter or the interpreter's spouse or child has a financial interest in the subject matter in controversy or is a party to the proceeding, or any other interest that would be affected by the outcome of the case;

(5) The interpreter has been involved in the choice of counsel or law firm for that case;

(6) The interpreter has been previously retained by any party for private employment; or

(7) Any other situation in which the interpreter thinks the interpreter's impartiality may be questioned or compromised.

C. Interpreters shall not serve in any matter in which payment for their services is contingent upon the outcome of the case.

Commentary.

The interpreter serves as an officer of the court and the interpreter's duty in a court proceeding is to serve the court and the public to which the court is a servant. This is true regardless of whether the interpreter is publicly retained at government expense or retained privately at the expense of one of the parties. Although an interpreter must disclose the fact that the interpreter interpreted for a party during out-of-court meetings, interviews, or other proceedings in the case at issue, ethical considerations do not preclude the interpreter from serving as the interpreter for multiple parties or for both the court and one or more parties in that case.

An individual who is, or may become, a witness is not permitted to serve as an interpreter in that same matter.

During the course of the proceedings, interpreters should not converse with parties, witnesses, jurors, attorneys, or with friends or relatives of any party, except in the discharge of their official functions. It is especially important that interpreters, who are often familiar with attorneys or other members of the courtroom work group, including law enforcement officers, take care not to convey an appearance of a special relationship or partiality to any of the court participants.

The interpreter should strive for professional detachment. Verbal and non-verbal displays of personal attitudes, prejudices, emotions, or opinions should be avoided at all times.

An interpreter who is also an attorney should not serve in both capacities in the same matter.

CANON 4. Professional Demeanor

Interpreters shall conduct themselves in a manner consistent with the dignity of the court and shall be as unobtrusive as possible.

Commentary.

Interpreters should know and observe the established protocol, rules, and procedures for delivering interpreting services. When interpreting testimony or making comments to be included in the record, interpreters should speak at a rate and volume that enable them to be heard and understood throughout the courtroom. Interpreters should work without drawing undue or inappropriate attention to themselves. Interpreters should dress in a manner that is consistent with the dignity of the proceedings of the court. Interpreters should avoid obstructing the view of any of the individuals involved in the proceedings.

Interpreters are encouraged to avoid both professional and personal conduct that could discredit the court.

CANON 5. Confidentiality

Interpreters shall protect the confidentiality of all privileged and other confidential information.

Commentary.

The interpreter must protect and uphold the confidentiality of all privileged information obtained during the course of their duties. It is especially important that the interpreter understands and upholds the attorney-client privilege, which requires confidentiality with respect to any communication between attorney and client. It is equally important for the interpreter to be aware that when the attorney is not present, there is no attorney-client privilege, and the interpreter may be required to divulge any information received from the attorney's client. The interpreter, therefore, must avoid any such situation.

Interpreters must also refrain from repeating or disclosing information obtained by them in the course of the proceedings that may be relevant to the legal proceeding.

During the course of the proceedings, if an interpreter becomes aware of information that suggests the threat of imminent harm to the client, the interpreter, or someone else, the interpreter should immediately disclose the information to an appropriate authority within the judicial system and seek advice in regard to the potential conflict in professional responsibility.

Interpreters should establish a protocol for how to dispose of their notes that may include confidential information. Guidance and best practices are available on the Administrative Office of the Courts website.

CANON 6. Restriction of Public Comment

Interpreters shall not publicly discuss, report, or offer an opinion concerning proceedings in which they are or have been engaged pursuant to this Rule, even when that information is not privileged or not required by law to be confidential.

CANON 7. Scope of Practice

Interpreters shall limit themselves to interpreting or translating, and shall not give legal advice, express personal opinions, or engage in any other activities that may be construed to constitute a service other than interpreting or translating while serving as an interpreter.

Commentary.

Initiating communications. Since interpreters are responsible only for enabling others to communicate, they should limit themselves to the activity of interpreting or translating only. Interpreters should refrain from initiating communications while interpreting at all times except as set out below.

Interpreters may be required to initiate communications during a proceeding when they find it necessary to seek assistance in performing their duties. Examples of such circumstances include seeking direction when unable to understand or express a word or thought, requesting speakers to moderate their rate of communication or repeat or rephrase something, correcting their own

interpreting errors, or notifying the court of reservations about their ability to satisfy an assignment competently. In such instances they should refer to themselves in the third person as "the interpreter," making it clear and on the record that they are speaking for themselves.

When an interpreter has been appointed.

(a) An interpreter should not explain the purpose of forms, services, or otherwise act as counselors or advisors in proceedings where they have been appointed to interpret.

(b) An interpreter should not give any legal advice.

(b) An interpreter may interpret communications from an attorney to any party while that attorney is giving it while maintaining confidentiality.

(c) They may sight translate language on a form in the presence of an attorney or authorized legal personnel for a person who is filling out the form. They may not explain the form or its purpose for such a person.

Situations when not appointed. Interpreters should avoid situations where they may inadvertently provide legal advice and engage in the unauthorized practice of law. Interpreters should be cautious when explaining the purpose of forms and assisting in filing forms for an LEP person in situations where the interpreter has not been appointed to interpret in the proceedings and they are not in the presence of an attorney or authorized legal personnel. This type of activity must be disclosed as a conflict of interest if the interpreter subsequently is appointed to interpret for the same LEP person.

Affidavit of Indigency. Interpreters are allowed to assist LEP persons to complete the affidavit of indigency form.

Official Acts Outside of Interpreter Responsibilities. The interpreter should not personally serve to perform official acts that are the official responsibility of other court officials including, but not limited to, court clerks, pretrial release investigators or interviewers, or probation officers, except as required by and in the presence of such officials.

Virtual Hearings. Interpreters may provide assistance directly to the LEP person in virtual proceedings to assist the LEP client with connectivity issues so that the LEP client may effectively participate in the virtual hearing.

Attorney or Law Firm Recommendations. Under no circumstances, should an interpreter recommend a specific attorney or law firm. This language is intended to prevent situations where there is a conflict of interest, including but not limited to an interpreter recommending an attorney or law firm in exchange for the law firm agreeing to use that interpreter. Interpreters may share information on whether or not an attorney or firm has bilingual staff, if specifically asked.

CANON 8. Assessing and Reporting Impediments to Performance

Interpreters shall familiarize themselves as thoroughly as possible with the nature and length of a proceeding beforehand, to assess their ability to deliver adequate services. When interpreters have any reservation about their ability to satisfy an assignment competently, they shall immediately convey that reservation to the appropriate judicial authority even when the proceeding is in progress.

Commentary.

If the communication mode or language of the LEP person cannot be readily interpreted, the interpreter should notify the appropriate judicial authority.

Interpreters should notify the appropriate judicial authority of any environmental or physical limitation that impedes or hinders their ability to deliver interpreting services adequately (e.g., the court room is not quiet enough for the interpreter to hear or be heard by the LEP speaker, more than one person at a time is speaking, or principals or witnesses of the court are speaking at a rate of speed that is too rapid for the interpreter to adequately interpret).

Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary, such as during trials, complex and technical proceedings, proceedings over two hours in length and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). See the commentary to Section 3 of Tennessee Supreme Court Rule 42 for additional information.

Interpreters are encouraged to make inquiries as to the nature of a case whenever possible before accepting an assignment. Attorneys and court clerks are encouraged to respond to the interpreters' inquiries to the best of their capabilities, without sharing any confidential or privileged information. This enables interpreters to match more closely their professional qualifications, skills, and experience to potential assignments and more accurately assess their ability to satisfy those assignments competently.

Even competent and experienced interpreters may encounter cases where routine proceedings suddenly involve technical or specialized terminology unfamiliar to the interpreter (e.g., the unscheduled testimony of an expert witness). Attorneys and court clerks are encouraged to inform the interpreter when there may be technical or specialized terminology in the proceedings as soon as they realize the proceedings will not be routine. When such instances occur, interpreters should request a brief recess to familiarize themselves with the subject matter. If familiarity with the terminology requires extensive time or more intensive research, interpreters should inform the presiding officer.

Interpreters should refrain from accepting a case if they feel the language and subject matter of that case is likely to exceed their skills or capacities. Interpreters should feel no hesitation about notifying the court if they feel unable to perform competently due to lack of familiarity with terminology, preparation, or difficulty in understanding a witness or defendant. Court personnel

and parties are encouraged to provide interpreters with copies of all documents referred to in a proceeding, such as witness lists, indictment, exhibit lists, criminal complaint, investigative reports, tape transcripts, telephone logs and bank records.

Interpreters should notify the court of any personal bias they may have involving any aspect of the proceedings. For example, an interpreter who has been the victim of a sexual assault may wish to be excused from interpreting in cases involving similar offenses.

CANON 9. Misconduct

An interpreter shall not commit a criminal act that reflects adversely on the interpreter's honesty, trustworthiness, or fitness as an interpreter in other respects. A conviction of a misdemeanor involving dishonesty, false statement, or moral turpitude, or any felony shall immediately disqualify the interpreter from all current appointments and from continuing to serve as an interpreter for the Tennessee courts. The Administrative Office of the Courts will review the conviction, determine the length of the suspension, and decide if other sanctions are warranted. The interpreter cannot accept any new appointments until the Administrative Office of the Courts has made a determination. Likewise, an interpreter shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

Commentary.

See Section 6 of Tennessee Supreme Court Rule 42 regarding convictions. This language is intended to put interpreters on notice that inappropriate conduct before, during, and after the conclusion of a case or matter may have professional ramifications. The conduct at issue includes, but is not limited to, inappropriate behavior in which an interpreter engages during one or more of the required credentialing examinations.

CANON 10. Duty to Report Ethical Violations

Interpreters shall report to the proper judicial authority any effort to impede their compliance with any law, any provision of this code, or any other official policy governing court interpreting and legal translating.

Commentary.

Because the users of interpreting services frequently misunderstand the proper role of the interpreter, they may ask or expect the interpreter to perform duties or engage in activities that run counter to the provisions of this code or other laws, regulations, specific instructions from the bench, or policies governing court interpreters. It is incumbent upon the interpreter to inform such persons of their professional obligations. If, having been apprised of these obligations, the person persists in demanding that the interpreter violate them, the interpreter should request the judge or appropriate official with jurisdiction over interpreter matters to resolve the situation.

CANON 11. Professional Development

Interpreters shall continually improve their skills and knowledge and advance the profession through activities such as professional training and education, and interaction with colleagues and specialists in related fields.

Commentary.

Interpreters must continually strive to increase their knowledge of the languages in which they professionally interpret, including past and current trends in technical, vernacular, and regional terminology as well as their application within court proceedings.

Interpreters should keep informed of all statutes, rules of courts and policies of the judicial system that relate to the performance of their professional duties.

An interpreter should seek to elevate the standards of the profession through participation in workshops, professional meetings, interaction with colleagues, and reading current literature in the field.

CANON 12. Pro Bono Public Service.

Interpreters should aspire to render a reasonable amount of pro bono public interpretive services per year. In fulfilling this responsibility, interpreters should:

- (a) provide a substantial portion of such services without fee or expectation of fee to persons of limited means; or
- (b) provide interpretive services at a substantially reduced fee to persons of limited means.

Commentary.

Direct involvement in the problems of the disadvantaged can be a rewarding experience in the life of an interpreter. This Canon encourages all interpreters to provide a reasonable number of hours of pro bono service annually.

Under paragraph (a), for service to qualify as pro bono, it must be provided without fee or expectation of fee. The intent of the interpreter to render free services is essential for the work performed to fall within the meaning of paragraph (a); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected. Paragraph (b) permits the pro bono interpreter to accept a substantially reduced fee for services to persons of limited means; again, however, the intent of the interpreter to render reduced-fee services is essential for the work performed to fall within the meaning of paragraph (b); accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected.

Because this Canon states an aspiration rather than a mandatory ethical duty, it is not intended to be enforced through disciplinary process.

[Adopted by order filed April 25, 2002; amended by order filed April 27, 2005; and amended by order filed December 16, 2011, effective July 1, 2012.]

Attachment C

ATTACHMENT C

Rule 42: Standards for Court Interpreters

Preamble.

Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess. The knowledge and skills of a court interpreter are different from those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. The Court has promulgated this rule due to the highly specialized knowledge and skills required in this profession. This rule provides uniform procedures, qualifications, and guidance for interpreters serving in Tennessee's courts.

Commentary

~~Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq., requires that recipients of federal funds take responsible steps to ensure meaningful access by persons with Limited English Proficiency (LEP persons). Accordingly, Title VI prohibits discrimination based on race, color, or national origin, in any program or activity that receives federal financial assistance from DOJ and authorizes DOJ to investigate and resolve discrimination complaints. 42 U.S.C. § 2000d 4a; 28 C.F.R. §§ 42.104(b), 42.107(e) (d); 28 C.F.R. § 42.203(b) (e). To that end, the Administrative Office of the Courts has revised Tenn. R. Sup. Ct. 42 to ensure meaningful access to agency services, programs, and activities on the part of persons who have limited English proficiency.~~

~~The State of Tennessee maintains a decentralized court system in which many statutes and private acts allow for variation in the judicial jurisdiction and structure of Tennessee courts. In addition, many local judges and clerks are elected and paid locally, and they operate courtrooms housed and maintained by the county in which they are elected. Notwithstanding Tennessee's decentralized court system, the Tennessee Supreme Court nevertheless has supervisory jurisdiction over all Tennessee courts. See Tenn. Const. art. VI, § 1; TENN. CODE ANN. § 16-3-501 ("In order to ensure the harmonious, efficient and uniform operation of the judicial system of the state, the supreme court is granted and clothed with general supervisory control over all the inferior courts of the state.").~~

~~The General Assembly has acknowledged the "broad conferece of full, plenary and diserotinary power upon the supreme court." TENN. CODE ANN. § 16-3-501. The Tennessee Supreme Court thus "constitutes the supreme judicial tribunal of the [S]tate," Barger v. Brock, 335 S.W.2d 337, 340 (Tenn. 1976), and has broad authority over the Tennessee Judicial Department. In re Bell, 344 S.W.3d 304, 313 (Tenn. 2011). Additionally, the General Assembly has expressly recognized that these powers are not a matter of legislative largess but instead derive from "the common law as it existed at the time of the adoption of the constitution of Tennessee and of the power inherent in a court of last resort." TENN. CODE ANN. § 16-3-503.~~

~~Consequently, "as the constitutionally designated repository of judicial power that exercises supervisory authority over the Judicial Department, this Court, and only this Court, has the authority to prescribe rules, policies, and procedures relating to matters essential to the judicial function." Moore Pennoyer v. State, 525 S.W.3d 271, 277 (Tenn. 2017) (citations omitted).~~

~~Ensuring meaningful access to all persons regardless of national origin and/or English language proficiency in state court proceedings is one such essential judicial function. See generally U.S. Department of Justice, Civil Rights Division, Language Access in State Courts, September 2016; see also Tenn. Const. art. I, § 17 (“That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay”). There can be no equal access to the courts if the ability to participate in judicial functions is compromised by language barriers.~~

~~The purpose of Tenn. R. Sup. Ct. 42 is to create a framework to ensure meaningful access for limited English persons who would otherwise be unable to understand or fully participate in judicial proceedings, operations, programs, and services by providing effective language assistance services and guidance. As such, Tenn. R. Sup. Ct. 42 should be periodically reviewed and updated to reflect new best practices in the judicial system and society. Standard One of the American Bar Association’s Standards for Language Access in Courts (2012) provides that “as a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court are able to do so in a language they understand, and are able to be understood by the court.” Standards for Language Access in the Courts, https://www.americanbar.org/groups/legal_aid_indigent_defendants/language_access/.~~

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. This rule also applies in specialty courts, including but not limited to drug court and veterans court, in instances where the judge is present and the LEP person is appearing before the judge. The Administrative Office of the Courts is authorized to adopt policies and procedures necessary to implement this rule.

Commentary

This rule recognizes that for most people living in the United States, English is their native language, or they have learned to speak and understand English. There are others for whom English is not their primary language and 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.

Drug court and other specialty courts typically include many steps that involve service providers outside of the court system. Those service providers should have their own language access plan and provider for interpreter services. Courts should consider the availability of foreign language interpreters before ordering court participants to engage with service providers.

Section 2. Definitions

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

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

(c) Interpretation - the unrehearsed transmission of a spoken message from one language into an equivalent spoken message in another language.

(d) Limited English Proficient (“LEP”) Person - a person who does not speak English as their primary language and who has a limited ability to speak, read, write, or understand the English language.

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

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

(g) Sight Translation - Rendering of written text in one language into an equivalent spoken message in another language.

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

(i) Audio or Video Transcription and Translation - written transcription of the entire recorded audio and verbal content from one language into a written document in another language.

(j) 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, specialty or appellate court, in an action, appeal, or other proceeding, including any matter conducted by a judicial magistrate. This includes but is not limited to any communications that occur immediately preceding, or immediately following, a court proceeding for the purposes of communicating with judicial staff, court clerks, probation officers, or other court personnel and/or staff to facilitate a court-mandated service or program operated and/or managed by the Courts.

(k) Court Operations - offices of the courts, services, and programs, excluding court proceedings, which involve contact with the public or parties in interest, and are conducted by judicial officials, court personnel or court contractors.

(l) Covered Proceedings - a court proceeding, court operation, or out-of-court communication for which interpreter and / or translation services are provided to an LEP person at no expense to the LEP person.

(m) Out-of-Court communications – communications between a Party in Interest or individual and others that do not occur within a court proceeding and do not involve court operations.

(n) 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.

(o) Party in Interest – a party to a case; a victim, or in the case of homicide, a next-of-kin; a witness; the parent, legal guardian, or custodian of a minor party; or the legal guardian or custodian of an adult party

(p) Proceedings Interpreter – an interpreter who interprets everything said in the courtroom by the judge, witnesses, attorneys, parties, and others.

(q) Table Interpreter – an interpreter who sits with the party and his or her attorney at their assigned table and interprets between the party and the attorney.

Section 3. Determining Need for Interpretation

(a) 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. Any and all persons who are aware of the need for an interpreter should notify the court when the need is first identified.

(b) Once the court has been notified of the need for an interpreter, either in advance of or during a legal proceeding, the court must 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 shall appoint an interpreter pursuant to this rule.

(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.

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 a certified or registered interpreter, as the case may be, have been made and none is 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.

(d) 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 in Tennessee Supreme Court Rule 41.

(g) 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.

(h) 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 Administrative Office of the Court's website (www.tncourts.gov).

It is imperative that court clerks and court staff make their best effort to obtain a certified interpreter before securing a registered or non-credentialed interpreter. Certified interpreters have undergone extensive training and examination and therefore must be contacted first. All appointment orders for registered and non-credentialed interpreters must include the appropriate findings before they are submitted to the Administrative Office of the Courts. See the commentary to Section 7 regarding requirements for non-credentialed interpreters.

Courts should take into account the location of the interpreter and strive to use interpreters from within their county, their adjoining counties, and their region.

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

- (1) 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 will need breaks even during relatively short hearings. Interpreters are entitled to request breaks at any time during the proceeding and the court should accommodate these requests.

- (2) Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary, such as trials, complex and technical proceedings, proceedings over two hours in length and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). See Canon 8, Assessing and Reporting Impediments to Performance, of Tennessee Supreme Court Rule 41.
- (3) Courts should consider using both a proceedings interpreter and a table interpreter in hearings lasting more than two hours. The table interpreter allows for the proceeding to continue without frequent interruption.
- (4) Multiple parties – 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.
- (5) Courts should be aware that court interpreter 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 some courts with simultaneous interpreting equipment, which will allow one interpreter to interpret for multiple parties during a single proceeding.

See the commentary to Canon 8, Assessing and Reporting Impediments to Performance, 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. If one or both parties have counsel, the attorney(s) should notify the court or court clerk when an interpreter is needed or no longer needed. The court and court clerk should work together to ensure that all parties, especially self-represented parties, have access to interpreters.

(b) Waiver of Interpreter. The LEP participant may knowingly and voluntarily waive the services of an interpreter at any point in the proceeding waive the services of an interpreter. The court must approve the waiver. 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 and through an interpreter, must first explain to the LEP person the nature and effect of the waiver; and

(ii) the judge must make a finding 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 their attorney through an interpreter.

(2) At any point in any proceeding, for good cause shown, the LEP person may retract their waiver and request an interpreter. If the judge approves the waiver, the judge shall inform the LEP person that they can make this request.

(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 prescribed in Rules 41 and 42 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; that you will render a complete and accurate interpretation or translation, that you will be impartial and unbiased and avoid the appearance of conflicts of interest, that you will conduct yourself in a manner that is consistent with the dignity of the court, that you will protect the confidentiality of all privileged and confidential information, and that you will follow all of the other 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. Local rules should be enacted to comply with this rule and indicate the process for notifying the court when an interpreter is needed to assist those appearing before the courts. One suggested way to ensure equal access and have an efficient language access program is to determine a local point of contact. The local point of contact should be knowledgeable of interpreter scheduling and court procedures. The courts and court clerks should work together to determine how to best ensure that self-represented parties have access to interpreters.

The Administrative Office of the Courts has developed best practices and other resources for court interpreters and courts regarding scheduling that are available at www.tncourts.gov.

Section 4(b)(1). An interpreter must be used in the hearing to explain the waiver process to the LEP person and to communicate the LEP person's understanding and decision to the court.

Section 4(c). Comment 1. Interpreters sign this oath upon receiving their credentials as a Tennessee foreign language interpreter. This oath is on file at the Administrative Office of the Courts. It is also 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) Attend an approved ethics and skill building workshop;
- (2) Pass an approved criterion-referenced written examination;
- (3) Complete and pass a verbal evaluation of the foreign language;
- (4) 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;
- (5) Provide verification of United States citizenship or the legal right to work in the United States;
- (6) Complete any required forms and pay any required fees; and
- (7) Complete any additional requirements established by the Administrative Office of the Courts pursuant to subsection (d).

If an oral examination is available, a registered court interpreter must sit for the examination at least once every twelve months from the date they are designated as a registered court interpreter until they receive 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 examination; and

(iii) Complete any additional requirements established by the Administrative Office 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)(4) through (a)(7) 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 units (CEUs) received during the three- year period. A CEU 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.

(ii) Completing any required forms and paying any required fees.

(d) The Administrative Office of the Courts shall determine appropriate examination registration fees as well as examination eligibility requirements and requirements for successful completion of examinations. The Administrative Office 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.

Commentary.

Comment 1. 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 2. 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, 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:

(a) Incompetence;

- (b) Being unable to interpret adequately, including where the interpreter self-reports such inability;
- (c) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;
- (d) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (e) Misrepresentation of any interpreter credentials;
- (f) Failure to reveal potential conflicts of interest; or
- (g) Failing to follow other standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts found in Tennessee Supreme Court Rule 41.

If the LEP person requests that the interpreter be removed for any reason, the judge may make inquiries about the request. The judge is required to hear the request and make a determination.

Commentary.

Incompetence is different from the other listed actions. Incompetence may include situations when the interpreter does not self-report and when the interpreter does not knowingly act to mislead the court. An example of incompetence includes but is not limited to when the judge visibly sees that the interpreter is not communicating or speaking with the LEP person.

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 found in Tennessee Supreme Court Rule 41.

Section 7. Non-credentialed Interpreters.

- (a) All non-credentialed interpreters must complete a form provided by the Administrative Office of the Courts when they register to use the online payment system. The form provides that the non-credentialed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts in Tennessee Supreme Court Rule 41.
- (b) Non-credentialed interpreters who submit claims to the Administrative Office of the Courts more than 12 times in a 12-month period will be required to take an approved ethics and skill building workshop at least once every three-years.

Section 8. Proceedings for Discipline of Court Interpreter.

(a) Initiation of Complaint.

(1) Any individual who has knowledge that an interpreter failed to comply with the provisions of this Rule, the provisions of Tennessee Supreme Court Rule 41, or any standard or procedure promulgated under this Rule or Rule 41 may file a complaint alleging such violation or failure to comply against a court interpreter.

(2) Any complaint against an interpreter must be received by the Administrative Office of the Courts no later than 180 days after the date of the alleged violation.

(3) The complainant shall submit a sworn complaint to the Administrative Office of the Courts using a complaint form promulgated by the Administrative Office of the Courts and posted on the Administrative Office of the Courts website.

(4) Any complaint that is not sworn or is received later than 180 days after the date of the alleged violation will not be accepted and the complainant will be barred from pursuing the complaint with the Administrative Office of the Courts. This statute of limitations only applies to the Administrative Office of the Courts' exercise of its own procedures contained within this Rule and Tennessee Supreme Court Rule 41.

(5) The Administrative Office of the Courts may initiate its own investigation if the alleged violations pertain to the claims procedure or if an interpreter is convicted of any felony or of a misdemeanor involving dishonesty or false statement. If the Administrative Office of the Courts has the authority to initiate its own investigation under this Section, a Grievance Committee is not required.

(b) Processing of Complaint

(1) Once a complaint has been received, the Administrative Office of the Courts shall, within a reasonable period of time, review the complaint and make a facial sufficiency determination as to whether the allegations contained in the complaint, if taken as true, may constitute a violation of this Rule, Tennessee Supreme Court Rule 41, or any standard promulgated under these Rules.

(2) The initial review by the Administrative Office of the Courts will include a determination as to whether the interpreter is credentialed, registered, or non-credentialed and if the complaint was filed timely. The designee at the Administrative Office of the Courts to conduct the initial review is authorized to conduct a preliminary investigation of the complaint by contacting the complainant, reviewing the complaint form and other documents submitted by the complainant, and contacting any listed witnesses submitted by the complainant.

(3) The Administrative Office of the Courts will notify the Chair of the Access to Justice Commission once the initial review is completed.

(4) If the Administrative Office of the Courts determines that the complaint cannot move forward due to lack of authority over the interpreter or the complaint was not filed timely, then that decision is final. The complaint will be dismissed after the initial review. The complainant will be notified in writing of the determination.

(5) If, after the initial review, the Administrative Office of the Courts determines that the complaint should move forward, the Administrative Office of the Courts shall notify the Chair of the Access to Justice Commission that a Grievance Committee should be appointed. The Chair of the Access to Justice Commission will appoint three individuals to the Committee. When possible, the three members should be from the Grand Division in which the alleged act or failure to act giving rise to the allegations contained in the complaint took place. The Grievance Committee shall include at least one Judge, one certified court interpreter and one member of the Access to Justice Commission. The Committee must be chaired by a member of the Access to Justice Commission.

(6) The Grievance Committee shall, within a reasonable period of time, review the complaint and the Administrative Office of the Courts' initial review and investigation and make a facial sufficiency determination as to whether the conduct that is the subject of the complaint constitutes a violation of this Rule, Rule 41, or any standard promulgated under these Rules.

(7) If the Grievance Committee finds that the conduct that is the subject of the complaint does not constitute a violation of this Rule, Rule 41, or any standard promulgated under these Rules, the Grievance Committee shall dismiss the complaint without prejudice and the Administrative Office of the Courts shall notify the complainant and the interpreter in writing of the dismissal.

(c) Process if Grievance Committee Determines Facial Sufficiency of Complaint

(1) If the Grievance Committee determines that the allegations, if taken as true, may constitute a violation of this Rule, Rule 41, or any standard promulgated under these Rules, the Committee shall prepare a list of any rule(s) or standard(s) which the interpreter may have violated. The Administrative Office of the Courts shall send a copy of the complaint, the list of alleged Rule violations, a copy of the Grievance Procedure, and a copy of Rule 41 and 42 to the interpreter named in the complaint. Service shall be made by mailing a copy of the document to be served to such person's last known address. Service by mail is complete upon mailing.

Service may also be made by sending the interpreter the document in Adobe PDF format to the interpreter's last known email address as maintained by the Administrative Office of the Courts or which shall be promptly furnished on request. A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under this Section.

(2) The interpreter shall send a written response to the Administrative Office of the Courts by postal mail or electronic mail and the Administrative Office of the Courts must receive the response within 30 days of the posting in (c)(1). If the interpreter fails to timely respond to the allegations, the grievance shall be deemed admitted, and the Grievance Committee may, within 10 days, recommend sanctions per subsection (d)(2)(v).

(3) Within 10 days of receipt of the interpreter's response, the Administrative Office of the Courts shall forward a copy of the interpreter's response to the complainant by postal mail and may also forward a copy by electronic mail. Within 30 days of posting of the interpreter's response, the complainant may send a written response to the interpreter's response to the Administrative Office of the Courts by postal mail and electronic mail. The Administrative Office of the Courts must receive the complainant's counter-response within 30 days of the Administrative Office of the Court's posting of the interpreter's response.

(4) Within 10 days of receipt of all responses, the Administrative Office of the Courts shall forward all responses received to the Grievance Committee.

(5) Notwithstanding any other provision in this Rule, at any time while the Grievance Committee has jurisdiction, it or its designated chair may meet with the complainant and the interpreter, jointly or separately, to resolve the matter. Such discussions shall include counsel for the respective parties, if attorneys have been hired or appointed. These meetings may be in person, by videoconference, or by teleconference at the discretion of the Committee. Any resolution may include sanctions if agreed to by the interpreter. If the interpreter agrees to sanctions and a resolution is reached, a stipulation of dismissal signed by the complainant and the interpreter with the concurrence of the Grievance Committee shall be submitted to the Administrative Office of the Courts and the complaint shall be dismissed with prejudice. At any time, the Grievance Committee may accept an admission by the interpreter and impose sanctions determined by the Committee per subsection (d)(2)(v).

(6) If there is no resolution per subsection (c)(5), the Grievance Committee shall review the complaint, the interpreter's response, the complainant's counter-response, and the result of any investigation directed by the Committee Chair, including any documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and constituted a violation of this Rule, Rule 41, or any standard promulgated under these Rules. If there is no probable cause, the Committee shall dismiss the complaint in a written decision and said decision shall be final with no right to an appeal. The Administrative Office of the Courts shall forward a copy of the decision to the complainant and the interpreter.

(d) Process if Grievance Committee Determines Probable Cause

Upon a finding of probable cause, the Grievance Committee may:

(1) Without a hearing if the Interpreter admits to the allegations or refuses to comply with the grievance procedure after proof of service, determine clear and convincing evidence that a violation has occurred and issue a written decision, including a statement noting the provisions of this Rule or Rule 42 or any standard promulgated under these Rules that the Interpreter failed to comply with and the Grievance Committee's reasons for not proceeding to a hearing on the matter. In its decision, the Grievance Committee shall impose appropriate sanctions per subsection (d)(2)(v). The Interpreter may request a hearing in front of the Grievance Committee to dispute the sanctions. This request for a hearing on the sanctions must be received by the Administrative Office of the Courts within 20 days of the Grievance Committee's decision. The

Administrative Office of the Courts will send this written decision to the Interpreter and the complainant; or

(2) Hold a hearing within 30 days or as soon thereafter as all parties, Grievance Committee members and witnesses are available for a hearing, on a date and at a location to be determined by the Grievance Committee. The Grievance Committee is encouraged to hold the hearing in-person when possible. Virtual hearings are permitted when an in-person hearing is not reasonable.

(i) The Grievance Committee is authorized to request the assistance of pro bono attorneys for both the Complainant and Interpreter for complicated matters. The Committee may make this request to State and local bar associations, legal aid organizations, or other access to justice partners. If either party to the complaint has retained outside counsel, the Grievance Committee will work to secure a pro bono attorney for the opposing party.

(ii) Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery and for the appearance of any person before the Grievance Committee may be issued by the Chair of the Access to Justice Commission or their designee. Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

(iii) Any person who, without adequate justification, fails to obey a duly served subpoena may be cited for contempt of the Grievance Committee. Should any witness fail, without justification, to respond to the lawful subpoena, or having responded, fail or refuse to answer all inquiries or produce evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding, the Chair of the Access to Justice Commission or their designee may cause a petition to be filed before the circuit court of the county in which the contemptuous act was committed. The petition shall allege the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt of the Grievance Committee. Such petition shall pray for the issuance of an order to show cause before the circuit court why the circuit court should not find the person in contempt of the Grievance Committee and why the person should not be punished by the court, therefore. The circuit court shall issue such orders and judgments therein as the court deems appropriate.

(iv) Hearings by the Grievance Committee may be conducted informally but shall be conducted pursuant to the Tennessee Rules of Evidence that may be liberally construed. Witnesses shall testify under oath. Proceedings may be reported by a court reporter, and the cost of the same shall be paid by the party requesting the reporting.

(v) Generally, the complainant shall have the burden of proving all allegations by clear and convincing evidence, unless a different burden of proof is prescribed by statute or law. The complainant will usually present their proof during the hearing. The Grievance Committee is authorized to ask questions during the hearing in order to obtain the information necessary to determine if a violation has occurred. The Grievance Committee may alter order of the proceedings, considering the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand

(vi) If, after the hearing, the Committee finds by clear and convincing evidence that the Interpreter has violated this Rule or Rule 41 or any standard promulgated under these Rules and that such violation warrants a sanction(s), the Committee shall impose an appropriate sanction(s), including but not limited to, private admonition, a public reprimand, additional training, suspension, and/or disqualification. When determining sanctions, the Committee shall consider criteria including but not limited to, the seriousness of the misconduct, the frequency of the misconduct, and prior violation by the Interpreter. The Committee shall draft a written opinion containing its findings of fact and conclusions.

(vii) If the Committee recommends an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(viii) The Administrative Office of the Courts will forward a copy of the decision to the complainant and the Interpreter.

(e) Appeal of Grievance Committee Decision

(1) Any party who desires to obtain a review of the decision of the Grievance Committee rendered either pursuant to subsection (c)(2), (d)(1), or following a hearing held pursuant to subsection (d)(2), may appeal to Chair of the Access to Justice Commission (excluding any members who served on the Grievance Committee), by filing a written notice of appeal with the Administrative Office of the Courts, within 30 days following the Committee's decision. The Chair of the Access to Commission will designate three-to-five Commission members to review the appeal. The Chair of the Access to Commission or their designee will serve as chair of the appellate review.

(2) If the parties agree to limit the issues to be presented for review, the Access to Justice Commission may choose to accept those limitations. The full record of the subject disciplinary process, including the findings of the Grievance Committee, shall be made available to the Access to Justice Commission during the review process.

(i) Content of the Record. The record on appeal shall consist of: (A) copies of all papers filed with the Administrative Office of the Courts; (B) the original of any exhibits offered; (C) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected; and (D) any other matter designated by a party and properly includable in the record.

(ii) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings. Except as provided in (iii) of Section 8(e)(2), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the Grievance Committee Hearing is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the

Administrative Office of the Courts and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the Administrative Office of the Courts and serve on the appellant a designation of additional parts to be included. The appellant shall have the additional parts prepared at the appellant's own expense. The transcript, certified by the appellant or the reporter as an accurate account of the proceedings, shall be filed with the Administrative Office of the Courts within 60 days after filing the notice of appeal. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the Administrative Office of the Courts with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the Administrative Office of the Courts within 15 days after service of notice of the filing of the transcript.

(iii) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the appellant determines that the cost to obtain the stenographic report in the matter is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant as an accurate account of the proceedings, shall be filed with the Administrative Office of the Courts within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the Administrative Office of the Courts with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the Administrative Office of the Courts within 15 days after service of the declaration and notice of the filing of the statement.

(3) An appealing party shall submit a brief describing the issues and matters for which the appealing party seeks a ruling and decision of the Access to Justice Commission. This shall be submitted to the Access to Justice Commission within 45 days after filing a written notice of appeal. The brief shall be served on the other party by the appealing party.

(4) The appellee shall submit a responsive brief to the Access to Justice Commission, within 30 days after the receipt of the appealing party's brief and serve a copy on the other party.

(5) The Chair of the appellate review panel has the authority to grant a request for an oral argument from either party to the grievance.

(6) The Access to Justice Commission, without members who assisted in the initial hearing, will review the briefs, the content of the record, and hear the oral arguments if applicable, within a reasonable time. The standard of review shall be de novo on the record with no presumption of correctness. The appellate review shall be set as soon as reasonably possible. The Commissioners assigned to review the appeal may meet in-person or virtually

(7) Sections 8(c)(5) and (d)(2)(iv-vii) of the Rule shall also apply to the hearings of the Access to Justice Commission.

(8) The Access to Justice Commission will review the appeal and content of the record and then issue a written decision. If the Access to Justice Commission determines that this Rule or Rule 41 or any standard promulgated under these Rules were violated, the Access to Justice Commission shall impose appropriate sanctions, including a private admonition, a public reprimand, additional training, suspension, and/or disqualification. The decision of the Access to Justice Commission is final and there is no right to an appeal.

(9) If the Access to Justice Commission recommends an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(f) General Provisions

(1) An Interpreter's failure to comply with sanctions imposed under this Section may, at the option of the Administrative Office of the Courts, result in additional sanctions, including but not limited to loss of credentials, or the filing of a petition for contempt per the process set forth in subsection (d)(2)(ii).

(2) If the recommendation is an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(3) All matters, investigations, or proceedings involving allegations of misconduct by an Interpreter, including all hearings and all information, records, minutes, files or other documents of the Administrative Office of the Courts, the Grievance Committee, and the Access to Justice Commission shall be confidential and privileged, and shall not be public records nor subject to disclosure, until or unless:

(i) a recommendation for the imposition of public discipline, without the initiation of a hearing, is filed by the Grievance Committee; or

(ii) the Interpreter requests that the matter be public; or

(iii) the complaint is predicated upon conviction of the Interpreter for a crime.

(4) All work product and work files (including internal memoranda, correspondence, notes and similar documents and files) of the Administrative Office of the Courts, Grievance Committee, Access to Justice Commission, and staff shall be confidential and privileged.

(5) All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality.

(6) Once the Grievance Committee has issued an opinion, a synopsis of the case may be published in the on the Administrative Office of the Courts' website or in training and educational materials for court interpreters. The name of the complainant will not be included in the synopsis. If the Interpreter is not publicly sanctioned, the name and any identifying information of the Interpreter will not be included in the synopsis.

(7) Members of the Grievance Committee, the Access to Justice Commission, and the Administrative Office of the Courts staff shall be immune from civil suit for any conduct in the course of their official duties.

(8) Notwithstanding any other provision of this Rule, if a grievance results in a finding, whether by admission or by decision of the Grievance Committee, that an Interpreter who is also an attorney violated this Rule or Rule 41 or any standard promulgated under these Rules, and once any rights of appeal have been exhausted or have expired, the Administrative Office of the Courts shall report the finding to the Board of Professional Responsibility of the Supreme Court of Tennessee.

Section 9. Cost of Interpreter/Translator Services

The 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 Administrative Office of the Courts will compensate the interpreter for this service. The costs will be compensated pursuant to this section 9 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. Compensation shall be authorized/approved by the court in which services are rendered, subject to the limitations in this rule.

(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 for interpreters or translators shall not exceed the following: Certified Interpreter - \$500 per day plus travel time; Registered Interpreter - \$400 per day plus travel time; Non-Credentialed Interpreter - \$250 per day plus travel time. 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 interpretation time and travel time at the compensation rate approved by the court and as provided for in this section.

(b) Two-Hour Minimum. If interpretation time and/or travel time total less than two (2) hours, a minimum of two (2) hours will be compensated. In the event an interpreter has multiple assignments within 2 hours for the same or different courts, only one "2-hour minimum" shall be permitted. ~~Only one "2-hour minimum" shall be permitted in the morning and only one "2-hour minimum" shall be permitted in the afternoon.~~ Travel time will be considered in determining minimum hours for payment.

(c) 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 ~~thirty cents (\$0.30)~~ 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.

(d) 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 hourly rate provided for spoken foreign language interpreters in sections 9(a) and 9(b) of this rule.

(e) 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 twenty dollars (\$20.00) 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 9(a) and 9(b), 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 (f) below, including travel outside the state, will be reimbursed only if prior authorization is obtained from the court.

(f) 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 Administrative Office of the Courts for prior approval. If the Administrative Office of the Courts denies prior approval of the request, the request shall be transmitted to the chief justice for disposition. The determination of the chief justice shall be final.

(g) Claims Procedures. Claims for compensation of interpreters and translators shall be submitted utilizing the system established by the Administrative Office of the Courts for electronic submission. The interpreter/translator's submission to the Administrative Office of the Courts 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 Administrative Office of the Courts.

(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 Administrative Office of the Courts' examination and audit pursuant to section 9(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 the Administrative Office of the Courts.

(i) The Administrative Office of the Courts shall examine and audit all claims for compensation and reimbursement to ensure compliance with this rule and any other applicable rule or statute(s). The Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts shall not prejudice the Administrative Office of the Courts' 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 Administrative Office of the Courts not to constitute proper remuneration for compensable services. The Administrative Office of the Courts 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 Administrative Office of the Courts.

(h) Contract Services and Pilot Projects. To facilitate the prompt and efficient disposition of proceedings which involve individuals with LEP, the Administrative Office of the Courts may contract with interpreters that are credentialed pursuant to this rule to interpret in specific counties or courts. Those counties or courts shall use the contracted interpreters unless they are unavailable. In addition, the Administrative Office of the Courts is authorized to establish pilot projects that may include but are not limited to video or audio remote interpretation. Counties may be interested in setting up a model whereby the county utilizes specific credentialed interpreters on a full-time or part-time basis and the counties are reimbursed directly from the Administrative Office of the Courts for those interpretation services. Counties must consult with the Administrative Office of the Courts before setting up that type of model. The Administrative Office of the Court will determine in what amounts and by what methods reimbursement shall be made.

~~(i) Eligible Cases and Covered Proceedings. The following provisions govern the payment of interpreter/translator costs pursuant to this rule. The Administrative Office of the Courts will bear the costs for an interpreter for an LEP party in interest as defined in Section 2 of this Rule, at no cost to the LEP party in interest regardless of the LEP party's ability to pay, as follows:~~

~~(1). Court Proceedings. The Administrative Office of the Courts will bear the costs of, and the court shall provide, an interpreter for an LEP party in interest to facilitate participation in all court proceedings as defined in Section 2 of this Rule.~~

~~(2). Out of Court Communications. The Administrative Office of the Courts will bear the costs for an interpreter for out of court communications in the following circumstances:~~

~~(a). Out of Court Communications with District Attorney. The Administrative Office of the Courts will bear the costs for an interpreter for out of court communications between the district attorney and LEP parties in interest to allow a court proceeding to continue as scheduled, including pre-trial conferences between district attorneys and LEP defendants in order to relay a~~

~~plea offer immediately prior to a court appearance or to discuss a continuance. This does not include arranging, providing, or paying for language interpretation to facilitate communication with attorneys, prosecutors, or other parties related to a case involving an LEP party in interest for the purpose of gathering background information, investigation, trial preparation, witness interviews, or any other communication which is not part of a courtroom proceeding. The District Attorney's Office is expected to arrange for language interpretation for case preparation and general communication with LEP parties in interest at its own expense.~~

~~(b). Out-of-Court Communications with Indigent LEP Parties in Interest. The Administrative Office of the Courts will bear the costs for an interpreter involving out-of-court communications between counsel, or a Guardian Ad Litem (GAL) for an LEP Party, and an LEP party in interest who has been declared indigent by the court for communications between client, counsel, and others for the purpose of gathering background information, investigation, and witness interviews.~~

~~(c). Out-of-Court Communications with Guardian ad Litem. To assist and facilitate out-of-court investigations and witness preparation, the Administrative Office of the Courts will bear the costs for an interpreter to facilitate out-of-court communications with a court-appointed guardian ad litem and an LEP party in interest.~~

~~(d). Out-of-Court Communications with non-Indigent LEP Parties in Interest. The Administrative Office of the Courts will not bear the costs for an interpreter to facilitate communications between non-indigent LEP parties in interest and privately retained counsel and/or others outside of a court proceeding or court operations as defined in Section 2 to this rule, which includes interviews, investigations, and other aspects of general case preparation. Privately retained counsel and non-indigent LEP parties in interest are expected to arrange for language interpretation for case preparation and general out-of-court communications at their own expense.~~

~~(3). Court Operations. LEP parties in interest and/or individuals are entitled to the same level of access to language assistance as those who appear in Court. Court personnel and/or staff shall ensure that LEP parties in interest and/or individuals have meaningful access to all court operations as defined in Section 2 of this Rule. Meaningful access to language services may include by way of illustration, but not limitation, utilizing qualified bilingual staff in person and/or remote interpreting services, language identification cards and/or signage, and translated forms and documents, including on the website.~~

~~(4). Interpreter Services Provided by Other Agencies. The Administrative Office of the Courts will not bear the costs for interpreters for programs, operations, or other initiatives that are within the purview of, and provided by, other agencies.~~

~~(5). Probation. In the event that probation intake interviews take place as a component of a court proceeding as defined in Section 2 of this Rule, the Administrative Office of the Courts will bear~~

~~the costs for an interpreter for only those initial probation intake interviews that are conducted immediately following a court proceeding as defined in Section 2 of this Rule. The Probation Office is expected to arrange for language interpretation for general communication with LEP parties in interest for all other probation matters at its own expense as provided in subsection (3) of this part.~~

~~(6). Evaluations. The Administrative Office of the Courts will bear the costs for an interpreter to facilitate the completion of evaluations ordered by, and performed for the purpose of aiding, the court in making a determination involving LEP parties in interest.~~

~~(7). Alternative Dispute Resolution. The Administrative Office of the Courts will bear the costs for interpreters for court-annexed alternative dispute resolution matters when such matters are part of court proceedings as defined in Section 2 of this Rule and are operated and/or managed by the Courts, and for alternative dispute resolution matters involving LEP parties when ordered by the court.~~

~~(8) Duty of Court—Other Services. Courts should avoid ordering an LEP party in interest to participate in and/or attend any programs or services in which participation by the LEP party in interest would be jeopardized due to a language barrier. Before ordering an LEP party in interest to attend treatment, rehabilitation, or other programs or services that are not operated or managed by the Courts, the court shall first consider whether the agency, entity, organization, or service provider provides language access services, including whether an LEP party in interest can effectively receive services from or meaningfully participate in such a service or program. If the court determines that the LEP party in interest cannot meaningfully participate in such program or service due to a language barrier, then the court shall consider whether there is an appropriate alternative program that provides language access in which the LEP party in interest may participate. If the court determines that such alternative programs or services are not available, then the court shall consider whether a waiver of the program or service is warranted.~~

~~(9) Victims/Homicide. Pursuant to Article I, 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.~~

~~(i) 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 [(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 9(i)(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 9(i)(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.

Comment to Rule 42, Section (9)(c). Interpreters should confirm with the court the business day prior to the hearing or the prior to travel that their services are still needed for the proceeding. If an interpreter makes best efforts to confirm with the court and the interpreter travels to the court only to learn they are no longer needed, the interpreter will be able to a claim for actual expenses and may receive the two-hour minimum when applicable.

Comment to Rule 42, Section 9(f)

Interpreters should contact the Administrative Office of the Courts for clarification prior to incurring any expenses that are not specified in this section.

~~Comment to Rule 42, Section 9(j)(5)~~

~~Initial probation intake interviews that are conducted following a plea agreement hearing are an indispensable part of Tennessee criminal jurisprudence. When initial probation intake interviews are scheduled immediately following a plea agreement hearing rather than being scheduled for a later time, date and place, courts should consider such initial probate intake interviews as an integral component of a courtroom proceeding as defined in Section 2 of this rule. Accordingly, courts may instruct interpreters for LEP parties in interest to accompany the LEP parties in interest and assist with initial probation intake interviews as a continuation of the court proceedings when they are conducted immediately following a plea agreement.~~

~~In such cases, when submitting a claim for compensation to the Administrative Office of the Courts, court interpreters shall include and identify any time spent assisting with an initial probation intake interview as court proceeding time rather than separately identifying such time as probation related.~~

~~This provision shall only apply to initial probation intake interviews that are conducted immediately following a plea agreement hearing and in no way shall be interpreted as allowing and/or providing that courts may instruct interpreters to assist with probation services other than initial probation intake interviews that are conducted immediately following a plea agreement hearing. All other probation services shall be considered a court operation as defined in Section 2 and Section 9 of this Rule.~~

~~Comment to Rule 42, Section 9(j)(7)~~

~~Court mandated services and programs, when they are part of a court proceeding and are operated and/or managed by the Courts, shall be language accessible to LEP parties in interest. Courts at times, however, may also order parties to participate in a program and/or service that is not operated or managed by the Court. And sometimes these services and/or programs act as prerequisites to participation in a future court proceeding. Before doing so, however, courts should consider whether the provider of such a program and/or service provides language access services to ensure successful participation and completion by an LEP party in interest. Courts should avoid ordering a party to participate in a program or service in which that party is unable to participate in, and therefore benefit from, due to a language barrier.~~

~~LEP parties in interest should thus not be held in contempt of court or subjected to other avoidable and adverse consequences for failure to participate in, and complete, a court ordered program or service due to a language barrier in which the LEP party in interest was not provided appropriate language access. Accordingly, when confronted with these circumstances, judges should first consider whether there is an appropriate alternative program in which the LEP party in interest may participate that provides language access; and secondly, if such an alternative program is not available, judges should consider whether a waiver of participation in the program or service is warranted when language access cannot be provided.~~

The American Bar Association has noted that “courts play pivotal roles in leadership, education, and resource development to ensure that language access services are accessible to LEP communities... Courts are thus well-situated to identify the appropriate providers for referrals of individual litigants, to coordinate with community providers to develop programs, to exercise leadership in assessing current needs and services and to help develop future resources.” See *ABA Standards of Language Access to the Courts*, pp. 69-76.

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ATTACHMENT D

Rule 42: Standards for Court Interpreters

Preamble.

Court interpretation is a specialized and highly demanding form of interpreting. It requires skills that few bilingual individuals possess. The knowledge and skills of a court interpreter are different from those required in other interpretation settings, including social service, medical, diplomatic, and conference interpreting. The Court has promulgated this rule due to the highly specialized knowledge and skills required in this profession. This rule provides uniform procedures, qualifications, and guidance for interpreters serving in Tennessee's courts.

Commentary

Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000(d) et seq., requires that recipients of federal funds take responsible steps to ensure meaningful access by persons with Limited English Proficiency (LEP persons). Accordingly, Title VI prohibits discrimination based on race, color, or national origin, in any program or activity that receives federal financial assistance from DOJ and authorizes DOJ to investigate and resolve discrimination complaints. 42 U.S.C. § 2000d-4a; 28 C.F.R. §§ 42.104(b), 42.107(c)-(d); 28 C.F.R. § 42.203(b)-(c). To that end, the Administrative Office of the Courts has revised Tenn. R. Sup. Ct. 42 to ensure meaningful access to agency services, programs, and activities on the part of persons who have limited English proficiency.

The State of Tennessee maintains a decentralized court system in which many statutes and private acts allow for variation in the judicial jurisdiction and structure of Tennessee courts. In addition, many local judges and clerks are elected and paid locally, and they operate courtrooms housed and maintained by the county in which they are elected. Notwithstanding Tennessee's decentralized court system, the Tennessee Supreme Court nevertheless has supervisory jurisdiction over all Tennessee courts. See Tenn. Const. art. VI, § 1; TENN. CODE ANN. § 16-3-501 ("In order to ensure the harmonious, efficient and uniform operation of the judicial system of the state, the supreme court is granted and clothed with general supervisory control over all the inferior courts of the state.").

The General Assembly has acknowledged the "broad conference of full, plenary and discretionary power upon the supreme court." TENN. CODE ANN. § 16-3-501. The Tennessee Supreme Court thus "constitutes the supreme judicial tribunal of the [S]tate," *Barger v. Brock*, 535 S.W.2d 337, 340 (Tenn. 1976), and has broad authority over the Tennessee Judicial Department. In *re Bell*, 344 S.W.3d 304, 313 (Tenn. 2011). Additionally, the General Assembly has expressly recognized that these powers are not a matter of legislative largess but instead derive from "the common law as it existed at the time of the adoption of the constitution of Tennessee and of the power inherent in a court of last resort." TENN. CODE ANN. § 16-3-503.

Consequently, "as the constitutionally designated repository of judicial power that exercises supervisory authority over the Judicial Department, this Court, and only this Court, has the authority to prescribe rules, policies, and procedures relating to matters essential to the judicial function." *Moore-Pennoyer v. State*, 525 S.W.3d 271, 277 (Tenn. 2017) (citations omitted). Ensuring meaningful access to all persons regardless of national origin and/or English language proficiency in state court proceedings is one such essential judicial function. See generally U.S. Department of Justice, Civil Rights Division, *Language Access in State Courts*, September 2016; see also Tenn. Const. art. I, § 17 ("That all courts shall be open; and every man, for an injury done him in his lands, goods, person or reputation, shall have remedy by due course of law, and right and justice administered without sale, denial, or delay"). There can be no equal access to the courts if the ability to participate in judicial functions is compromised by language barriers.

The purpose of Tenn. R. Sup. Ct. 42 is to create a framework to ensure meaningful access for limited English persons who would otherwise be unable to understand or fully participate in judicial proceedings, operations, programs, and services by providing effective language assistance services and guidance. As such, Tenn. R. Sup. Ct. 42 should be periodically reviewed and updated to reflect new best practices in the judicial system and society. Standard One of the American Bar Association's *Standards for Language Access in Courts* (2012) provides that "as a fundamental principle of law, fairness, and access to justice, and to promote the integrity and accuracy of judicial proceedings, courts should develop and implement an enforceable system of language access services, so that persons needing to access the court

are able to do so in a language they understand, and are able to be understood by the court.” Standards for Language Access in the Courts, https://www.americanbar.org/groups/legal_aid_indigent_defendants/language_access/.

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. This rule also applies in specialty courts, including but not limited to drug court and veterans court, in instances where the judge is present and the LEP person is appearing before the judge. The Administrative Office of the Courts is authorized to adopt policies and procedures necessary to implement this rule.

Commentary

This rule recognizes that for most people living in the United States, English is their native language, or they have learned to speak and understand English. There are others for whom English is not their primary language and 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.

Drug court and other specialty courts typically include many steps that involve service providers outside of the court system. Those service providers should have their own language access plan and provider for interpreter services. Courts should consider the availability of foreign language interpreters before ordering court participants to engage with service providers.

Section 2. Definitions

- (a) State Certified Court Interpreter - an interpreter who possesses the qualifications outlined in Section 5(b) of this rule.
- (b) State Registered Court Interpreter - an interpreter who possesses the qualifications outlined in Section 5(a) of this rule.
- (c) Interpretation - the unrehearsed transmission of a spoken message from one language into an equivalent spoken message in another language.
- (d) Limited English Proficient (“LEP”) Person - a person who does not speak English as their primary language and who has a limited ability to speak, read, write, or understand the English language.
- (e) Non-Credentialed Interpreter--a court interpreter who is not certified or registered as provided in this rule.
- (f) Participant--a party, witness, or other person in a legal proceeding.
- (g) Sight Translation - Rendering of written text in one language into an equivalent spoken message in another language.
- (h) Written Translation - the rendering of a written document from one language into a written document in another language.
- (i) Audio or Video Transcription and Translation - written transcription of the entire recorded audio and verbal content from one language into a written document in another language.

(j) 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, specialty or appellate court, in an action, appeal, or other proceeding, including any matter conducted by a judicial magistrate. This includes but is not limited to any communications that occur immediately preceding, or immediately following, a court proceeding for the purposes of communicating with judicial staff, court clerks, probation officers, or other court personnel and/or staff to facilitate a court-mandated service or program operated and/or managed by the Courts.

(k) Court Operations - offices of the courts, services, and programs, excluding court proceedings, which involve contact with the public or parties in interest, and are conducted by judicial officials, court personnel or court contractors.

(l) Covered Proceedings - a court proceeding, court operation, or out-of-court communication for which interpreter and / or translation services are provided to an LEP person at no expense to the LEP person.

(m) Out-of-Court communications – communications between a Party in Interest or individual and others that do not occur within a court proceeding and do not involve court operations.

(n) 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.

(o) Party in Interest – a party to a case; a victim, or in the case of homicide, a next-of-kin; a witness; the parent, legal guardian, or custodian of a minor party; or the legal guardian or custodian of an adult party

(p) Proceedings Interpreter – an interpreter who interprets everything said in the courtroom by the judge, witnesses, attorneys, parties, and others.

(q) Table Interpreter – an interpreter who sits with the party and his or her attorney at their assigned table and interprets between the party and the attorney.

Section 3. Determining Need for Interpretation

(a) 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. Any and all persons who are aware of the need for an interpreter should notify the court when the need is first identified.

(b) Once the court has been notified of the need for an interpreter, either in advance of or during a legal proceeding, the court must 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 shall appoint an interpreter pursuant to this rule.

(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.

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 a certified or registered interpreter, as the case may be, have been made and none is 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.

(d) 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 in Tennessee Supreme Court Rule 41.

(g) 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.

(h) 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 Administrative Office of the Court's website (www.tncourts.gov).

It is imperative that court clerks and court staff make their best effort to obtain a certified interpreter before securing a registered or non-credentialed interpreter. Certified interpreters have undergone extensive training and examination and therefore must be contacted first. All appointment orders for registered and non-credentialed interpreters must include the appropriate findings before they are submitted to the Administrative Office of the Courts. See the commentary to Section 7 regarding requirements for non-credentialed interpreters.

Courts should take into account the location of the interpreter and strive to use interpreters from within their county, their adjoining counties, and their region.

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

- (1) 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 will need breaks even during relatively short hearings. Interpreters are entitled to request breaks at any time during the proceeding and the court should accommodate these requests.
- (2) Interpreters should notify the presiding officer of the need to take periodic breaks to maintain mental and physical alertness and prevent interpreter fatigue. Interpreters should recommend and encourage the use of team interpreting whenever necessary, such as trials, complex and technical proceedings, proceedings over two hours in length and testimony lasting one hour or more (keeping in mind that the consecutive interpreting mode doubles the length of time of the testimony). See Canon 8, Assessing and Reporting Impediments to Performance, of Tennessee Supreme Court Rule 41.
- (3) Courts should consider using both a proceedings interpreter and a table interpreter in hearings lasting more than two hours. The table interpreter allows for the proceeding to continue without frequent interruption.

- (4) Multiple parties – 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.
- (5) Courts should be aware that court interpreter 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 some courts with simultaneous interpreting equipment, which will allow one interpreter to interpret for multiple parties during a single proceeding.

See the commentary to Canon 8, Assessing and Reporting Impediments to Performance, 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. If one or both parties have counsel, the attorney(s) should notify the court or court clerk when an interpreter is needed or no longer needed. The court and court clerk should work together to ensure that all parties, especially self-represented parties, have access to interpreters.

(b) Waiver of Interpreter. The LEP participant may knowingly and voluntarily waive the services of an interpreter at any point in the proceeding waive the services of an interpreter. The court must approve the waiver. 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 and through an interpreter, must first explain to the LEP person the nature and effect of the waiver; and

(ii) the judge must make a finding 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 their attorney through an interpreter.

(2) At any point in any proceeding, for good cause shown, the LEP person may retract their waiver and request an interpreter. If the judge approves the waiver, the judge shall inform the LEP person that they can make this request.

(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 prescribed in Rules 41 and 42 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; that you will render a complete and accurate interpretation or translation, that you will be impartial and unbiased and avoid the appearance of conflicts of interest, that you will conduct yourself in a manner that is consistent with the dignity of the court, that you will protect the confidentiality of all privileged and confidential information, and that you will follow all of the other 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. Local rules should be enacted to comply with this rule and indicate the process for notifying the court when an interpreter is needed to assist those appearing before the courts. One suggested way to ensure equal access and have an efficient language access program is to determine a local point of contact. The local point of contact should be knowledgeable of interpreter scheduling and court procedures. The courts and court clerks should work together to determine how to best ensure that self-represented parties have access to interpreters.

The Administrative Office of the Courts has developed best practices and other resources for court interpreters and courts regarding scheduling that are available at www.tncourts.gov.

Section 4(b)(1). An interpreter must be used in the hearing to explain the waiver process to the LEP person and to communicate the LEP person's understanding and decision to the court.

Section 4(c). Comment 1. Interpreters sign this oath upon receiving their credentials as a Tennessee foreign language interpreter. This oath is on file at the Administrative Office of the Courts. It is also 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) Attend an approved ethics and skill building workshop;
- (2) Pass an approved criterion-referenced written examination;
- (3) Complete and pass a verbal evaluation of the foreign language;
- (4) 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;
- (5) Provide verification of United States citizenship or the legal right to work in the United States;
- (6) Complete any required forms and pay any required fees; and
- (7) Complete any additional requirements established by the Administrative Office of the Courts pursuant to subsection (d).

If an oral examination is available, a registered court interpreter must sit for the examination at least once every twelve months from the date they are designated as a registered court interpreter until they receive 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 examination; and

(iii) Complete any additional requirements established by the Administrative Office 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)(4) through (a)(7) 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 units (CEUs) received during the three-year period. A CEU 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.

(ii) Completing any required forms and paying any required fees.

(d) The Administrative Office of the Courts shall determine appropriate examination registration fees as well as examination eligibility requirements and requirements for successful completion of examinations. The Administrative Office 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.

Commentary.

Comment 1. 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 2. 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, 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:

(a) Incompetence;

(b) Being unable to interpret adequately, including where the interpreter self-reports such inability;

(c) Knowingly and willfully making false, misleading, or incomplete interpretation while serving in an official capacity;

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

- (e) Misrepresentation of any interpreter credentials;
- (f) Failure to reveal potential conflicts of interest; or
- (g) Failing to follow other standards prescribed by law and the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts found in Tennessee Supreme Court Rule 41.

If the LEP person requests that the interpreter be removed for any reason, the judge may make inquiries about the request. The judge is required to hear the request and make a determination.

Commentary.

Incompetence is different from the other listed actions. Incompetence may include situations when the interpreter does not self-report and when the interpreter does not knowingly act to mislead the court. An example of incompetence includes but is not limited to when the judge visibly sees that the interpreter is not communicating or speaking with the LEP person.

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 found in Tennessee Supreme Court Rule 41.

Section 7. Non-credentialed Interpreters.

- (a) All non-credentialed interpreters must complete a form provided by the Administrative Office of the Courts when they register to use the online payment system. The form provides that the non-credentialed interpreter has read, understands, and will abide by the Rules of Ethics for Spoken Foreign Language Interpreters in Tennessee Courts in Tennessee Supreme Court Rule 41.
- (b) Non-credentialed interpreters who submit claims to the Administrative Office of the Courts more than 12 times in a 12-month period will be required to take an approved ethics and skill building workshop at least once every three-years.

Section 8. Proceedings for Discipline of Court Interpreter.

- (a) Initiation of Complaint.

(1) Any individual who has knowledge that an interpreter failed to comply with the provisions of this Rule, the provisions of Tennessee Supreme Court Rule 41, or any standard or procedure promulgated under this Rule or Rule 41 may file a complaint alleging such violation or failure to comply against a court interpreter.

(2) Any complaint against an interpreter must be received by the Administrative Office of the Courts no later than 180 days after the date of the alleged violation.

(3) The complainant shall submit a sworn complaint to the Administrative Office of the Courts using a complaint form promulgated by the Administrative Office of the Courts and posted on the Administrative Office of the Courts website.

(4) Any complaint that is not sworn or is received later than 180 days after the date of the alleged violation will not be accepted and the complainant will be barred from pursuing the complaint with the Administrative Office of the Courts. This statute of limitations only applies to the Administrative Office of the Courts' exercise of its own procedures contained within this Rule and Tennessee Supreme Court Rule 41.

(5) The Administrative Office of the Courts may initiate its own investigation if the alleged violations pertain to the claims procedure or if an interpreter is convicted of any felony or of a misdemeanor involving dishonesty or false statement. If the Administrative Office of the Courts has the authority to initiate its own investigation under this Section, a Grievance Committee is not required.

(b) Processing of Complaint

(1) Once a complaint has been received, the Administrative Office of the Courts shall, within a reasonable period of time, review the complaint and make a facial sufficiency determination as to whether the allegations contained in the complaint, if taken as true, may constitute a violation of this Rule, Tennessee Supreme Court Rule 41, or any standard promulgated under these Rules.

(2) The initial review by the Administrative Office of the Courts will include a determination as to whether the interpreter is credentialed, registered, or non-credentialed and if the complaint was filed timely. The designee at the Administrative Office of the Courts to conduct the initial review is authorized to conduct a preliminary investigation of the complaint by contacting the complainant, reviewing the complaint form and other documents submitted by the complainant, and contacting any listed witnesses submitted by the complainant.

(3) The Administrative Office of the Courts will notify the Chair of the Access to Justice Commission once the initial review is completed.

(4) If the Administrative Office of the Courts determines that the complaint cannot move forward due to lack of authority over the interpreter or the complaint was not filed timely, then that decision is final. The complaint will be dismissed after the initial review. The complainant will be notified in writing of the determination.

(5) If, after the initial review, the Administrative Office of the Courts determines that the complaint should move forward, the Administrative Office of the Courts shall notify the Chair of the Access to Justice Commission that a Grievance Committee should be appointed. The Chair of the Access to Justice Commission will appoint three individuals to the Committee. When possible, the three members should be from the Grand Division in which the alleged act or failure to act giving rise to the allegations contained in the complaint took place. The Grievance Committee shall include at least one Judge, one certified court interpreter and one member of the Access to Justice Commission. The Committee must be chaired by a member of the Access to Justice Commission.

(6) The Grievance Committee shall, within a reasonable period of time, review the complaint and the Administrative Office of the Courts' initial review and investigation and make a facial sufficiency determination as to whether the conduct that is the subject of the complaint constitutes a violation of this Rule, Rule 41, or any standard promulgated under these Rules.

(7) If the Grievance Committee finds that the conduct that is the subject of the complaint does not constitute a violation of this Rule, Rule 41, or any standard promulgated under these Rules, the Grievance Committee shall dismiss the complaint without prejudice and the Administrative Office of the Courts shall notify the complainant and the interpreter in writing of the dismissal.

(c) Process if Grievance Committee Determines Facial Sufficiency of Complaint

(1) If the Grievance Committee determines that the allegations, if taken as true, may constitute a violation of this Rule, Rule 41, or any standard promulgated under these Rules, the Committee shall prepare a list of any rule(s) or standard(s) which the interpreter may have violated. The Administrative Office of the Courts shall send a copy of the complaint, the list of alleged Rule violations, a copy of the Grievance Procedure, and a copy of Rule 41 and 42 to the interpreter named in the complaint. Service shall be made by mailing a copy of the document to be served to such person's last known address. Service by mail is complete upon mailing.

Service may also be made by sending the interpreter the document in Adobe PDF format to the interpreter's last known email address as maintained by the Administrative Office of the Courts or which shall be promptly furnished on request. A document transmitted electronically shall be treated as a document that was mailed for purposes of computation of time under this Section.

(2) The interpreter shall send a written response to the Administrative Office of the Courts by postal mail or electronic mail and the Administrative Office of the Courts must receive the response within 30 days of the posting in (c)(1). If the interpreter fails to timely respond to the allegations, the grievance shall be deemed admitted, and the Grievance Committee may, within 10 days, recommend sanctions per subsection (d)(2)(v).

(3) Within 10 days of receipt of the interpreter's response, the Administrative Office of the Courts shall forward a copy of the interpreter's response to the complainant by postal mail and may also forward a copy by electronic mail. Within 30 days of posting of the interpreter's response, the complainant may send a written response to the interpreter's response to the Administrative Office of the Courts by postal mail and electronic mail. The Administrative Office of the Courts must receive the complainant's counter-response within 30 days of the Administrative Office of the Court's posting of the interpreter's response.

(4) Within 10 days of receipt of all responses, the Administrative Office of the Courts shall forward all responses received to the Grievance Committee.

(5) Notwithstanding any other provision in this Rule, at any time while the Grievance Committee has jurisdiction, it or its designated chair may meet with the complainant and the interpreter, jointly or separately, to resolve the matter. Such discussions shall include counsel for the respective parties, if attorneys have been hired or appointed. These meetings may be in person, by videoconference, or by teleconference at the discretion of the Committee. Any resolution may include sanctions if agreed to by the interpreter. If the interpreter agrees to sanctions and a resolution is reached, a stipulation of dismissal signed by the complainant and the interpreter with the concurrence of the Grievance Committee shall be submitted to the Administrative Office of the Courts and the complaint shall be dismissed with prejudice. At any time, the Grievance Committee may accept an admission by the interpreter and impose sanctions determined by the Committee per subsection (d)(2)(v).

(6) If there is no resolution per subsection (c)(5), the Grievance Committee shall review the complaint, the interpreter's response, the complainant's counter-response, and the result of any investigation directed by the Committee Chair, including any documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and constituted a violation of this Rule, Rule 41, or any standard promulgated under these Rules. If there is no probable cause, the Committee shall dismiss the complaint in a written decision and said decision shall be final with no right to an appeal. The Administrative Office of the Courts shall forward a copy of the decision to the complainant and the interpreter.

(d) Process if Grievance Committee Determines Probable Cause

Upon a finding of probable cause, the Grievance Committee may:

(1) Without a hearing if the Interpreter admits to the allegations or refuses to comply with the grievance procedure after proof of service, determine clear and convincing evidence that a violation has occurred and issue a written decision, including a statement noting the provisions of this Rule or Rule 42 or any standard promulgated under these Rules that the Interpreter failed to comply with and the Grievance Committee's reasons for not proceeding to a hearing on the matter. In its decision, the Grievance Committee shall impose appropriate sanctions per subsection (d)(2)(v). The Interpreter may request a hearing in front of the Grievance Committee to dispute the sanctions. This request for a hearing on the sanctions must be received by the Administrative Office of the Courts within 20 days of the Grievance Committee's decision. The Administrative Office of the Courts will send this written decision to the Interpreter and the complainant; or

(2) Hold a hearing within 30 days or as soon thereafter as all parties, Grievance Committee members and witnesses are available for a hearing, on a date and at a location to be determined by the Grievance Committee. The Grievance Committee is encouraged to hold the hearing in-person when possible. Virtual hearings are permitted when an in-person hearing is not reasonable.

(i) The Grievance Committee is authorized to request the assistance of pro bono attorneys for both the Complainant and Interpreter for complicated matters. The Committee may make this request to State and local bar associations, legal aid organizations, or other access to justice partners. If either party to the complaint has retained outside counsel, the Grievance Committee will work to secure a pro bono attorney for the opposing party.

(ii) Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery and for the appearance of any person before the Grievance Committee may be issued by the Chair of the Access to Justice Commission or their designee. Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

(iii) Any person who, without adequate justification, fails to obey a duly served subpoena may be cited for contempt of the Grievance Committee. Should any witness fail, without justification, to respond to the lawful subpoena, or having responded, fail or refuse to answer all inquiries or produce evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly or contemptuous conduct before any proceeding, the Chair of the Access to Justice Commission or their designee may cause a petition to be filed before the circuit court of the county in which the contemptuous act was committed. The petition shall allege the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt of the Grievance Committee. Such petition shall pray for the issuance of an order to show cause before the circuit court why the circuit court should not find the person in contempt of the Grievance Committee and why the person should not be punished by the court, therefore. The circuit court shall issue such orders and judgments therein as the court deems appropriate.

(iv) Hearings by the Grievance Committee may be conducted informally but shall be conducted pursuant to the Tennessee Rules of Evidence that may be liberally construed. Witnesses shall testify under oath. Proceedings may be reported by a court reporter, and the cost of the same shall be paid by the party requesting the reporting.

(v) Generally, the complainant shall have the burden of proving all allegations by clear and convincing evidence, unless a different burden of proof is prescribed by statute or law. The complainant will usually present their proof during the hearing. The Grievance Committee is authorized to ask questions during the hearing in order to obtain the information necessary to determine if a violation has occurred. The Grievance Committee may alter order of the proceedings, considering the interests of fairness, simplicity, and the speedy and inexpensive determination of the matter at hand.

(vi) If, after the hearing, the Committee finds by clear and convincing evidence that the Interpreter has violated this Rule or Rule 41 or any standard promulgated under these Rules and that such violation warrants a sanction(s), the Committee shall impose an appropriate sanction(s), including but not limited to, private admonition, a public reprimand, additional training, suspension, and/or disqualification. When determining sanctions, the Committee shall consider criteria including but not limited to, the seriousness of the misconduct, the frequency of the misconduct, and prior violation by the Interpreter. The Committee shall draft a written opinion containing its findings of fact and conclusions.

(vii) If the Committee recommends an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(viii) The Administrative Office of the Courts will forward a copy of the decision to the complainant and the Interpreter.

(e) Appeal of Grievance Committee Decision

(1) Any party who desires to obtain a review of the decision of the Grievance Committee rendered either pursuant to subsection (c)(2), (d)(1), or following a hearing held pursuant to subsection (d)(2), may appeal to Chair of the Access to Justice Commission (excluding any members who served on the Grievance Committee), by filing a written notice of appeal with the Administrative Office of the Courts, within 30 days following the Committee's decision. The Chair of the Access to Commission will designate three-to-five Commission members to review the appeal. The Chair of the Access to Commission or their designee will serve as chair of the appellate review.

(2) If the parties agree to limit the issues to be presented for review, the Access to Justice Commission may choose to accept those limitations. The full record of the subject disciplinary process, including the findings of the Grievance Committee, shall be made available to the Access to Justice Commission during the review process.

(i) Content of the Record. The record on appeal shall consist of: (A) copies of all papers filed with the Administrative Office of the Courts; (B) the original of any exhibits offered; (C) the transcript or statement of the evidence or proceedings, which shall clearly indicate and identify any exhibits offered in evidence and whether received or rejected; and (D) any other matter designated by a party and properly includable in the record.

(ii) Transcript of Stenographic or Other Substantially Verbatim Recording of Evidence or Proceedings. Except as provided in (iii) of Section 8(e)(2), if a stenographic report or other contemporaneously recorded, substantially verbatim recital of the Grievance Committee Hearing is available, the appellant shall have prepared a transcript of such part of the evidence or proceedings as is necessary to convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. Unless the entire transcript is to be included, the appellant shall, within 15 days after filing the notice of appeal, file with the Administrative Office of the Courts and serve on the appellee a description of the parts of the transcript the appellant intends to include in the record, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall, within 15 days after service of the description and declaration, file with the Administrative Office of the Courts and serve on the appellant a designation of additional parts to be included. The appellant shall have the additional parts prepared at the appellant's own expense. The transcript, certified by the appellant or the reporter as an accurate account of the proceedings, shall be filed with the Administrative Office of the Courts within 60 days after filing the notice of appeal. Upon filing the transcript, the appellant shall simultaneously serve notice of the filing on the appellee. Proof of service shall be filed with the Administrative Office of the Courts with the filing of the transcript. If the appellee has objections to the transcript as filed, the appellee shall file objections thereto with the Administrative Office of the Courts within 15 days after service of notice of the filing of the transcript.

(iii) Statement of the Evidence When No Report, Recital, or Transcript Is Available. If no stenographic report, substantially verbatim recital or transcript of the evidence or proceedings is available, or if the appellant determines that the cost to obtain the stenographic report in the matter is beyond the financial means of the appellant or that the cost is more expensive than the matters at issue on appeal justify, and a statement of the evidence or proceedings is a reasonable alternative to a stenographic report, the appellant shall prepare a statement of the evidence or proceedings from the best available means, including the appellant's recollection. The statement should convey a fair, accurate and complete account of what transpired with respect to those issues that are the bases of appeal. The statement, certified by the appellant as an accurate account of the proceedings, shall be filed with the Administrative Office of the Courts within 60 days after filing the notice of appeal. Upon filing the statement, the appellant shall simultaneously serve notice of the filing on the appellee, accompanied by a short and plain declaration of the issues the appellant intends to present on appeal. Proof of service shall be filed with the Administrative Office of the Courts with the filing of the statement. If the appellee has objections to the statement as filed, the appellee shall file objections thereto with the Administrative Office of the Courts within 15 days after service of the declaration and notice of the filing of the statement.

(3) An appealing party shall submit a brief describing the issues and matters for which the appealing party seeks a ruling and decision of the Access to Justice Commission. This shall be submitted to the Access to Justice Commission within 45 days after filing a written notice of appeal. The brief shall be served on the other party by the appealing party.

(4) The appellee shall submit a responsive brief to the Access to Justice Commission, within 30 days after the receipt of the appealing party's brief and serve a copy on the other party.

(5) The Chair of the appellate review panel has the authority to grant a request for an oral argument from either party to the grievance.

(6) The Access to Justice Commission, without members who assisted in the initial hearing, will review the briefs, the content of the record, and hear the oral arguments if applicable, within a reasonable time. The standard of review shall be de novo on the record with no presumption of correctness. The appellate review shall be set as soon as reasonably possible. The Commissioners assigned to review the appeal may meet in-person or virtually

(7) Sections 8(c)(5) and (d)(2)(iv-vii) of the Rule shall also apply to the hearings of the Access to Justice Commission.

(8) The Access to Justice Commission will review the appeal and content of the record and then issue a written decision. If the Access to Justice Commission determines that this Rule or Rule 41 or any standard promulgated under these Rules were violated, the Access to Justice Commission shall impose appropriate sanctions, including a private admonition, a public reprimand, additional training, suspension, and/or disqualification. The decision of the Access to Justice Commission is final and there is no right to an appeal.

(9) If the Access to Justice Commission recommends an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(f) General Provisions

(1) An Interpreter's failure to comply with sanctions imposed under this Section may, at the option of the Administrative Office of the Courts, result in additional sanctions, including but not limited to loss of credentials, or the filing of a petition for contempt per the process set forth in subsection (d)(2)(ii).

(2) If the recommendation is an immediate suspension or disqualification, the Administrative Office of the Courts must notify the Tennessee Supreme Court. The Tennessee Supreme Court must conduct a cursory review of the grievance and the recommendations and either approve or amend the recommendations.

(3) All matters, investigations, or proceedings involving allegations of misconduct by an Interpreter, including all hearings and all information, records, minutes, files or other documents of the Administrative Office of the Courts, the Grievance Committee, and the Access to Justice Commission shall be confidential and privileged, and shall not be public records nor subject to disclosure, until or unless:

(i) a recommendation for the imposition of public discipline, without the initiation of a hearing, is filed by the Grievance Committee; or

(ii) the Interpreter requests that the matter be public; or

(iii) the complaint is predicated upon conviction of the Interpreter for a crime.

(4) All work product and work files (including internal memoranda, correspondence, notes and similar documents and files) of the Administrative Office of the Courts, Grievance Committee, Access to Justice Commission, and staff shall be confidential and privileged.

(5) All participants in any matter, investigation, or proceeding shall conduct themselves so as to maintain confidentiality.

(6) Once the Grievance Committee has issued an opinion, a synopsis of the case may be published in the on the Administrative Office of the Courts' website or in training and educational materials for court interpreters. The name of the complainant will not be included in the synopsis. If the Interpreter is not publicly sanctioned, the name and any identifying information of the Interpreter will not be included in the synopsis.

(7) Members of the Grievance Committee, the Access to Justice Commission, and the Administrative Office of the Courts staff shall be immune from civil suit for any conduct in the course of their official duties.

(8) Notwithstanding any other provision of this Rule, if a grievance results in a finding, whether by admission or by decision of the Grievance Committee, that an Interpreters who is also an attorney violated this Rule or Rule 41 or any standard promulgated under these Rules, and once any rights of appeal have been exhausted or have expired, the Administrative Office of the Courts shall report the finding to the Board of Professional Responsibility of the Supreme Court of Tennessee.

Section 9. Cost of Interpreter/Translator Services

The 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 Administrative Office of the Courts will compensate the interpreter for this service. The costs will be compensated pursuant to this section 9 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. Compensation shall be authorized/approved by the court in which services are rendered, subject to the limitations in this rule.

(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 for interpreters or translators shall not exceed the following: Certified Interpreter - \$500 per day plus travel time; Registered Interpreter - \$400 per day plus travel time; Non-Credentialed Interpreter - \$250 per day plus travel time. 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 interpretation time and travel time at the compensation rate approved by the court and as provided for in this section.

(b) Two-Hour Minimum. If interpretation time and/or travel time total less than two (2) hours, a minimum of two (2) hours will be compensated. In the event an interpreter has multiple assignments within 2 hours for the same or different courts, only one "2-hour minimum" shall be permitted. Only one "2-hour minimum" shall be permitted in the morning and only one "2-hour minimum" shall be permitted in the afternoon. Travel time will be considered in determining minimum hours for payment.

(c) 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 (\$0.30) 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.

(d) 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 hourly rate provided for spoken foreign language interpreters in sections 9(a) and 9(b) of this rule.

(e) 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, if supported by a receipt.

(5) Time spent traveling shall be compensated at the same rates provided for spoken language interpreters in section 9(a) and 9(b), 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 (f) below, including travel outside the state, will be reimbursed only if prior authorization is obtained from the court.

(f) 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 Administrative Office of the Courts for prior approval. If the Administrative Office of the Courts denies prior approval of the request, the request shall be transmitted to the chief justice for disposition. The determination of the chief justice shall be final.

(g) Claims Procedures. Claims for compensation of interpreters and translators shall be submitted utilizing the system established by the Administrative Office of the Courts for electronic submission. The interpreter/translator's submission to the Administrative Office of the Courts 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 Administrative Office of the Courts.

(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 Administrative Office of the Courts' examination and audit pursuant to section 9(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 the Administrative Office of the Courts.

(i) The Administrative Office of the Courts shall examine and audit all claims for compensation and reimbursement to ensure compliance with this rule and any other applicable rule or statute(s). The Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts 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 Administrative Office of the Courts shall not prejudice the Administrative Office of the Courts' 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 Administrative Office of the Courts not to constitute proper remuneration for compensable services. The Administrative Office of the Courts 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 Administrative Office of the Courts.

(h) Contract Services and Pilot Projects. To facilitate the prompt and efficient disposition of proceedings which involve individuals with LEP, the Administrative Office of the Courts may contract with interpreters that are credentialed pursuant to this rule to interpret in specific counties or courts. Those counties or courts shall use the contracted interpreters unless they are unavailable. In addition, the Administrative Office of the Courts is authorized to establish pilot projects that may include but are not limited to video or audio remote interpretation. Counties may be interested in setting up a model whereby the county utilizes specific credentialed interpreters on a full-time or part-time basis and the counties are reimbursed directly from the Administrative Office of the Courts for those interpretation services. Counties must consult with the Administrative Office of the Courts before setting up that type of model. The Administrative Office of the Court will determine in what amounts and by what methods reimbursement shall be made.

(i) Eligible Cases and Covered Proceedings. The following provisions govern the payment of interpreter/translator costs pursuant to this rule. The Administrative Office of the Courts will bear the costs for an interpreter for an LEP party in interest as defined in Section 2 of this Rule, at no cost to the LEP party in interest regardless of the LEP party's ability to pay, as follows:

(1). Court Proceedings. The Administrative Office of the Courts will bear the costs of, and the court shall provide, an interpreter for an LEP party in interest to facilitate participation in all court proceedings as defined in Section 2 of this Rule.

(2). Out-of-Court Communications. The Administrative Office of the Courts will bear the costs for an interpreter for out-of-court communications in the following circumstances:

(a). Out-of-Court Communications with District Attorney. The Administrative Office of the Courts will bear the costs for an interpreter for out-of-court communications between the district attorney and LEP parties in interest to allow a court proceeding to continue as scheduled, including pre-trial conferences between district attorneys and LEP defendants in order to relay a plea offer immediately prior to a court appearance or to discuss a continuance. This does not include arranging, providing, or paying for language interpretation to facilitate communication with attorneys, prosecutors, or other parties related to a case involving an LEP party in interest for the purpose of gathering background information, investigation, trial preparation, witness interviews, or any other communication which is not part of a courtroom proceeding. The District Attorney's Office is expected to arrange for language interpretation for case preparation and general communication with LEP parties in interest at its own expense.

(b). Out-of-Court Communications with Indigent LEP Parties in Interest. The Administrative Office of the Courts will bear the costs for an interpreter involving out-of-court communications between counsel, or a Guardian Ad Litem (GAL) for an LEP Party, and an LEP party in interest who has been declared indigent by the court for communications between client, counsel, and others for the purpose of gathering background information, investigation, and witness interviews.

(c). Out-of-Court Communications with Guardian ad Litem. To assist and facilitate out-of-court investigations and witness preparation, the Administrative Office of the Courts will bear the costs for an interpreter to facilitate out-of-court communications with a court-appointed guardian-ad-litem and an LEP party in interest.

(d). Out-of-Court Communications with non-Indigent LEP Parties in Interest. The Administrative Office of the Courts will not bear the costs for an interpreter to facilitate communications between non-indigent LEP parties in interest and privately retained counsel and/or others outside of a court proceeding or court operations as defined in Section 2 to this rule, which includes interviews, investigations, and other aspects of general case preparation. Privately retained counsel and non-indigent LEP parties in interest are expected to arrange for language interpretation for case preparation and general out-of-court communications at their own expense.

(3). Court Operations. LEP parties in interest and/or individuals are entitled to the same level of access to language assistance as those who appear in Court. Court personnel and/or staff shall ensure that LEP parties in interest and/or individuals have meaningful access to all court operations as defined in Section 2 of this Rule. Meaningful access to language services may include by way of illustration, but not limitation, utilizing qualified bilingual staff in person and/or remote interpreting services, language identification cards and/or signage, and translated forms and documents, including on the website.

(4). Interpreter Services Provided by Other Agencies. The Administrative Office of the Courts will not bear the costs for interpreters for programs, operations, or other initiatives that are within the purview of, and provided by, other agencies.

(5). Probation. In the event that probation intake interviews take place as a component of a court proceeding as defined in Section 2 of this Rule, the Administrative Office of the Courts will bear the costs for an interpreter for only those initial probation intake interviews that are conducted immediately following a court proceeding as defined in Section 2 of this Rule. The Probation Office is expected to arrange for language interpretation for general communication with LEP parties in interest for all other probation matters at its own expense as provided in subsection (3) of this part.

(6). Evaluations. The Administrative Office of the Courts will bear the costs for an interpreter to facilitate the completion of evaluations ordered by, and performed for the purpose of aiding, the court in making a determination involving LEP parties in interest.

(7). Alternative Dispute Resolution. The Administrative Office of the Courts will bear the costs for interpreters for court-annexed alternative dispute resolution matters when such matters are part of court proceedings as defined in Section 2 of this Rule and are operated and/or managed by the Courts, and for alternative dispute resolution matters involving LEP parties when ordered by the court.

(8) Duty of Court – Other Services. Courts should avoid ordering an LEP party in interest to participate in and/or attend any programs or services in which participation by the LEP party in interest would be jeopardized due to a language barrier. Before ordering an LEP party in interest to attend treatment, rehabilitation, or other programs or services that are not operated or managed by the Courts, the court shall first consider whether the agency, entity, organization, or service provider provides language access services, including whether an LEP party in interest can effectively receive services from or meaningfully participate in such a service or program. If the court determines that the LEP party in interest cannot meaningfully participate in such program or service due to a language barrier, then the court shall consider whether there is an appropriate alternative program that provides language access in which the LEP party in interest may participate. If the court determines that such alternative programs or services are not available, then the court shall consider whether a waiver of the program or service is warranted.

(9) Victims/Homicide. 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.

Comment to Rule 42, Section (9)(c). Interpreters should confirm with the court the business day prior to the hearing or the prior to travel that their services are still needed for the proceeding. If an interpreter makes best efforts to confirm with the court and the interpreter travels to the court only to learn they are no longer needed, the interpreter will be able to a claim for actual expenses and may receive the two-hour minimum when applicable.

Comment to Rule 42, Section 9(f)

Interpreters should contact the Administrative Office of the Courts for clarification prior to incurring any expenses that are not specified in this section.

Comment to Rule 42, Section 9(j)(1) “Court Proceedings.”

Early identification and notice to the court that an LEP party in interest requires language assistance is essential to ensure an appropriate interpreter is provided for a court proceeding. In order for the court to promptly and efficiently ensure that an interpreter is provided for an LEP party in interest for participation in a court proceeding, the LEP party in interest shall, or if the LEP party in interest is represented by an attorney, the LEP party in interest's attorney shall, well in advance of the court proceeding, notify the court that an interpreter is needed.

Currently, LEP parties in interest and/or their attorneys have either independently requested the assistance of interpreters, or the courts have requested the assistance of interpreters unaware that the parties or their attorneys have also made such a request. The unfortunate result of the current practice is to have multiple interpreters appear for a single court proceeding which wastes time, resources, and funds.

Courts should also be aware that they may, at times, have to continue court proceedings in the event an interpreter is not available on a specific hearing date. LEP parties and their attorneys shall strive to work with the courts in facilitating appropriate scheduling to accommodate, and ensure, the availability of interpreters for court proceedings.

Comment to Rule 42, Section 9(j)(5)

Initial probation intake interviews that are conducted following a plea agreement hearing are an indispensable part of Tennessee criminal jurisprudence. When initial probation intake interviews are scheduled immediately following a plea agreement hearing rather than being scheduled for a later time, date and place, courts should consider such initial probate intake interviews as an integral component of a courtroom proceeding as defined in Section 2 of this rule. Accordingly, courts may instruct interpreters for LEP parties in interest to accompany the LEP parties in interest and assist with initial probation intake interviews as a continuation of the court proceedings when they are conducted immediately following a plea agreement.

In such cases, when submitting a claim for compensation to the Administrative Office of the Courts, court interpreters shall include and identify any time spent assisting with an initial probation intake interview as court proceeding time rather than separately identifying such time as probation related.

This provision shall only apply to initial probation intake interviews that are conducted immediately following a plea agreement hearing and in no way shall be interpreted as allowing and/or providing that courts may instruct interpreters to assist with probation services other than initial probation intake interviews that are conducted immediately following a plea agreement hearing. All other probation services shall be considered a court operation as defined in Section 2 and Section 9 of this Rule.

Comment to Rule 42, Section 9(j)(7)

Court-mandated services and programs, when they are part of a court proceeding and are operated and/or managed by the Courts, shall be language accessible to LEP parties in interest. Courts at times, however, may also order parties to participate in a program and/or service that is not operated or managed by the Court. And sometimes these services and/or programs act as prerequisites to participation in a future court proceeding. Before doing so, however, courts should consider whether the provider of such a program and/or service provides language access services to ensure successful participation and completion by an LEP party in interest. Courts should avoid ordering a party to participate in a program or service in which that party is unable to participate in, and therefore benefit from, due to a language barrier.

LEP parties in interest should thus not be held in contempt of court or subjected to other avoidable and adverse consequences for failure to participate in, and complete, a court-ordered program or service due to a language barrier in which the LEP party in interest was not provided appropriate language access. Accordingly, when confronted with these circumstances, judges should first consider whether there is an appropriate alternative program in which the LEP party in interest may participate that provides language access; and secondly, if such an alternative program is not available, judges should consider whether a waiver of participation in the program or service is warranted when language access cannot be provided.

The American Bar Association has noted that “courts play pivotal roles in leadership, education, and resource development to ensure that language access services are accessible to LEP communities...Courts are thus well-situated to identify the appropriate providers for referrals of individual litigants, to coordinate with community providers to develop programs, to exercise leadership in assessing current needs and services and to help develop future resources.” See ABA Standards of Language Access to the Courts, pp. 69-76.