

6816 Pennywell Drive
Nashville, TN 37205
September 27, 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



Dear Mr. Crowson,

I am a Federally and Tennessee State Certified Court Interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and I would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: (iii) *Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: (iii) *Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

Rule 13, as proposed, also states that: (iv) *Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour. This is not a viable option. Please change Rule 13 to state: (iv) *Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.* The last part leaves some room for negotiation, if needed.

Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge is, perhaps, best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a (registered/certified/qualified) interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,

A handwritten signature in cursive script that reads "Marvyn Bacigalupo". The signature is written in dark ink and is positioned above the typed name.

Marvyn Bacigalupo

Co-Chair of Tennessee Association of Professional Interpreters and Translators

SEP 30 2003

Heather Hayes
Federally Certified Court Interpreter
Tennessee Certified Court Interpreter
208 W. Bronson St.
Sparta, TN 38583
office: (931) 837-2236
cell: (931) 256 0272
www.hhtranslations.com
interpreter@multipro.com

September 25 2003

Cecil V. Crowson, Jr.
re Rule 13 Comments
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Cc to Rebecca Montgomery; TAPIT (Tennessee Association of
Professional Interpreters and Translators)

Dear Mr. Crowson:

While I congratulate the Tennessee Administrative Office of the Courts on the steady effort it has been making to deal with the issues surrounding the use of interpreters in the courts, as an active certified interpreter, I wish to comment upon several important points contained in the proposed revision to Rule 13.

1) I wish to inform the Administrative Office of the Courts and the Tennessee Supreme Court that I respectfully object to the stipulation that travel time for interpreters be paid at no more than 50% of the suggested hourly rate for interpreting. My objection stems from the fact that, during the time that I am traveling for one court, I am naturally not able to accept a job interpreting for another court. Therefore, I frequently turn down assignments since I will be in transit. This time in transit, during which I would otherwise have been earning \$50.00/hour, must be compensated at the same rate. Why should interpreters be expected to refuse incoming jobs while setting aside their time at half the price? As a highly qualified professional, my **time** is

worth a minimum of \$50.00/hour according to the hourly fee schedule established in Tennessee for state-certified interpreters. Once reserved and occupied at the State's request, it is of no consequence that my time be spent in transit to or from assignments, in the act of interpreting, or, indeed, reading a newspaper while kept waiting in the halls of a courthouse.

2) I am extremely wary of Section 4 of Rule 13, which states, "(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour." I feel that this is an unreasonably strict wording, which mandates the amount that private individuals may charge for their work. We interpreters are not offered employment contracts or any benefits whatsoever, such as health or disability insurance. The courts are not our employers; they are our clients. How can the Tennessee court system legally establish a ceiling for the amount that private contractors may charge for services they render to it?

With respect to this same issue, I should like to point out that rates paid by the courts to professional interpreters are already low for people with our credentials and level of expertise. Clients within the private sector pay certified interpreters \$75.00/hour and more (plus mileage and expenses) for the same services we perform in state courts.

I maintain that it would be more appropriate to word the Rules so that these amounts be described as generally accepted or reasonable, but to leave it to the discretion of the parties directly involved to modify these rates, since in some cases there may exist special, verifiable circumstances that merit different charges.

3) Also, in the proposed invoice to be presented to the Administrative Office of the Courts, apart from the distinction made between time in court and time outside of court, there is a section for time to be billed in increments of one-tenths of an hour. Internationally, in all fields of interpretation, the interpreter's time is paid in one-hour increments. Occasionally an agreement may be made to bill in half-hour increments, under previous arrangement between parties, and usually applicable only to overtime.

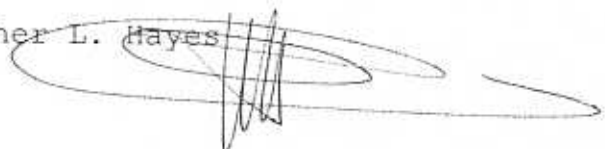
I feel that all of these points are of universal concern to court interpreters. It would be a shame if, after all of its hard work to certify interpreters for courtroom use, the AOC's proposed

practices regarding payment for interpreters were to force highly qualified individuals such as myself to accept only job offers coming from the private sector, which pay at more attractive and competitive rate, leaving the courts to work only with less qualified individuals.

In addition, I would like to bring to your attention a separate issue that does not appear in the Rule. I believe that some mention should be made of cancellation policies. It is my practice to inform courts that if I do not receive a minimum of 24 hours' advance notification of a cancellation (or by the previous working day in the case of Friday-to-Monday or holidays), the court will be responsible for a minimum payment of one-half day: 4 hours at \$50.00/hour. I charge for a full day if a proceedings had been slated to occupy more than 1 day, including travel, etc.

I thank you for your attention to this matter, and I look forward to your response.

Heather L. Hayes

A handwritten signature in black ink, appearing to be "Heather L. Hayes", written over a horizontal line. The signature is somewhat stylized and includes a large loop.

Heather Hayes, certified interpreter

I enclose
this copy
by way of endorsement.
Mervyn Enguidanos, Ph.D.
(615) 356-9251

Heather Hayes
Federally Certified Court Interpreter
Tennessee Certified Court Interpreter
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Heather L. Hayes

Heather Hayes, certified interpreter

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
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Nashville, TN 37219-1407.

OCT 2 2003

October 1, 2003

Dear Mr. Crowson,

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I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a Registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,

Mervyn Enguidanos, Ph.D., Member-ATA

6716 Currywood Drive
Nashville, TN 37205
Tel: (615) 356-9251
Fax : (615) 356-937

A handwritten signature in black ink that reads "Mervyn Enguidanos". The signature is written in a cursive style with a large, sweeping initial "M".

Gary Chittester
182 Antler Ridge Circle
Nashville, TN 37214

OCT 2 2003

Wednesday, October 1, 2003

Mr. Cecil V. Crowson, Jr.,
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

REFERENCE: Rule 13 Comments

Dear Mr. Crowson:

With regard to Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts, it would seem that some details might bear further consideration before the payment guidelines are made permanent.

I was surprised and very happy to see, however, that your office continues to arrange for the upgrade of the interpreter program by addressing interpreter payment.

I suggest that the fees outlined at Supreme Court Rules 13 and 43 be amended to read "minimum" fees paid to interpreters. I further suggest that interpreter hourly fees be paid for travel time and mileage with a two hour minimum. Private sector fees now range above one hundred dollars an hour.

Qualified and competent interpreters represent a lifetime of learning, training, and talent. With the current pay schedule it is not economically feasible to travel for a "perhaps" one hour court session. "Perhaps" because as you are well aware, court routines are very flexible with cancellations and postponements being the rule rather than the exception. Travel time is still time for an interpreter and could be used for interpreting. No private business can operate long under conditions where time is not compensated. Usually interpreters round their time up to the full hour and most have a minimum with a compensation fee for cancellations.

Please consider also that the courts are still not calling upon the registered and certified interpreters as required by the current rules, discouraging entry into the interpreter field.

Becoming a state qualified interpreter represents a considerable and ongoing investment in time and expense and it is certainly fair for the state to provide reasonable compensate for such dedication on behalf of the state. Perhaps personal contact with some of the interpreters working in the courts would be beneficial in arriving at a more equitable pay schedule.

Final thoughts-no answer expected or requested. How do payment rules apply to courts who have chosen to employ interpreters on a permanent basis? Please consider also that the courts are still not calling upon the registered and certified interpreters as required by the current rules, further discouraging entry into the interpreter field. Given the current rules, is it ethical for the courts to permanently employ persons as interpreters if these persons are not registered or certified by the state?

These suggestions and comments are made at the invitation of the Administrative Office of the Courts and are intended as a constructive response. It is hoped that it will help you arrive at decisions which will enhance and improve the program into the future.

Sincerely,



Gary Chittester

TN State Registered Interpreter

FERNANDA MARURI

OCT 2 2003

408 Hill Road
Nashville, TN 37220

(615) 834-4654
fmaruri@comcast.net

October 1, 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

Dear Mr. Crowson,

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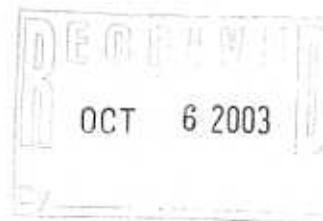
Fernanda Maruji

408 Hill Road
Nashville, TN 37220
Phone: (615)834-4654

CEJA ENTERPRISES, INC.

AL SERVICIO DE LOS HISPANOS

October 1, 2003



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4025 Nolensville Rd.
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Phone: 615-832-3550
Fax: 615-832-3551

406 West Northfield Blvd
Murfreesboro, TN 37129
Phone: 615-494-0333
Fax: 615-494-0301

1143 # A-11 Columbia Ave
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SABRINA M. JACAL
Ceja Enterprises, Inc.
4025 Nolensville Road
Nashville, TN 37211
(615) 832-3550 ext. 201

October 2, 2003



Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
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Cc to Rebecca Montgomery

Dear Mr. Crowson,

As a court interpreter certified by the state of Tennessee, I would like to offer my concerns about proposed Supreme Court Rule 13, Section 4K. Tennessee tax-payers have gone to considerable expense in the development of the training program and certification exam for interpreters. The Supreme Court of Tennessee has developed a mandate to promote the use of highly qualified interpreters throughout all of the counties in Tennessee. I think that the state should work to uphold and support Supreme Court Rule 42 and do its best to create an environment in which the courts of Tennessee will have access to the best interpretation services possible. While I appreciate the effort being made by the Supreme Court to expedite payment for interpreters and translators, it would sadden me greatly to see the local courts revert to using unqualified interpreters because of some of the new payment conditions proposed in Rule 13. Under these new conditions, qualified interpreters will not choose to travel to county courts and the courts themselves may feel justified in hiring someone local and unqualified because those persons would be willing to bill their work in accordance with this new payment system. So we go back to the old days, when anyone who was around, no matter how unqualified, was used to interpret. In fact, I recently lost a job due to this new payment system. The court decided to hire someone local even though they were not certified, because the local person was willing to bill in tenths of an hour and posed no travel expenses. I cannot afford to drive 1 ½ hours each way, at half my rate, and perhaps earn only a tenth of an hour of pay because my case was cancelled or continued. I would not be able to get another job for that day. As you know, freelance workers pay taxes, the full 15% for Social Security, and have no benefits or health insurance.

Regarding the pay rate: Supreme Court Rule 42 established a suggested minimum range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. These rates are already significantly below rates paid by the private sector for similar services. I believe that these amounts should be approved in Rule 13 as **minimum** fees rather than maximum fees. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13. I would respectfully suggest that the language adopted by Rule 13 allow more flexibility: "(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour." This formulation allows some

variations, if needed, while providing courts a framework within which to make suitable arrangements.

Regarding compensation for travel time: Rule 13, as proposed, also states that: "(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate". As I stated before, freelance interpreters like me cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time.. I cannot afford to travel several hours to an assignment at \$25/hour, while turning down other work that would pay me \$50/hour or more. This is not a viable option. Please change Rule 13 to state: "(iv) Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties." The last part leaves some room for negotiation, if needed.

The matter of billing in tenths of an hour is also a problem. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time for the court and turning down other jobs. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. Please remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a certified interpreter according to Tennessee's regulations. I feel that my work is valuable to the community and would hope to be properly compensated for my efforts on the state's behalf. The State of Tennessee has made great progress in the development of a program to provide qualified interpretation services throughout our justice system – I hope that it will continue to advance in the implementation of that program.

Sincerely,



Amy Calzadilla

Tennessee State Certified Court Interpreter

108 Newell Ave.

Old Hickory, TN 37138

Tel. and Fax: (615) 847-5468

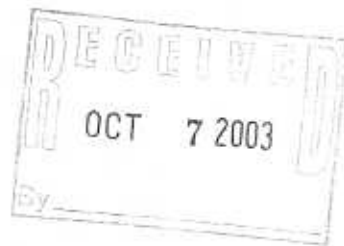
AmyC108@comcast.net

Minnehaha Communications

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October 3rd, 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



Dear Mr. Crowson,

I am a State Registered Court Interpreter currently working in Tennessee Courts. I recently received a copy of Supreme Court Rule 13, Section 4K, concerning payment for spoken foreign language interpreters in Tennessee Courts. I am delighted that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators - I'm STILL waiting to receive payment for an interpreting assignment I did in Clarksville, Montgomery County last November! Hopefully these new measures will prevent this kind of contempt towards the interpreting profession. I would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements. **There also needs to be a vehicle in the rules to adjust compensation annually due to inflation.**

Rule 13, as proposed, also states that: *(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no

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interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour. This is not a viable option and will severely hinder the rural courts ability to hire qualified interpreters. Please change Rule 13 to state: *(iv) Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.* The last part leaves some room for negotiation, if needed.

Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

In addition, I would like to address the issue of cancellation policies of which there is no mention in the Rule. The duration of the cancellation policy should be based on an interpreter's ability to reschedule a cancelled appointment. I feel it is only fair that if I do not receive a minimum of 48 business hours' advance notification of a cancellation, the court will be responsible for a minimum payment of one-half day: 4 hours at \$40.00/hour. I charge for a full day if proceedings had been slated to occupy more than 1 day, including travel, etc.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a State Registered Interpreter according to Tennessee's regulations and am working hard to pass the simultaneous interpreting part of the oral exam, which is all I have left to pass to receive State Certification. It was very disheartening to me to read Rule 13 and it caused me to wonder if I should even continue spending any more time on exam preparation if Rule 13 is the reward for it. It is my hope that interpreters be properly compensated for our efforts on the state's behalf.

Sincerely,

Melanie Campanis

Melanie Campanis
State Registered Interpreter

cc: Rebecca Montgomery
TAPIT (Tennessee Association of Professional Interpreters and Translators)

6503 Holt Road, Nashville TN 37211

Tel: 615 833 7742

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October 30th, 2003

FILED

NOV 03 2003

Clerk of the Courts

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

Dear Mr. Crowson,

In addition to my former letter to you regarding Rule 13, Section 4K, concerning payment for spoken foreign language interpreters in Tennessee Courts – now that I have had a little more experience in processing the paperwork in order to be paid – I would like to make the following comments. The procedure is a lot more complicated and cumbersome than previously – I have yet to experience how quickly I will be paid. It is particularly burdensome to have to obtain a signature from an attorney who is overloaded with cases in court and have to interrupt him in his work for such bureaucracy.

Since we operate as independent contractors and are not state employees I fail to see why we should have to be subjected to this excessive paperwork in order to be paid. When dealing with all other clients I simply send an invoice detailing all the aspects of the job assignment and I get paid. The current procedure for payment of court interpreters is very bothersome. I am used to processing all my bills electronically – so to have to fill out all these forms manually is very time-consuming and wearisome. I hope you will take these points into account when making improvements to the current procedure.

Sincerely,

Melanie Campanis

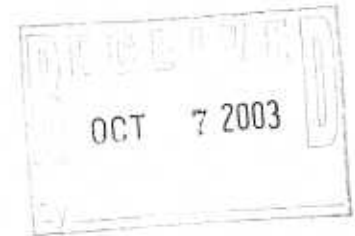
Melanie Campanis
State Registered Interpreter

cc: Rebecca Montgomery
TAPIT (Tennessee Association of Professional Interpreters and Translators)

6503 Holt Road, Nashville TN 37211
Tel: 615 833 7742
www.minnehaha.net

Date: October 05, 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



Dear Mr. Crowson,

I am a qualified court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

Rule 13, as proposed, also states that: *(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour. This is not a viable option. Please change Rule 13 to state: *(iv) Time spent traveling shall be compensated at the same rate as that*

approved for interpreting services, or as agreed upon by the contracting parties. The last part leaves some room for negotiation, if needed.

Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a qualified interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Grace K. St. John
2506 Fairmount Pike
Signal Mountain, TN 37377-2718
(423) 886-5737

KRISTY COMMUNICATIONS
Judith Kenigson Kristy, U.S.C.C.I., TN.C.C.I.

FILED

OCT 14 PM 2:47

2021 Rosecliff Dr. Nashville, TN 37206
Tel: 615-228-3861; Fax: 615-228-9900; Cell: 615-948-5444
E-mail: judith@kristycomm.com

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

Dear Mr. Crowson,

I am a Federal and Tennessee State Certified Court Interpreter, and I have recently received a copy of the pertinent section of Supreme Court Rule 13 regarding payment parameters and procedures for spoken foreign language interpreters in Tennessee Courts. I applaud the Supreme Court for establishing this section and am heartened that steps have been taken to expedite and normalize the procedures for payment to interpreters, since this has been rather problematical for both interpreters and administrators alike in the past. I would, however, like to make some comments on various items set forth in Rule 13 and the accompanying Invoice form.

My first comment regards the rates established in proposed Rule 13. Whereas the Commentary to Section 7 of Supreme Court Rule 42 states:

*A suggested **minimum range** for interpreters is as follows: certified interpreter - \$50 per hour; registered interpreter - \$40 per hour; non-credentialed interpreter - \$30 per hour, (emphasis added)*

the new guidance in Section 4K of Rule 13 states,

*(iii) Compensation rates for spoken foreign language interpreters **shall not exceed** the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour (emphasis added).*

I believe that Rule 13 should follow the lead of Rule 42 in this respect so as not to “cap” interpreter rates and reduce the courts’ ability to attract certified and registered interpreters, who, at present, are scarce. I am not suggesting that interpreters would routinely charge more than the recommended rates, but surely courts and attorneys should have some leeway when special circumstances arise, such as in death penalty cases, for example, where the services of more seasoned or specialized interpreters are desired and may only be obtained by offering enhanced compensation. At present, the only “wiggle room” allowed in Rule 13 specifically refers to interpreters of languages other than Spanish. *(For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court*

shall make written findings regarding such inadequacy and determine a reasonable rate for a qualified interpreter.) Placing an upper limit on the amount approved for Spanish language interpreters' fees will have a chilling effect on the courts' ability to obtain qualified language services, as mandated by Title VI of the Civil Rights Act and Tennessee Supreme Court Rule 42.

Second, the new guidance under Rule 13 states that:

(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate” (emphasis added).

This part of Rule 13, I am sure, will be quite unacceptable to most interpreters. It most certainly is to me. As an independent contractor, and as one of a limited group of available Certified and Registered Court Interpreters, my time is my product and it has value. For me, there is no difference between the time I dedicate to traveling to court or to working in court. This is my business, and I would consider it financially unsound to provide service to distant courts at half-rate compensation for my travel time when I could be providing service to closer venues at the full rate for those same hours. An informal survey of other court interpreters tells me that this opinion is universally shared. Please do not reduce interpreters pay during travel periods; no one will want to accept jobs where there is a travel component under this kind of plan. Furthermore, since a large number of courts require travel from Nashville, Memphis and Chattanooga – the three sites where certified interpreters are currently available – courts in other cities and towns throughout the state will continue to experience difficulties in finding qualified interpreters to serve them if this part of Rule 13 is approved.

Third, referring again to Rule 42, Section 7 Commentary continues:

Variables affecting compensation include various market forces including the language involved, distance the interpreter has to travel to court, and the availability of interpreters in a given geographic area. Courts may wish to consider adopting a one or two hour minimum guaranteed compensation to help assure the availability of interpreters. (emphasis added).

I note, however, that the invoice form provided would have interpreters register their work time in tenths of an hour. The practice of court interpreters everywhere is to bill in full hour units (rounded up to the next hour) with a two or three hour minimum, depending on the assignment. This practice, if adopted, may provide an incentive for courts to utilize the services of interpreters on an expedited basis instead of requiring them to wait long hours for their case to be heard, and in fact, interpreters would be free to serve on more assignments if their services were used in a more efficient manner.

In counties where I have been asked to provide input on how to solve the problem of interpreter scarcity, I have recommended that registered and certified interpreters be used on a rotating roster basis, with a guaranteed minimum compensation of 2 hours each time they serve, regardless of the cases that come up on that day or half day. This seems to be the only way that courts can obtain the services of qualified interpreters on a regular basis and I think it should be encouraged in order to fill the gaps presently occurring in the provision of appropriate language access

mandated by Title VI and Rule 42. Interpreters are, for the most part, independent contractors and it is not economically feasible for them to dedicate their time to serving courts if their services are not adequately compensated with some degree of predictability.

Mr Crowson, as a former member of committee whose work lead to the formulation of Tennessee Supreme Court Rule 42, I am all too well aware of the economic limitations and lack of education regarding interpreter matters experienced by the judicial system in Tennessee. Nevertheless, professional court interpreting requires an extensive investment of time, training and resources. The interpreters who have undergone and successfully completed the registration and certification process outlined in Rule 42 should be recognized and compensated appropriately. I respectfully request that you take my comments into consideration and incorporate them into the new guidance provided under Rule 13, Section 4K. If you should wish to contact me for further information, please do not hesitate to call me at 615-228-3861, write me at the address provided above, or email me at judith@kristycomm.com. I am at your service.

Respectfully submitted,



Judith Kenigson Kristy

Federal and Tennessee State Certified Court Interpreter

Treasurer and Member of the Board of Directors of the National Association of Judiciary Interpreters (NAJIT)

Co-founder and Co-Chair of the Tennessee Association of Professional Interpreters and Translators (TAPIT)

P.S.

During the period between Oct 6
and Oct ~~18~~ 18, I can be reached
at my cottage : 705-368-0415

jk

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407

OCT 15 2003

October 12, 2003

Dear Mr. Crowson,

I am a Registered court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators. Changes were very needed concerning the former payment system for interpreters and translators. Following, I would like to provide my comments on various items set forth in the proposed Rule and Invoice form.


Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum fees rather than maximum fees**. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

Rule 13, as proposed, also states that: *(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour. This is not a viable option. This is from an interpreter who has been willing to travel 35,000 miles during this last year in order to serve the Tennessee courts. Please change Rule 13 to state: *(iv) Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.* The last part leaves some room for negotiation, if needed.

Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Mr. John C. Osier
18 Harper Drive
Fayetteville, TN 37334
(931) 433-2575; (931) 993-9203

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

OCT 16 2003

October 15, 2003

Dear Mr. Crowson,

I am a Registered court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

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Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a (registered/certified/qualified) interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Charles Andrew Robinson

309 Jayme Mika Court

Joelton, TN 37080

615-299-8268

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

OCT 16 2003

October 8, 2003

Dear Mr. Crowson,

I am a (choose one or leave out: Registered court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

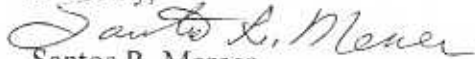
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Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this

way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Santos R. Mercer
Rt. 6 Box 2790
Pikeville, TN 37367
423 533-2297
smercerc@bledsoe.net

October 6, 2003

OCT 22 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

Dear Mr. Crowson,

I have served as court interpreter in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

Rule 13, as proposed, also states that: *(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour. This is not a viable option. Please change Rule 13 to state: *(iv) Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.* The last

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I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a (registered/certified/qualified) interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Victor Daniel Pagan
1003 N. Jackson St.
Athens, TN. 37303
423-507-8682

8953 Cairn Ridge Drive
Germantown, Tennessee 38139
October 23, 2003

OCT 30 2003

Cecil V. Crowson, Jr.
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407

RE: Rule 13 Comments

Dear Mr. Crowson:

I am a Certified Court Interpreter currently working in Tennessee Courts. Recently, I received a copy of Supreme Court Rule 13, Section 4(a)(3)(K), and I would like to take this opportunity to provide my comments about various items set forth in the proposed new Rule 13 which sets certain parameters and procedures for the reimbursement process for foreign language interpreters and translators in indigent cases.

While I am delighted that all the efforts of the Administrative Office of the Courts have culminated in the establishment of guidelines for the expedited reimbursement for interpreters and translators in indigent cases, I respectfully object to the provision under Rule 13 that compensation rates for interpreters shall not exceed a certain maximum per hour, whereas Supreme Court Rule 42 established a suggested minimum range. I believe that these amounts should be approved in Rule 13 as minimum fees rather than maximum fees.

Rule 13, as proposed, also states that traveling time will be compensated at half the time of the suggested hourly rate. As a qualified professional, I feel that my time is worth a minimum of \$50 an hour whether I am traveling to the Court or actually interpreting at the courthouse, since while I am traveling to an assignment, I am committing that time to the State, and therefore unable to accept work from the private sector which usually pays certified interpreters a lot more for the same services as those performed in state courts.

In addition, the proposed invoice which interpreters are required to present to the Administrative Office of the Courts, makes the distinction of in and out of court hours spent by interpreters in tenths of an hour, rather than full hours. Interpretation in all other venues is paid in hourly increments and a minimum two-hour fee is generally guaranteed, in order to justify reserving the interpreter's time.

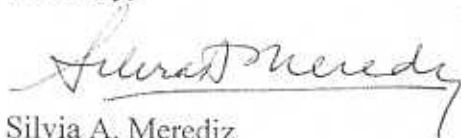
I would also like to recommend that a minimum two-hour cancellation fee be established, in the event of cancellation of the assignment without a 24 hour advance notification. If a

proceeding were scheduled to occupy more than one day, the minimum could be increased.

As a certified court interpreter, I strongly feel that all of these objections are of great concern to all the interpreters who have dedicated their time to become credentialed and thus serve the State Courts to the best of their abilities. It would be counterproductive to have the most qualified interpreters in the state starting to reject assignments in the State courts and limiting themselves to assignments in the private sector, because of the discrepancies in the payment schedule set forth by the provisions of Rule 13.

Thank you for your consideration to this matter. I have dedicated considerable time and effort to become a certified interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts.

Sincerely,

A handwritten signature in cursive script that reads "Silvia A. Merediz". The signature is written in dark ink and is positioned above the typed name.

Silvia A. Merediz
State Certified Court Interpreter
(901)752.1823

Martha Lockwood

NOV 13 2003

Professional Interpreting & Translation Services

1956 Snowden Ave.
Memphis, TN 38107
Phone: 901.276.0059 FAX: 901.276.0059

Mr. Cecil V. Crowson, Jr.
Re: Rule 13 Comments,
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

Dear Mr. Crowson,

I am a Registered court interpreter currently working in Tennessee Courts and I have received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee courts. I am glad the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule establishes a suggested *minimum* range of pay for certified, registered and qualified interpreters. I believe these fees should be established as a *minimum*, not a maximum compensation. To attract and keep the most qualified interpreters, the fees should remain competitive with those being paid in the private sector. Qualified linguists like myself with many years of study and practice with advanced graduate degrees in the language are highly trained specialists who are due professional fees in order to be attracted to serve in the courts. I suggest that Rule 13 be worded so as to establish the *minimum not the maximum* fees for such interpreters.

Secondly, Rule 13, as proposed, states that (iv) *Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, I am a freelance interpreter and I am unable to stay in business if the value of my time and services is cut in half while traveling to and from assignments. The nature of freelance work is such that a good portion of my time is often spent traveling to and from assignments. I might add that as a freelancer, I must pay for my own private health care insurance. I cannot afford to travel at half pay because I cannot cover my expenses.

Lastly, in regard to proposed procedure requiring billing in tenths of an hour, I would like to say that in order to remain in business, I, like most interpreters, must charge a minimum service fee of two hours. Again, my time is of value like that of any other professional. I suggest that the phrase "billing in tenths of an hour" be removed from the Rule allowing some flexibility for negotiation of fees with the court.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,

Martha Lockwood

Martha Lockwood

1956 Snowden Avenue
Memphis, TN 38107
Ph: 901-276-0059

November 10, 2003

NOV 13 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

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Mr. Cecil V. Crowson, Jr.
November 10, 2003
Page 2

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I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,

Elena H. Ottaway
117 Baldrige Drive
Cottontown, TN 37048
Ph: 615-672-9611

12 November 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

NOV 13 2003

Dear Mr. Crowson,

I am a Registered/qualified) court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

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I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a (registered/certified/qualified) interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Elena F. Ragan, R.N. B.S.N.
911 Grapevine Lane
Nashville, TN 37221
615-504-2348

November 12, 2003

NOV 14 2003

Mr. Cecil V. Crowson, Jr.
Appellate Court Clerk
100 Supreme Court Building
401 Seventh Avenue North
Nashville, Tennessee 37219-1407

RE: Rule 13 Comments

Dear Mr. Crowson,

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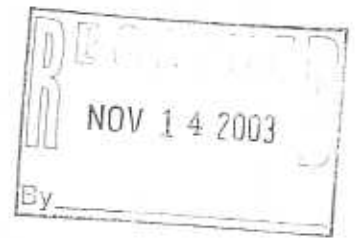
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Sincerely,



Julia H. Kirkscey
1454 Pecan Trees Drive
Germantown, Tennessee 38138
(901) 754-1295

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



November 13th, 2003

Dear Mr. Crowson,

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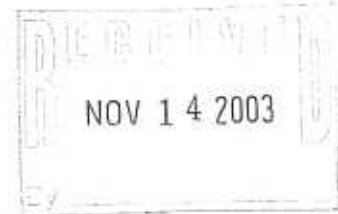
A handwritten signature in cursive script, appearing to read "D. Martincic".

Dubravka Martincic
Interpreter/Translator for Bosnian, Croatian, Serbian
1113 Clifton Ln.
Nashville, TN 37204
Phone: (615)269-9033
Mobile: (615)554-5641
m_dubravka@comcast.net

Gary Chittester
182 Antler Ridge Circle
Nashville, TN 37214

Wednesday, November 12, 2003

Mr. Cecil V. Crowson, Jr.,
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407



REFERENCE: Rule 13 Comments

Dear Mr. Crowson:

Although I have previously written concerning rule 13 comments, I have since discovered several conditions that I feel should be commented upon additionally.

I have noted that we credentialed interpreters are not, repeat not, being called from the list published by the Administrative Office of the Supreme Court (AOC). Indeed, I have not received a single call from any of the courts in Davidson County, or any other county for that matter, to appear in court as an interpreter. Since I have invested considerable time, money, and effort into the credentialing process this has provided a certain level of frustration and annoyance.

In speaking with other interpreters I have received the same comment. I spoke today with a certain Delmar Aguilar for the Davidson County General Sessions Court concerning why I had not been called. She advised me that she had "her list of regulars" and used them first. She also admitted using uncredentialed interpreters. One of them, Luis Bustillo, does not today appear on the AOC list of interpreters, yet this individual was substituted for me today.

This situation provides no incentive for interpreters to credential themselves, and, if it continues will certainly denigrate the effort that has so far been made within the program.

To that end I suggest that uncredentialed interpreters receive no more than ten dollars an hour and no travel or expense pay. Further, that any uncredentialed interpreter not be allowed to practice if he has not credentialed himself within 6 months of his first appearance in court.

I also suggest that the pay receipt emanating from the courts show a reason for not using a credentialed interpreter.

If the courts are not forced to use credentialed interpreters, the program will become inefficacious and probably will eventually die.

There is one other comment. The current rules require that calls for interpreters be made from the top of the list beginning with certified interpreters. If continued, other interpreters will be denied the opportunity to practice thereby losing valuable experience so necessary to successfully completing the oral test. I would also mention that the instructions do not say where in the list; the very top or beginning with the county concerned etc.

The interpreter program is a much needed program and, if enforced, should improve the quality of interpreters in the courts. However, who wants to spend the time and money if uncredentialed interpreters continue to be used.

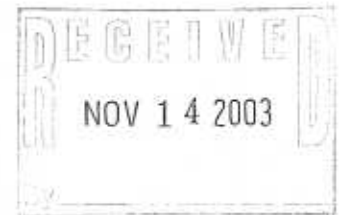
Certainly the judges are responsible for using qualified interpreters in their courts, but at the same time they should not be ignoring or disregarding the rules. Using uncredentialed interpreters is an abuse of the system and should be promptly investigated and corrected. It can be corrected by reducing sharply their compensation.



Gary Chittester
TN State Registered Interpreter

Copy to: Rebecca Montgomery

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



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Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters

charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,

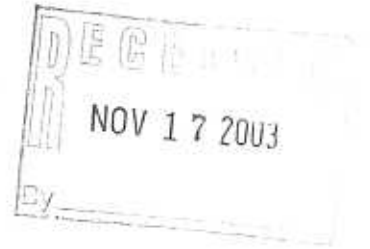


Paula R. Murphy Trujillo

133 Clemson Dr.
Oak Ridge, TN 37830
865-482-8215

November 13, 2003

Mr. Cecil V. Crowson, Jr.,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407



Re: Rule 13 Comments

Dear Mr. Crowson,

I am a Registered Court Interpreter in the State of Tennessee. I have recently read a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I appreciate the Supreme Court's initiative to establish procedures and guidelines for the expedited payment of interpreters and translators for their services, and would like to comment on a few items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters, and \$30 per hour for non-credentialed interpreters. I would respectfully suggest that the language adopted by Rule 13 be consistent with Supreme Court Rule 42, as reflected in the following proposed amendment: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following **minimum** rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.*

Rule 13, as proposed, also states that: *(iv) Time spent traveling shall be compensated **at no greater than fifty (50) percent** of the approved hourly rate.* My time is valuable. Please consider changing Rule 13 to state: *(iv) Time spent traveling shall be **compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.*** This last part allows for negotiation, if necessary.

Thirdly and finally, the invoice that accompanied Rule 13 for interpreter compensation requires billing in **tenths** of an hour. Interpreters normally bill **by the hour with a minimum fee of two or more hours.** I am respectfully requesting that you remove the word "**(tenths)**" from the invoice form.

Mr. Crowson, I have worked very hard to meet the State of Tennessee's criteria for becoming a registered interpreter. The State's court interpreter credentialing process ensures the maintenance of a high standard of professionalism in judicial interpretive services here. The latter are necessary for compliance with Title VI of the Office of Civil Rights. Appropriate compensation for foreign language interpretive services will ensure that high quality interpreting professionals remain in the system. Thank you for your consideration.

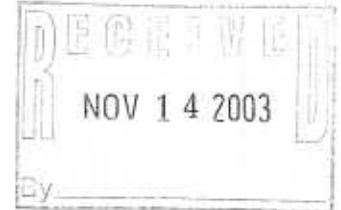
Sincerely,

Marc Friedman
(901) 756-6164
pager (901) 368-7027

Tennessee Association of Professional Interpreters and Translators

T A P I T
P.O. BOX 91116
NASHVILLE, TN 37209
Tel: 615-824-7878; Fax: 615-228-9900

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.



The Tennessee Association of Professional Interpreters and Translators (TAPIT) wishes to express its membership's solidarity with the Tennessee Supreme Court's excellent efforts to train and certify interpreters for Tennessee courts and related entities, and to emphasize that in so doing, the Association is united in supporting all reasonable and appropriate measures taken to ensure the continued success of the Tennessee State Court Interpreter Certification Program. Unfortunately, we must also note that, in regard to the actual utilization and compensation of Tennessee Certified and Registered Court Interpreters, we are currently witnessing practices that are detrimental to the achievement of the goals of that program.

Accurate, professional interpreting depends on extensive linguistic and cultural experience to which has been added specific training in ethics, simultaneous and consecutive interpreting skills and vocabulary enhancement. Indeed, court interpreting is an especially demanding segment of the interpreting field because of the requirement for precision at many linguistic levels and the wide range of subject material to be mastered. Without specific expertise in the field of court interpreting, unqualified interpreters and translators can create legal consequences that are costly and time-consuming to remedy, not to mention the injustices suffered by the parties in question.¹ At present, few courts are facing challenges for inadequate interpretation but clearly this is a trend of the future.² Although the Tennessee Supreme Court took a giant step forward when creating and implementing the interpreter certification program, continued failure to enforce utilization of credentialed interpreters by the courts as well as the establishment of inappropriate pay schedules will force many already in the program to leave, and deter the entrance of others into the program.

Credentialing is an expensive, time consuming, and difficult process. There is no real incentive to go through such a challenging credentialing process if, afterwards, work is not forthcoming and compensation is not set at appropriately competitive levels. In other words, lack of work and inadequate pay rates are putting at risk the continued growth and use of Tennessee's current and future pool of skilled, qualified and credentialed interpreters and translators.

¹ See the "Pagoada Case", Addendum I, attached.

² See excerpt from newspaper article about 8th Circuit ruling re certified interpreters, Addendum II.

With specific regard to the compensation rules proposed in **Supreme Court Rule 13, Section 4(a)(3)(K) Spoken Foreign Language Interpreters and Translators**, we find the following portions to be especially troublesome, and have made suggestions as to language that we would find more appropriate:

Subsection (iii), current proposed language

(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court shall make written findings regarding such inadequacy and determine a reasonable rate for a qualified interpreter.

Suggested modification:

(iii) Suggested minimum compensation rates for spoken foreign language interpreters are as follows: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour. If the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court shall make written findings regarding such inadequacy and may undertake negotiations with qualified interpreters to arrive at a mutually acceptable, reasonable rate.

Rationale:

The establishment of what is, in effect, a “ceiling” for the amounts that can be paid to interpreters working both in and out of the courts (that is, for “in-court” proceedings and “out-of-court” assignments such as attorney-client interviews) is unquestionably detrimental to the courts’ ability to obtain the services of properly credentialed interpreters. Interpreters will be unwilling to serve Tennessee’s courts if they can earn more elsewhere or if they feel they are not being properly compensated for the level of expertise they have developed and the considerable investment of time and money they have expended to become certified or registered under Tennessee Supreme Court Rule 42. In terms of the real market value of highly skilled interpreter services (ranging up to \$100 per hour and more in the private sector), a cap of \$50/hour is unrealistic, especially where seasoned expert interpreters may be desired in cases of particular gravity, such as capital cases. Compensation rates should be stated in terms of appropriate **minimum** compensation that courts may use as a guide, rather than maximum permitted pay rates; courts and interpreters should be free to negotiate whatever compensation is deemed appropriate in a specific case, given the language, technical difficulties, gravity of the outcome and breadth of knowledge and experience required by the assignment. The inclusion of the phrase referring to qualified interpreters in “languages other than Spanish” (OTS languages), allowing courts to “determine a reasonable rate” for those interpreters, clearly recognizes the existence of market forces and the need for negotiation in some instances, but errs in supposing that such negotiations should only apply to certain languages, a discriminatory practice at best; surely levels of expertise and experience should also be considered in this context. It is offensive to many skilled Spanish interpreters that the Court is quite willing to negotiate higher rates with non-credentialed, unproven speakers of OTS languages while setting limits on compensation for more highly trained, experienced Spanish language interpreters.

Subsection (iv), current proposed language

(iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.

Suggested modification:

(iv) Time spent traveling shall be compensated at the hourly rate approved in (iii) above or at a mutually acceptable negotiated rate.

Rationale:

This subsection should be amended to reflect that travel time should be compensated at the same hourly rate as that approved in section (iii) because, put very plainly, failure to make such a change will ensure that qualified and credentialed interpreters will NOT be willing to accept assignments in courts to which they must travel. Interpreters' time must be paid at a single, adequate rate no matter whether they are traveling, waiting to interpret or interpreting. Already, in the short period during which this rule has been given interim authority over court interpreter compensation, many instances of refusal to travel, or refusal to accept "half pay" for travel, have been reported by interpreters who have called TAPIT's office to express their anger about this provision. Courts in areas where there are no locally available certified or registered interpreters have once again been forced to use unqualified interpreters because credentialed interpreters are unwilling to travel under these conditions. While TAPIT recognizes that money to pay for services is always a problem for the state, outside funding may be available³ and even were it not, it is the Court's responsibility to find a way to pay appropriately for the competent services mandated by Supreme Court Rule 42 and required under DOJ Office of Civil Rights Title VI and Executive Order 13166. Cutting interpreter travel pay in half is not an option if the court is truly committed to providing competent language services to LEP individuals in Tennessee's courts. It is important to keep in mind that, unlike attorneys and other experts whose involvement in a given case usually requires many hours of case-related work for which they are compensated at the full rate, with travel time forming just a small percentage of the time dedicated to the case, a court interpreter's involvement is usually limited to the on-site appearances during which the interpreter provides language services. Time spent traveling to an assignment may represent 75 % or more of an interpreter's total fee. Interpreters cannot financially justify serving distant courts at half pay for travel time when they could be earning full wages for those same hours in their home city, without the wear-and-tear of traveling.

Subsection (vi), proposed language

(vi) The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of a LEP person. Document translation shall be compensated at no more than twenty (20) cents per word. For languages other than Spanish: if the court finds that these rates are 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.

Suggested modification:

(vi) The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of a LEP person. Document translation shall be compensated at a reasonable per word translation rate to be negotiated between the court and the translator, with appropriate consideration given to current market prices, tight deadlines or

³ E.g. the Edward G. Byrne Grant; also, the "State Court Interpreter Grant Program Act", SB 1733 (see Addendum III for the full text of this important Bill).

rush turnaround times, the level of technical difficulty and the languages involved in the text to be translated.

Rationale:

Once again, as in the case of (iii), a “cap” on translation rates will have a detrimental effect on courts’ ability to obtain highly skilled translation services. While the translation of simple texts may call for a rate below the twenty cents per word mentioned in the original version of (vi), some documents involving difficult technical or legal language may require higher compensation. The same reasoning applies here as in (iii), including that which pertains to the exception made for OTS languages. It goes without saying that courts must require, in the translation of legal documents, the same level of accuracy and expertise that they have invested in the original formulation of those documents in English, especially in view of the possibility of legal repercussions arising from inaccurate or erroneous translations. Excellence in translation, no matter what the language, should be sought and appropriately rewarded, particularly in the highly specialized field of legal translation.

Invoicing:

With regard to the invoice form, ***REQUEST FOR PAYMENT OF INTERPRETER SERVICES IN INDIGENT MATTER***, provided for reporting interpreter requests for payment in accordance with Rule 13, Section 4(a)(3)(K)(vii): ***Claims for compensation of interpreters and translators shall be submitted to the Administrative Office of the Courts on forms provided by the Administrative Office of the Courts***, TAPIT wishes to clarify that interpreters do not bill in tenths of an hour, nor do they distinguish between in and out-of-court hours for purposes of payment. The universally accepted methods for calculating payments for interpreters in almost all settings are either by days and half days [Federal Court (\$329/day, \$178/half day) and conference interpreting (roughly \$500-\$1200/day)] or by hours (roughly \$45-\$120/hour, partial hours rounded up to the next half or full hour) with a minimum charge of two or more hours per assignment depending on the individual interpreter’s custom and credentials. The reason is this: when an interpreter accepts a court assignment, it is usually the case that the interpreter will not be able to accept any other assignment during that entire morning or afternoon, given the unpredictable progression of the docket; thus, a minimum two or three hour charge is necessary to ensure that the interpreter receives fair compensation for that period, for which he or she may have turned down other jobs, no matter whether the proceeding lasts 3 hours or 3 minutes. This is the customary industry standard for interpreter billing. Without belaboring this point further, credentialed interpreters simply will prefer to opt out of the state pool of available court interpreters rather than accept compensation that is inferior to their customary range of fees and methods of billing.

In conclusion:

Court interpreting is a highly demanding profession involving specific skills and constant upgrading of knowledge; court interpreters are deservedly proud of their achievements and know their value. A policy or rule that limits and reduces fees in the ways outlined in the proposed Rule 13 and Invoice Form (tenths of hours, differentiation between in and out-of-court hours, half-pay for traveling, caps on fees, etc.) will alienate the very people that the courts have been trying to recruit and retain (i.e. truly competent interpreters) and ultimately will lead to the failure of the State Court Interpreter Certification Program’s professed goal of developing and maintaining an adequately large pool of available, qualified interpreters for Tennessee’s courts. Given that the state has already invested close to half a

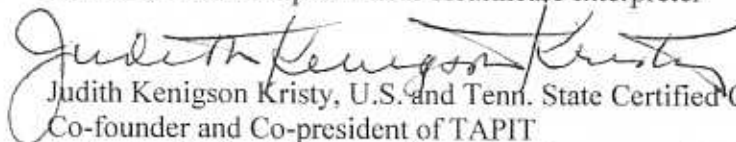
million dollars in grant money and well over \$100,000 of state funds in the Certification Program, such a policy or rule would seem to be very short-sighted.

It is the hope of the Tennessee Association of Professional Interpreters and Translators that the Tennessee Supreme Court and the Administrative Office of the Courts will seriously consider the above points in establishing appropriate compensation guidelines to be approved in Rule 13, Section 4K. TAPIT, although a very young association, is proud to count some 50 interpreters and translators among its members, including a substantial portion of the state's certified and registered court interpreters. (You can find out more about TAPIT at www.tapit.org.) TAPIT is committed to promoting the development and maintenance of high levels of skills and professional standards among interpreters and translators. We are fully supportive of the Tennessee State Court Interpreter Certification Program, recognizing that it, too, aims for high-level skills and standards. However, it is becoming more and more difficult for us to continue encouraging our members to train for and remain in a profession in which prospective employers (the courts) deny them work even after they have become credentialed, and where appropriate payment is apparently becoming more limited and difficult to obtain, instead of adequately compensating them for the efforts they undertake to satisfy the State's stringent requirements. We are hopeful that you will take our concerns to heart and incorporate our suggestions in the final version of Rule 13, Section 4(a)(3)(K).

This letter is issued in the name of and in solidarity with the members of the Tennessee Association of Professional Interpreters and Translators, by



Dr. Marvyn H. Bacigalupo, Ph.D.
U.S. and Tenn. State Certified Court Interpreter,
Co-founder and Co-president of TAPIT
Instructor for the Tennessee State Court Interpreter Certification Program
Accredited Translator for Spanish and English translation by the American Translators Association (ATA)
Member of the Publications Committee, National Association of Judiciary Interpreters and Translators (NAJIT)
Author of The Comprehensive Healthcare Interpreter



Judith Kenigson Kristy, U.S. and Tenn. State Certified Court Interpreter,
Co-founder and Co-president of TAPIT
Instructor for the Tennessee State Court Interpreter Certification Program
Member of the Board of Directors and Treasurer of the National Association of Judiciary Interpreters and Translators (NAJIT)
Active Member of the American Translators Association (ATA)
Member of the Regional Network of North America (affiliate of the International Federation of Translators), Ethics Committee

ADDENDUM I

FAYETTE CIRCUIT COURT
CRIMINAL BRANCH
FIFTH DIVISION

[STAMP: FILED AND ENTERED
OCTOBER 5, 2001
ATTEST. WILLA F. LYNCH, CLERK
FAYETTE CIRCUIT COURT
BY: [INITIALS] DEPUTY]

SANTOS ADONAY PAGOADA
MOVANT

vs.

NO. 97CR-1002

COMMONWEALTH OF KENTUCKY
RESPONDENT

ORDER

The Movant, Santos Adonay Pagoada, hereafter Pagoada, has moved the Court pursuant to Rcr 11.42 to vacate the judgment against him entered on March 17, 1998. Movant has exhausted his appeals and is properly before the Court on this Motion. The Motion raises a question of first impression in this state, and has been extremely difficult for the Court to conclude.

The Court has read and studied for the past year, trying to get a grasp on the scope of the problem, and how to adequately address it. Historically, cases requiring interpreting have been uncommon in Kentucky, with reported cases virtually nonexistent. Nationwide, however, a process to deal with language issues is developing.

Pagoada was convicted by a Jury on February 17, 1998 of one count of murder, and his penalty was fixed at 40 years. The Court imposed that sentence on March 13, 1998 (a typographical error in the date appears on the first page of the Final Judgment, which states February rather than March). That judgment was affirmed on appeal.

It was alleged, and Pagoada appeared to admit in a statement to police, that he shot the victim, Jose Enrique Arambul eight times at close range, resulting in his death. Pagoada claimed to be acting in self-defense when, he alleged, Arambul tried to rob him.

Pagoada further claimed to speak little or no English at the time, and was provided the services of interpreters when he gave his version of the events to police. He was also provided a different interpreter at a suppression hearing on this statement. A third interpreter was provided to meet with him and counsel to interpret for trial strategy and to interpret at trial. It was apparent to the Court that interpreting services were needed.

An evidentiary hearing on this Motion was held on September 7 and October 20, 2000. The quality of interpreting at each of the above proceedings is at an issue in this Motion, as this is the gravamen of whether the Movant received a fair trial. In order to be “present” and to be able to participate in his defense, the Movant had to have an acceptable level of understanding of the proceedings.

FINDINGS AND CONCLUSIONS

Legal history is rife with cases where persons under a disability were tried, convicted, and those convictions upheld. Penry v. Lynaugh, 492 U.S. 302, 106 L. Ed. 2d 256, 109 S. Ct. 2861 (1989) (mentally retarded defendant found competent to stand trial, conviction upheld); Miles v. Dorsey, 61 F. 3d 1459 (10th Cir. 1995) (personality disorders); Wolf v. United States, 430 F.2d 443 (10th Cir. 1970) (mental instability); Moore v. Commonwealth, 597 S. W. 2d 155 (Ky. Ct. App. 1979) (mental retardation); Huff v. Commonwealth, 560 S. W. 2d 544 (Ky. 1977) (schizophrenia); Thursby v. State, 223 A 2d 61 (Me. 1966) (defendant had debilitating headaches). The cases are instructive in that certain minimum standards must be met: the defendant must have the ability to appreciate the criminality of his acts and be able to conform his behavior to acceptable standards; and he must be able to assist his counsel

with rational degree of understanding in making his defense. Dusky v United States, 362 U.S. 402, 4 L.Ed. 2d 824, 80 S.Ct. 788 (1960); Gilbert v. Commonwealth, 575 S. W.2d 455 (Ky. 1978); Huff v. Commonwealth, 560 S.W.2d 544 (Ky. 1977); Plumb v. Commonwealth, 490 S. W.2d 729 (Ky. 1973); Commonwealth v Strickland, 375 S.W. 2d 701 (Ky. 1964). Because the Court believes, after lengthy hearings and analysis, that Pagoada did not comprehend the proceedings sufficiently to adequately assist his counsel at trial, he is entitled to have the judgment vacated and a new trial ordered.

In recent years in Central Kentucky and throughout the Commonwealth, there has been a large infusion of Hispanic immigrants. Some enter legally, some do not. Some are law abiding and industrious, some are not. By virtue of being part of the human estate, some land in the court system. The native language of these persons is some form of Spanish. The native language of our country, however, is our Americanized version of English. When the complexities of the legal system are combined with the language differences, the potential for problems is easily recognized. Cultural differences provide another layer of complexity.

This Court is not aware of any Hispanic jurists in Kentucky, and has no knowledge of whether any speak Spanish. While some police, government workers, prosecutors, defense attorneys and judges may now be studying the language and closely scrutinizing interpreters, in 1998, the Courts of the Commonwealth were simply not prepared.

However, in this case, all parties concerned made concerted efforts to provide Pagoada with adequate interpretation. Out of ignorance, all assumed that one who speaks Spanish or is born in a Spanish-speaking country can interpret. This case reveals that this is a false assumption. At the time of trial, there was only a very general rule for court use of interpreters, and no professional responsibility code or certification. To this day, there is still no standardized process, although the Administrative Office of the Courts is working

diligently to develop policy and to contain costs. Administrative Procedures of the Court of Justice, Part IX, Procedures for Appointment of Interpreters. (See attached)

The Commonwealth Attorney obtained two Spanish-speaking persons who operate a Spanish translation business, plus an officer with some knowledge of the language, who took Pagoada's statement, which is garbled even as interpreted. No distinction was made between interpreting skills and translation skills, which according to testimony differ considerably, so that one who can translate adequately from the written word may well lack the skills to interpret orally and simultaneously in the legal context. No one was aware of this distinction at the time.

A third person, then working as a professional interpreter, was found to interpret at the suppression hearing regarding this statement. The Court was skeptical about the quality of the interpretation and even questioned the interpreter about what he was doing because of the long silences and summary-like statement the interpreter was making to the defendant. On his explanation, plus the testimony of the officer, the Court nonetheless concluded that there was no basis to suppress the statement, and assumed that Pagoada understood the purpose of the statement and that he was giving it voluntarily and fully informed. The Court believed that his statement did impart the gist of his account. The court's skepticism, however, caused it to require a different interpreter for trial, which defense counsel and the Deputy Court Administrator attempted to locate.

At this point, the general lack of qualified interpreters became an issue. No certification or minimum standards for interpreting existed under Kentucky law, and when a third person was found who was Spanish-speaking and who agreed to interpret, the Court, defense counsel and the Commonwealth Attorney all believed that knowledge of the language was sufficient. Though inexperienced as an interpreter, no objection to her qualifications was raised by either counsel, given the common assumption that knowledge of the language was sufficient. Further, because of the unavailability of other interpreters on that date, the rule requiring two interpreters to spell each other was not followed. No request was made for a continuance to obtain a second interpreter, either because the defendant did not want to lose his trial date or because no one realized the necessity.

Everyone generally believed that they made extreme efforts to be fair. The Court even tried a colloquy with the Movant at trial to ensure that he understood his situation.

An interpretation of the above interpretations by Isabel Framer, who testified at the evidentiary hearing on this Motion, reveals that the Court and counsel were mistaken. Ms. Framer's credentials clearly meet objective standards of interpreter effectiveness, given her experience, her position with the Ohio Court system, her certifications and her national work as a consultant.

Because Pagoada did not have accurate, comprehensible statements made to him for most of the interpretation, his position is analogous to that of persons under a disability in competency proceedings.

The test for competency to stand trial is whether the accused has the capacity to appreciate the nature and consequences of the proceedings against him and to participate rationally in his defense. KRS 504.040 (1) A criminal defendant may not be tried or convicted while legally incompetent and the Supreme Court has held that due process requires an evidentiary hearing whenever there is sufficient doubt of competency as to require further inquiry on the question.

Gilbert, 575 S.W. 2d at 456

When a criminal defendant cannot speak or understand the language of the court, there is an apparent question of competency, sufficient to require inquiry. In this instance, however, inquiry must be made through the interpreter, who also should be subject to certain inquiry. Since the defendant is speaking through the interpreter, the competency of the interpreter is an additional significant question. Before a court can assess the level of defendant's language ability, it must assess the ability of the interpreter.

To focus on the problem, persons who don't speak a language cannot inherently know whether interpretation is appropriate. When trying a case involving a foreign language person, a Court must thus rely on objective qualification of the interpreter. These must be thoroughly scrutinized before he or she is employed. Interpreters must likewise be held to certain standards of conduct. If they cannot adequately interpret, they must so inform the Court. A copy of the Virginia Code of Professional Responsibility for Interpreters is attached to illustrate one attempt to codify these standards.

There should clearly be standards which an interpreter should meet. Based on the testimony it has heard, and review of the interpreting policies of other jurisdictions, this Court believes that the following qualifications would prove a presumption of adequacy for legal interpreting: native speaking or certified as fluent by a language school; simultaneous interpreting; use of first person; knowledge of legal terms; asking for clarification and making the Court aware of confusion; informing the Court if an interpretation can not be made; and sworn to interpret by these requirements.

To rebut this presumption, at least two similarly qualified interpreters who agree on a material misinterpretation should be required.

There is nothing easy about any trial where liberty is at stake and a victim is at loss. It is even less so when there are multiple languages involved. However, fundamental due process requires a level playing field, and that all persons answering to the law of the land be given a similar opportunity to answer. The Movant is entitled to such fairness regardless of his ability to speak and comprehend English. Perfect understanding is not required to mete fairness, but a reasonable understanding is.

Pagoada could not have comprehended the crucial nature of his testimony at trial, nor the advisability of giving it, from what the interpreter told him. He could not have followed the testimony against him in order to rebut it if her individual trial interpreting, which the Court did not hear, was similar. By her own testimony, she was forced to resort to drawing a diagram to explain a difficult point. The translation of her interpreting at sidebar is almost gibberish. Pagoada clearly did not perceive that self-defense is not a complete defense under Kentucky law absent a well-founded belief in the need therefor. There is no evidence that his counsel even attempted to explain Kentucky law on self-defense, yet the one thing the Court clearly comprehended from Pagoada is that he believed self-defense to be a complete defense and had no concept of the erroneous belief qualification. The facts of this case, to the extent known, indicate that erroneous belief was clearly at issue. He simply could not have had a sufficient understanding of the proceedings against him to adequately assist his counsel in his defense.

While it is not generally a denial of due process to place the burden of proving incompetency on the defendant, *Medina v. California*, 505 U.S. 437, 120 L. Ed. 2d 353, 112 S. Ct. 2572 (1992), in cases where inadequate interpreting occurs which is not perceived by counsel or the Court, how could the defendant possibly meet that burden? Instead, counsel and the Court must make sufficient inquiry of the interpreting process to ensure that the

defendant can do so. Having failed to secure his client's due process rights, albeit unintentionally, counsel was indeed ineffective.

Having conducted this trial once, and noting the efforts of all concerned to deal adequately with the language problems, the Court is reluctant to grant a new trial. The victim's family will find it difficult to endure the presentation of evidence of the death of a loved one again; the Commonwealth of Kentucky will bear additional expense and delay. Justice, however, requires it.

Consequently, the Judgment of Conviction against Santos Adonay Pagoada is hereby set aside, and the case is set for a status conference on October 19, 2001 at 12:30 p.m. to determine a date for a new trial. Movant shall remain in custody without bond until a hearing on same can be held at the status conference.

Entered this the 5th day of October, 2001.

[Signature of Mary C. Noble]

Attested copies to:

Commonwealth Attorney

Hon. Karen Shuff Maurer
Department of Public Advocacy
100 Fair Oaks Lane, Ste. 302
Frankfort, KY 40601

Docket Clerk

On this the 5 day of Oct, 2001
WILMA F. LYNCH, C.F.C.C.
BY: [Initials] D.C.

ADDENDUM II

Iowa flayed for lack of court interpreters

By FRANK SANTIAGO
Register Staff Writer
08/13/2003

A federal appeals court on Tuesday sharply criticized judges in Iowa who fail to provide certified interpreters for defendants not fluent in English.

Ruling in a Des Moines drug case, the three-judge panel of the 8th Circuit in St. Louis warned that federal law obligates judges to make all efforts to find and use certified interpreters...

(Page 2) ...Tuesday's ruling came in the case of Heriberto Gonzales, a native of Mexico who was arrested in Des Moines on methamphetamine charges. He contended his trial was unfair because his interpreter was unqualified. He pleaded guilty and was sentenced to 12 years in prison.

The appeals court noted that Gonzales had been provided three interpreters for his court appearances, but none was certified in Spanish. Gonzales claimed that the court had violated his rights and the Court Interpreters Act.

The appeals judges agreed but affirmed his conviction, saying he failed to raise the issue during his first trial.

The problem was highlighted when an eastern Iowa murder trial of a Spanish-speaking man was delayed nearly a year, in part because court officials couldn't find enough bilingual experts and court interpreters.

Jose Aguirre-Arreola, 44, was charged after his roommate, Luis Vales, was found shot to death June 6, 2002. Aguirre-Arreola, a native of Mexico, is a legal resident but speaks a limited amount of English. He was eventually convicted of voluntary manslaughter.

Ben Stone, executive director of the civil liberties union, said Tuesday's ruling "will be used as a vehicle to help educate the state Legislature."

"If Congress thinks it is serious enough to pass a federal law, we should think the issue is as serious, too," he said.

(Portion excerpted from the Des Moines Register, 8/13/2003.)

<http://www.dmregister.com/news/stories/c4788993/21985052.html>

ADDENDUM III

108th CONGRESS
1st Session

S. 1733

To authorize the Attorney General to award grants to States to develop and implement State court interpreter programs.

IN THE SENATE OF THE UNITED STATES

October 15, 2003

Mr. KOHL (for himself and Mr. KENNEDY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To authorize the Attorney General to award grants to States to develop and implement State court interpreter programs.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'State Court Interpreter Grant Program Act'.

SEC. 2. FINDINGS.

Congress finds that--

- (1) the fair administration of justice depends on the ability of all participants in a courtroom proceeding to understand that proceeding, regardless of their English proficiency;
- (2) 18 percent of the population of the United States over 5 years of age speaks a language other than English at home;
- (3) only qualified court interpreters can ensure that persons with limited English proficiency comprehend judicial proceedings in which they are a party;

- (4) the knowledge and skills required of a qualified court interpreter differ substantially from those required in other interpretation settings, such as social service, medical, diplomatic, and conference interpreting;
- (5) the Federal Government has demonstrated its commitment to equal administration of justice regardless of English proficiency;
- (6) Executive Order 13166, issued August 11, 2000, requires Federal Agencies, including courts, to improve access for persons who have limited English proficiency;
- (7) 29 States have developed, or are developing, court interpreting programs;
- (8) robust, effective court interpreter programs--
 - (A) actively recruit skilled individuals to be court interpreters;
 - (B) train those individuals in the interpretation of court proceedings;
 - (C) develop and use a thorough, systematic certification process for court interpreters;
 - (D) have sufficient funding to ensure that a qualified interpreter will be available to the court whenever necessary; and
- (9) Federal funding is necessary to--
 - (A) encourage States that do not have court interpreter programs to develop them;
 - (B) assist States with nascent court interpreter programs to implement them;
 - (C) assist States with limited court interpreter programs to enhance them; and
 - (D) assist States with robust court interpreter programs to make further improvements and share successful programs with other States.

SEC. 3. STATE COURT INTERPRETER PROGRAM.

(a) GRANTS AUTHORIZED-

- (1) **IN GENERAL-** The Administrator of the Office of Justice Programs of the Department of Justice (referred to in this section as the 'Administrator') shall make grants, in accordance with such regulations as the Attorney General may prescribe, to States to develop and implement programs to assist individuals with limited English proficiency to access and understand State court proceedings in which they are a party.
- (2) **TECHNICAL ASSISTANCE-** The Administrator shall allocate, for each fiscal year, \$500,000 of the amount appropriated pursuant to section

4 to be used to establish a court interpreter technical assistance program to assist States receiving grants under this Act.

(b) USE OF GRANTS- Grants awarded pursuant to subsection (a) may be used by States to--

- (1) assess regional language demands;
- (2) develop a court interpreter program for the State;
- (3) develop, institute, and administer language certification examinations;
- (4) recruit, train, and certify qualified court interpreters;
- (5) pay for salaries, transportation, and technology necessary to implement the court interpreter program developed pursuant to paragraph (2); and
- (6) engage in other related activities, as prescribed by the Attorney General.

(c) APPLICATION- Each State desiring a grant under this section shall submit an application to the Administrator at such time, in such manner, and accompanied by such information as the Administrator may reasonably require.

(d) STATE ALLOTMENTS-

(1) BASE ALLOTMENT- From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate \$100,000 to each State, which has an application approved under subsection (c).

(2) DISCRETIONARY ALLOTMENT- From amounts appropriated for each fiscal year pursuant to section 4, the Administrator shall allocate a total of \$5,000,000 to the States that have extraordinary needs that must be addressed in order to develop, implement, or expand a State court interpreter program.

(3) ADDITIONAL ALLOTMENT- In addition to the allocations made under paragraphs (1) and (2), the Administrator shall allocate to each State, which has an application approved under subsection (c), an amount equal to the product reached by multiplying--

(A) the unallocated balance of the amount appropriated for each fiscal year pursuant to section 4; and

(B) the ratio between the number of people over 5 years of age who speak a language other than English at home in the State and the number of people over 5 years of age who speak a language other than English at home in all the States that receive an allocation under paragraph (1), as those numbers are determined by the Bureau of the Census.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated \$15,000,000 for each of the fiscal years 2005 through 2008 to carry out this Act.



East Tennessee State University
College of Arts and Sciences

Department of Foreign Languages • Box 70312 • Johnson City, Tennessee 37614-1701 • (423) 439-4264 • Fax: (423) 439-4448

November 12, 2003

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

Dear Mr. Crowson,

I am a registered court interpreter currently working in Tennessee Courts, and I have recently received a copy of Supreme Court Rule 13, Section 4K, dealing with payment for spoken foreign language interpreters in Tennessee Courts. I am very glad that the Supreme Court has taken this measure to provide a set of procedures and guidelines for expedited payment for interpreters and translators, and would like to provide my comments on various items set forth in the proposed Rule and Invoice form.

Supreme Court Rule 42 establishes a suggested **minimum** range of \$50 per hour for certified interpreters, \$40 per hour registered interpreters and \$30 per hour for non-credentialed interpreters. I believe that these amounts should also be approved in Rule 13 as **minimum** fees rather than maximum fees. In the private sector, interpretation for depositions, conferences and business meetings is compensated at rates ranging from \$45/hr to \$100/hour and above. For the courts to ensure services from qualified interpreters on a competitive basis, they should not be limited by a "cap" such as the one included in the current version of Rule 13, which reads: *(iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* I would respectfully suggest that the language adopted by Rule 13 be more along the lines of: *(iii) Compensation rates for spoken foreign language interpreters shall be guided by the following minimum rates recommended in Supreme Court Rule 42, Section 7, Commentary: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour.* This formulation provides more flexibility at the same time it gives courts a framework within which to make suitable arrangements.

Rule 13, as proposed, also states that: *(IV) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate.* Mr. Crowson, interpreters, most of whom are freelancers, cannot provide services at half pay; we must run our businesses on sound financial premises and seek fair compensation like everyone else. Regardless of whether the time is for travel or for interpreting, it is still our valuable time. Interpreters will not work for half pay when they could be earning full pay. Simply put, no interpreter will travel several hours to an assignment at \$25/hour, while turning down other work that would pay him or her \$50/hour.

This is not a viable option. Please change Rule 13 to state: *(IV) Time spent traveling shall be compensated at the same rate as that approved for interpreting services, or as agreed upon by the contracting parties.* The last part leaves some room for negotiation, if needed.

Another problem I see with the proposed procedures is this: The invoice that accompanied Rule 13 for interpreter compensation requires billing in tenths of an hour. Interpreters do not bill this way. We bill by the hour and round up to the next full hour. Additionally, most interpreters charge a minimum fee of two or more hours in order to justify reserving their time and being present in courts that often call them and then dismiss them for lack of need (or because a given case is cancelled), make them wait interminable hours for a case to be called, or use their services in several locations such as for attorney conferences in holding cells, plea negotiations, probation instructions and the like. Without full hourly fees and a minimum number of hours guaranteed, interpreters such as myself will not be inspired to make themselves available for court work, given the stresses and uncertainties involved. While the matter of a minimum charge may, perhaps, be best handled by direct negotiations between the court and the interpreter, I would request that you remove the word "(tenths)" from the invoice form.

I hope you will take my comments into consideration. I have gone to considerable expense and effort to become a registered interpreter according to Tennessee's regulations and would hope to be properly compensated for my efforts on the state's behalf.

Sincerely,



Ardis L Nelson

Professor of Hispanic Literature

Director, Language and Culture Resource Center

Mr. Cecil V. Crowson, Jr.,
Re: Rule 13 Comments,
100 Supreme Court Building,
401 Seventh Avenue North,
Nashville, TN 37219-1407.

DEC 29 2003

Heather Hayes
208 W. Bronson St.
Sparta, TN 38583

December 22, 2003

Esteemed Mr. Crowson:

Just another few thoughts on the matter of billing according to the changes to Rule 13:

This morning, I received a call from the Chancery Court of Rutherford County (in Murfreesboro), where my services were requested for a judicial proceedings to take place in January. I was informed that the time I should expect to be in court that day would not exceed 15 minutes.

I live 90 minutes from Murfreesboro. According to the recent changes in invoicing procedure, I would have ended up sending an invoice containing concepts similar to those listed below:

Travel @\$25.00: \$37.50 X 2	\$75.00
Interpretation:	\$10.00
Mileage:	\$38.00
TOTAL:	\$123.00

As a highly qualified specialist, I would have been occupied for most of the business day, unavailable to provide this service to federal authorities or to private enterprise, where I would have been paid at least \$350 for the same amount of my time.

Thus, I regret to report that I was forced to deny the Court's request for interpreter services, and that I suspect that it will not be the last time I am forced to do so unless changes are made in the (currently unrealistic) invoicing policies.

I thank you again for your attention, and look forward to hearing of changes in current policy.

Sincerely yours,



Heather Hayes
U.S. and Tennessee Certified Court Interpreter for Spanish

HEATHER L. HAYES
Federally Certified Court Interpreter
for Spanish

info@hhtranslations.com
interpreter@multipro.com
www.hltranslations.com
(931) 837-2236



Middle Tennessee
Eastern Tennessee

January 5, 2004

JAN 8 2004

Joan Wagner
905 Grady Drive
Johnson City, TN
37604

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Nashville, TN 37219-1407.

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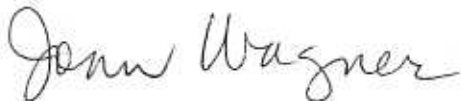
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Sincerely,



Joan Wagner

Telephone: 423 282 5559

RALPH NOYES

ATTORNEY - ABOGADO

TO: Tennessee Supreme Court, Administrative Office of the Courts
FAX (615) 741-6285

FROM: Ralph Noyes, Attorney at Law
FAX (901) 325-1409

RE: Comments -- Proposed Rule for Court Interpreters

Dear Sirs/Mesdames:

I am a Spanish-speaking lawyer in Memphis who often interacts with court interpreters. I am writing on behalf of several registered court interpreters who asked me to convey some of their concerns regarding the way the new rules are working out in practice. And I have a couple of comments of my own at the end.

- 1) The interpreter voucher form leaves blank the cap on the amount of compensation a judge may authorize. This is a cause for concern for the interpreters, and for at least one Memphis Criminal Court judge, because they have no idea what amount to fill in. Caps should be quite different in General Sessions, as opposed to Criminal Court, and in the latter court much will depend on the nature of the case; but in any event, judges and the interpreters alike would benefit from some guidance. Perhaps the form should be modified; I believe it is derived from the ancient and cumbersome pay voucher for court-appointed attorneys.
- 2) When the AOC disburses, the date of receipt of the interpreter's request for payment is noted on the voucher accompanying the check. It would be most helpful if the voucher would make reference instead (or also) to the date the service was rendered. Thus interpreters will be able to keep track of which cases they have been paid for.
- 3) Some consideration should be given to a minimum appearance fee for interpreters. After one has gotten dressed, driven to the courthouse, and paid \$5 for parking, it is not fair to allow an interpreter compensation for only one tenth of an hour, to take the extreme case. In the private sector – in legal and medical translation – the customary minimum is two hours. Consideration should be given to a minimum compensation for an interpreter's trip to the courthouse in her professional capacity.

TO: Tennessee Supreme Court, Administrative Office of the Courts

FAX (615) 741-6285

FROM: Ralph Noyes, Attorney at Law

FAX (901) 325-1409

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Personally, I know that none of the court-approved interpreters are getting rich off their work, and they appear to be very dedicated and professional. Ongoing efforts to upgrade their professional status are to be commended. The interpreters do appreciate these efforts, I can assure you.

On the other hand, non-English-speaking defendants, especially Spanish speakers, perhaps especially in Memphis, are continually victimized by independent or attorney-affiliated interpreters,

some of whom cheat both the client and the attorney for whom they are working or (sometimes) soliciting business. There are some bad so-called interpreters out there - I would call them runners -- and those of us who want our Spanish-speaking clients to be treated right in Tennessee courts would love to see a significant housecleaning aimed at eliminate certain independent interpreters who are nothing but predators.

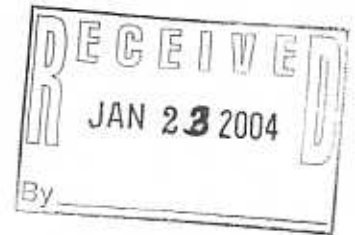
Please contact me if you have any questions. Thank you for your attention to these matters.

Cordially,

Ralph Noyes
Attorney at Law

Tennessee Association of Professional Interpreters and Translators

T A P I T
P.O. BOX 91116
NASHVILLE, TN 37209
Tel: 615-824-7878; Fax: 615-228-9900



Janice Rawls, Chief Deputy Clerk
RE: Rule 13 Comments
100 Supreme Court Building
401 Seventh Avenue North
Nashville, TN 37219-1407

The Tennessee Association of Professional Interpreters and Translators welcomes this additional opportunity to express our views and clarify concepts through the extension of the deadline for comments.

We have come to believe that it is necessary to provide a more in-depth picture of what court interpreters ARE, and what they DO within the justice system, so that the members of the Supreme Court may appreciate the very unique position occupied by court interpreters, and the qualities that differentiate them from attorneys, investigators and expert witnesses. When the author of this letter first began giving presentations about court interpreter issues to Judges and attorneys, both she and they were amazed to discover that, although all of them *thought* they knew and understood what interpreters do, as the presentation progressed they were astounded at how much they *didn't* know about it. Thus, the first step in this document will be to describe the skills, knowledge and attributes required for the competent performance of court interpreting. We believe that after coming to appreciate more thoroughly that court interpreting is a specialized field requiring not just some special vocabulary and bilingual talent, but unique and highly prized skills, training and knowledge, and that the profession already has its own set of customary and necessary standards of compensation (all of which are well established throughout the nation's public and private sectors) you will be compelled to agree that Rule 13, as currently written, does not reflect appropriate guidelines for interpreter compensation and must be revised to take into account the current requirements and realities of Tennessee's qualified court interpreters.

COURT INTERPRETER SKILLS, KNOWLEDGE AND ATTRIBUTES

According to Supreme Court Rules 41 and 42, Court interpreters must master and be competent practitioners of three specific kinds or "modes" of interpreting: consecutive interpreting, simultaneous interpreting and sight translation. They must also be completely familiar with, and able to correctly apply, their code of professional responsibility. The following is a description of the

abovementioned modes of interpreting, their application in court and their comparative place in the world of international affairs. A note about Ethics follows.

Consecutive interpreting: The most well-known and commonest kind of interpreting.

This occurs when one speaker speaks, the interpreter waits and subsequently interprets that speech, then another person speaks or answers, and the interpreter interprets that locution after the person has finished speaking, thus portions of speech are interpreted “consecutively” and out loud for all to hear. This mode of interpreting, in a court setting, is used for witness testimony and any other spoken exchanges that include foreign language speech **that must be placed on the record** (guilty pleas, for example). Since the court reporter can only make a record of the English interpretation of foreign language speech, the requirement for great precision and faithful delivery is paramount for the practitioner of consecutive interpreting in court. This mode requires excellent short-term memory and rapid, automatic processing of verbal content so that in converting the message to another language, the consecutive interpreter does not inadvertently lose or change any elements of the communication being conveyed. (SC Rule 41, Canon 1: “Interpreters shall render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written, and without explanation.”) Since living languages, by nature, do not allow for word-for-word equivalencies (consider, for example, the disaster that would result from a literal translation of the common expression, “he’ll stab you in the back to get that job”...), whole “chunks” of meaning must be received, understood contextually and converted by the interpreter to a different language with different grammatical and syntactical rules. In so doing, the interpreter must also choose from among myriad synonyms and levels of discourse (formal, colloquial, technical, etc.) to find the exact nuances expressed in the original message. This process, in which hundreds of decisions are made in the passage of seconds, is highly stressful and requires intense concentration, especially when the fate of other human beings may depend on the accuracy of the interpreted message placed on the record for posterity.

While lay people consider consecutive interpreting to be the “easiest” form of interpreting, most professional interpreters would say that, in a court setting, it is the most demanding and stressful of the three modes. It is interesting to note that in international applications, consecutive interpreting is considered a specialization in its own right. Most United Nations and conference interpreters will refuse even to attempt to do consecutive interpreting, while persons who specialize in it (interpreters for foreign dignitaries and heads of state) tend to perform consecutive interpreting *exclusively*, at a very high level and only after rigorous, specialized training in memory retention and note taking. Experts in consecutive interpreting often receive “celebrity” status in the field and are very highly paid. In contrast, every court interpreter is expected to be competent in both consecutive and simultaneous interpreting; yet little recognition is given to this remarkable feat in the legal arena, especially at the state level.

Simultaneous Interpreting: also sometimes called “U.N.-style” interpreting.

This occurs when the interpreter listens to the spoken message and renders a continuous foreign language rendition of its content just a phrase or two after the utterances being interpreted. The simultaneous mode is used when the interpreter is

interpreting for one or more defendants (or other parties in interest) every spoken word occurring during a proceeding: evidence, legal arguments, objections, rulings, conversations, everything. In other words, simultaneous interpreting is utilized to place a Limited English Proficient (LEP) person in the same position as a similarly situated English speaking person. It requires accuracy and completeness in order to satisfy constitutional guarantees regarding due process and equal access to justice. The competent performance of this skill encompasses the physical ability to listen and speak at the same time, and the mental multi-tasking ability to receive, digest, decode and re-code incoming messages instantaneously without altering, omitting or adding anything or losing the meaning and continuity of uninterrupted incoming verbiage. It also requires specialized knowledge and mental acuity to keep up with and understand extremely fast-paced and often convoluted verbal exchanges embodying complex legal concepts, or complicated recitations of events about which the interpreter often has been given no prior knowledge or meaningful contexts.

The amount of time, effort and expense that interpreters must dedicate to the specialized training and constant practice required to master and maintain this skill is very great, and the size and quality of the interpreter's "internalized dictionaries" must be extremely advanced. It is no accident that U.N. and conference interpreters are, by common agreement, limited to interpreting for short periods of time with ample rest periods between performances, since simultaneous interpreting requires an extremely high level of concentration and is very exhausting. It is also no coincidence that such interpreters are highly valued and very well remunerated for their expertise, since international agencies have long recognized that good simultaneous interpreters are a relatively scarce resource that must be supported by good working conditions and provided with appropriate financial incentives to continue in such a demanding field. The Association of International Conference Interpreters (AIIC) requires that member interpreters work in teams of at least two interpreters per language in comfortable booths, with closed circuit TV and clear headphone access to speakers' voices and faces, provision of prepared texts beforehand, and work-days that may not exceed 4-6 hours during which each interpreter works only 30 minutes per hour. In contrast, the burden of complete accuracy, the unpredictable nature of the subject matter, bad acoustics, and the far-less-than-ideal working conditions found in courts make simultaneous court interpreting even more difficult and fatiguing than conference or diplomatic interpreting.

Supreme Court Rule 42, shows some recognition of such a level of difficulty in Section 3(f): "*The court may wish to consider using multiple interpreters in legal proceedings where one or more of the following situations exist: (1) Legal proceedings lasting more than 2 hours - Generally, in legal proceedings lasting more than two hours a team of two interpreters should be designated to ensure the accuracy and completeness of the record by allowing interpreters to alternate work and rest in short shifts, thus avoiding fatigue.*" (Fatigue, like incompetence, produces inaccuracies and defeats the goal of guaranteeing constitutional due process rights.) Nevertheless, such recognition of the challenges faced by Tennessee Court Interpreters has not seemed to translate into appropriately flexible and reliable financial incentives.

For any among you who suspect that we are exaggerating, or who would like to personally acquire a rough idea of the intensity of focus needed for the task of simultaneous interpreting, TAPIT recommends tuning in to National Public Radio to a

news or talk show and attempting to “shadow” the spoken content (that is, repeat verbatim exactly what you are hearing, just 10-15 words after you hear it) continuously for about 10 minutes, without missing or changing a single word. It is likely that those who attempt this little demonstration will find the task mentally exhausting and quite irritating, even after only a few minutes. Now imagine doing the same thing, but with the extra burden of converting it into another language, for periods sometimes exceeding 2 hours. This will provide an experiential understanding of the need for frequent rest periods and the use of multiple interpreters in short shifts to avoid fatigue.

Sight translation: This mode is a hybrid mixture of interpreting and translating.

In sight translation, the interpreter is asked to quickly read a document in one language and then provide an oral rendition of its contents in a different language. While it may be the least stressful of the three modes (time is not at such a premium in this mode) it is, nonetheless, very demanding. Written legal documents are characterized by dense, information-filled prose in which concepts are reduced to their most economical expression and legal jargon is prevalent. Such dense texts, which may have taken hours to draft, must be converted into a completely different language (often from countries whose legal systems may not have exactly equivalent concepts) on the spot and without lengthy study or consultation with reference works. This mode often requires very specialized knowledge of legal terminology, from varied countries and different legal systems, in order for the interpreter to correctly capture and accurately render the contents of the document.

Ethical performance of duties: Tennessee Court interpreter ethics are stated in Rule 41.

The canons guiding ethical court interpreting performance (stated in SC Rule 41) are not intuitive, they are not about common-sense ideas of morality, advocacy or utility, and they are not the same as attorneys’ codes of professional responsibility. Common sense might seem to indicate that the interpreter, as a conduit for communication, carries the burden of ascertaining that parties understand one another, yet this is not true. Court Interpreters are sworn to maintain complete accuracy and NOT to explain anything or interject any comments of their own. It is up to the communicating parties to ascertain that understanding is taking place, and if it is not, to adjust their level of discourse accordingly and/or explain concepts that are difficult to assimilate. That this concept is not understood by untrained interpreters, judges and attorneys alike is clearly evidenced every day in Tennessee courts when Judges and attorneys still routinely ask the interpreter if the defendant “understands his rights” or “understands what is going on” or when they tell the interpreter to “explain to him that he needs to do x and y”. Such questions or requests directed to the interpreter not only totally inappropriate, but, for the interpreter, an inducement to violate her ethical canons since the interpreter is sworn only to interpret the direct discourse between participants and the Court, and cannot ethically explain anything or make any such statements (i.e., be a witness) while serving as an interpreter. Non-credentialed bilinguals (often family members, friends or volunteers allowed to interpret in court in order “to save money”) rarely understand the concept of impartiality and often tend to think that they should advocate for, explain concepts to and generally “help” non-English speakers through the legal process. All of those activities constitute violations of court interpreter ethics, yet without specific training, how can

they know this? In their everyday community interpreting experiences, this has seemed intuitively to be the right thing to do. Here is another example: attorneys and judges often want interpreters to "meet in the hallway" with defendants (unaccompanied by legal counsel) to read them documents and explain options, or they may ask interpreters to give their opinions as to the mental or educational condition of the LEP individual; again, all of these things are forbidden to interpreters under their code of ethics.

The above are only a few, rather simplistic, examples of how court interpreters' ethical rules are not well understood and all-too-frequently subverted by bench and bar, due to lack of education about interpreter ethics. Court interpreters face real-life, sometimes complex, ethical dilemmas every day and it is only by constant training and on-going discussions among professionals that they can learn to identify and then navigate their way through the often-murky waters of ethically perplexing situations.

Now let us consider the fundamental **attributes and knowledge** needed by a court interpreter in order to perform the tasks required by SC Rules 41 and 42 described above:

Court interpreters must have, at a minimum, a relatively high level of education and cultural awareness in two languages, with a large, sophisticated vocabulary in both languages to start with; they must possess a capacity for quick thinking and flexibility, mental and physical stamina and agility, and the patience and perseverance to withstand a very lengthy and exhaustive period of training and practice in order to perform at the skill levels required by the courts. They must be lifetime learners since language usages and slang can change frequently and often differ according to the various geographical and national regions where the languages are used.

Contrary to popular perceptions, the ability to speak, write and understand two languages does not mean that one can function as an interpreter. The study of a language at the university level does not equip a person to be an interpreter. Even training and professional experience as a translator does not mean that one can interpret, although it may provide a good starting point for learning the necessary skills. Unlike investigators, attorneys and expert witnesses who may possess specialized academic and practical knowledge, court interpreters must not only acquire specialized knowledge, but they must also master the difficult performance skills described above. That is, they must possess a thoroughly integrated combination of: 1) extensive and varied linguistic/cultural/legal/general/technical information and terminologies, and 2) highly developed performance skills, achieved and maintained only by continuous study and constant practice.

On the performance side, a comparison might be made with, say, music or sports: The fact that a person has fingers and may have learned to play "chop-sticks" as a child does not make him a pianist, nor does the mere possession of legs make a person a long-distance runner. Those attributes are simply part of the most basic requirements for pursuing further development that MIGHT result in expertise. Likewise, mere knowledge of two languages is only the most basic, minimal requirement for becoming an interpreter. To continue with our analogy, if a person studies and invests considerable

time and effort into learning techniques and practicing a musical instrument or a given sport, he could become a very proficient concert pianist or accomplished athlete. With even more practice and dedication, a person with superior talents and abilities might even achieve recognition as one of the best performers in his field. Likewise, interpreters, after *very intense and lengthy practice*, may achieve skill levels in interpreting that are sufficiently high to pass rigorous court interpreter exams (for which pass rates typically range from 2%-8%).

But here is where our analogy comes up short. In addition to performance skills, court interpreting also requires specialized studies and intellectual diligence. It is axiomatic that the court interpreter must have thorough and accurate understanding of a wide array of concepts, terms and idiomatic expressions in the English language and that he or she must also have a rapid, native or near-native ability to communicate in a foreign language. To this must be added: an extensive vocabulary -- the "internalized dictionaries" referred to above; wide-ranging general knowledge; an understanding of court procedures, laws, ethical precepts and protocols; awareness of cultural differences; quick access to a wide variety of synonyms and antonyms at different discourse levels (formal, slang, upper-class, underworld, etc.); appreciation of subtle grammatical points; ability to avoid semantic and syntactical traps; the list could go on and on. In reference to technical terminology, the interpreter must be a "quick study" -- researching and quickly committing to memory long lists of specialized terms and jargon. Why? Any kind of subject can come up in a court hearing, from the street slang of uneducated fact witnesses to the highly sophisticated, technical testimony of experts in a wide variety of specialties, to the dense, convoluted language of legal precedents cited by attorneys and judges. The interpreter may be faced with the arcane terminology of an autopsy report or testimony about the construction of aircraft or watercraft in which secret drug compartments have been constructed; he or she may have to interpret the testimony of a forensic chemist describing the methods and chemical substances used to determine the composition of a suspected controlled substance. The possibilities are endless. In these circumstances, the interpreter must constantly be studying and learning new vocabulary and creating more glossaries for future use. Good interpreters are walking dictionaries.

In this sense, it might be more instructive to compare court interpreters to physicians specialized in the practice of surgery: To start with, the surgeon must possess certain very basic physical and educational attributes -- sound physical and mental condition; intact, steady hands; a general, broad-based knowledge of human anatomy and medicine. Then he must successfully undertake specialized studies -- intimate and very extensive knowledge about the specific anatomy, disease processes and new medical developments related to his specialized area of practice. Finally, he must, through study of specific techniques and repeated practice, develop the physical dexterity, stamina and precise motor skills needed to actually perform the surgical procedures for which he has attained specialized knowledge. Only after achieving a high and reliable level of combined knowledge and performance skills is the surgeon allowed to practice on human beings. And for this very special combination of knowledge and performance attributes, he is given special professional recognition and commensurate compensation.

The situation for interpreters is similar, up to a point. Interpreters, too, must possess certain very basic physical and educational attributes: clear speech, the ability to hear well, a good, general, broad-based education, preferably at university level, and superior knowledge of and fluency in two languages (including proper semantic, syntactic and structural elements); these are the basic foundation for beginning interpreter training. To these must be added specialized studies of specific legal/court terminology, familiarization with the law and with court procedures and protocols, continuing study of every kind of specialized document and testimony that may come up in court proceedings, and an ongoing learning process about current trends in terminology and slang. Finally, the interpreter must study and repeatedly practice the specific techniques and skills that will enable him or her to have the mental agility, physical and mental stamina, and precise, rapid decision-making skills needed to flawlessly perform interpreting tasks at high speeds and imperfect conditions in the courtroom. Only then should an interpreter be allowed to intervene as the appointed communication conduit in cases where, potentially, the life and liberty of human beings is at stake.

Unfortunately, this is the point at which there is a divergence from all the above analogies. While surgeons, master musicians and accomplished athletes enjoy prestige and wealth, court interpreters do not. Why? Because of that pervasive and erroneous belief that “anyone who can read, write and understand two languages” can perform the demanding tasks required of court interpreters! Because historically Tennessee lawyers, judges and court administrators have employed untrained bilingual individuals who lack requisite skills and do not comport themselves as professionals, thus reinforcing the bias that prevents the legal community from recognizing court interpreting as a highly skilled profession. Because both bench and bar are sadly in need of more education about the difficult and lengthy training and knowledge required to pass stringent court interpreter, certification exams and thus do not distinguish between credentialed interpreters and non-credentialed bilinguals. In short, despite the huge advance accomplished by the Supreme Court in the establishment of Rules 41 and 42, many people in the legal community, including many judges and even some practicing interpreters, do not treat court interpreting as a valued professional career, but still think of it as some sort of side-line activity easily performed by “that guy down at the high-school that speaks Spanish” who just needs to “show up and help out”! With this sort of distorted perception still lingering in the minds of so many, it is no wonder that people in our profession despair of ever receiving the level of respect and compensation they deserve. TAPIT is hopeful and insistent that the excellent work of the Tennessee State Court Interpreter Certification Program should not be undermined by downgrading fees and neglecting to ensure employment for the few hardy souls who have been willing to undertake rigorous training to become true professionals in the field of court interpreting. We hope, also, that this lengthy description of the knowledge and performance skills required by this profession will have enabled Supreme Court members to appreciate that court interpreters have very different qualities, roles and needs than the attorneys, investigators and experts with whom they have been grouped in Rule 13.

RULE 13 COMMENTS:

With that having been said, let us get right down to the ways in which proposed Supreme Court Rule 13, Section 4(a)(3)(K) impacts court interpreters and the areas in which TAPIT considers the Rule to be misguided and counterproductive.

I. General Considerations: Should interpreters' compensation be regulated under Section 4(a)(3)(K) of proposed Rule 13 at all?

The section of Rule 13 under which interpreter compensation is prescribed, Section 4(a)(3)(K), is titled "Payment of expenses incident to representation". Similarly, a memo from the AOC posted to the web page of the Tennessee State Court Interpreter Certification Program and sent to interpreters on the Roster, titled "Reimbursement Process for Spoken Foreign Language Interpreters or Translators in Indigent Cases" states as follows: "*The use of a spoken foreign language interpreter or translator in an indigent matter is considered an attorney expense under Tennessee Supreme Court Rule 13, Section 4(a)(3)(K).* (See Addendum 1)

On careful reading of all of Rule 13 and upon considering the proper position occupied by interpreters in court cases, TAPIT has grave doubts as to the wisdom of including interpreter remuneration for any in-court interpreting under this section. A case could be made for allowing interpreter payment for out-of-court work to remain in this section, in that the interpreter, in facilitating communications between client and attorney may be considered to be aiding the attorney to provide appropriate representation for his client. On the other hand, an interpreter is never, except when actually hired as an expert, a part of any "defense team". Interpreters, when functioning strictly as interpreters, are not involved in seeking or creating information or materials needed for the defense of the attorney's client, unlike the investigators and experts with whom they have been grouped in this section. Like a telephone, interpreters only facilitate communication – they have little to do with its content and they do not intervene in matters of defense or prosecution. This distinction is even more critical when considering the role of the interpreter in the courtroom. The interpreter is an impartial officer of the court. She does not "help" either side, but serves the Court alone and is the Court's tool for ensuring equal access to justice to LEP individuals. That this position of neutrality should be tainted by a close connection with the defense attorney --through a compensation mechanism no less!-- is unjustified and undesirable. It only serves to reinforce a prevalent bias on the part of some prosecutors that interpreters are defendants' allies and therefore intrinsically untrustworthy.

TAPIT suggests that there might be better models to follow; for example, it might be preferable to treat foreign language interpreters' compensation in a way similar to that of interpreters for the Deaf:

T.C.A. 24-1-211. Deaf persons - Providing oral or deaf sign language interpreters in administrative and judicial proceedings.

(b) (1) *In any case in law or equity before any court or the grand jury, wherein any deaf person is a party to such action, either as a complainant, defendant, or witness, the court shall appoint a qualified interpreter of the deaf sign language to interpret the proceedings to the deaf person and interpret the person's testimony or statements and to assist in preparation with counsel.*

(g) *An interpreter appointed under the provisions of this section shall be entitled to a reasonable fee for such services. ... When the interpreter is appointed by a court, the fee shall be paid out of general county funds and when the interpreter is otherwise appointed the fee shall be paid out of funds available to the appointing authority.*

The position of a court interpreter might, alternatively, be considered to be more similar to that of a court reporter than that of an investigator or expert witness. Like court reporters, interpreters are impartial, disinterested court officers without whose presence the proceeding could not take place. Even though attorneys may seek out court reporters to obtain transcripts and out-of-court services for depositions, the court reporters position of neutrality is not questioned and provision for payment of their service in court is not dependent on defense attorney submissions. Perhaps this would be an appropriate model to investigate.

TAPIT recognizes that the Supreme Court has made a valiant effort to resolve all the doubts and inconsistencies that previously dogged the process of interpreter payment, but this new set of procedures has not, according to complaints from our members, accomplished this goal. Current AOC oversight of interpreter invoices under Rule 13 has been cumbersome, confused, nit picking, aggravating and slow. Apart from this, TAPIT considers that it is unduly onerous for both interpreters and attorneys to have to channel all interpreter invoicing through multiple attorneys' offices, where it creates more paperwork for the law firms and leaves the interpreter completely deprived of control as to the date in which her billing is actually presented to the AOC.

It should also be mentioned that to date, the plan for billing indicated in Rule 13 (i.e. as an attorney expense) and outlined in the previously mentioned AOC memo is not, in fact, being universally followed in Tennessee courts at present. The memo states:

"Effective September 8, 2003, the Administrative Office of the Courts will reimburse spoken foreign language interpreters and translators for services rendered in indigent matters for in-court time as well as out-of-court time.

The court order authorizing the use of the interpreter or translator should be dated prior to the first date of service. The attached claim for reimbursement should be completed by the interpreter and sent to appointed counsel for review and approval. Once reviewed and approved, appointed counsel should forward the invoice and court order to the [AOC]." [emphasis added]

However, for in-court services, this is often not practicable and sometime is contrary to local courts preferred practices. The interpreter may have NO connection at all with the appointed attorney, perhaps not even know where he is located, if she comes in from out-of-town to interpret in a hearing for which she has been summoned by court personnel ... yet she must somehow seek him out and process her invoices through him? And how can this be considered a service "incident to representation"? Many courts make all arrangements for in-court services through their own coordinators and insist that

invoices for such services to be sent directly to them (Davidson County and Metro courts, for example); others arrange for services exclusively through agencies; yet others make each Judge's secretary responsible for hiring the interpreter; in each case, there is NO attorney requesting interpreter services or funds for "expenses incident to representation". Sometimes interpreters work in hearings only to find afterwards that court personnel have not secured an order from the Judge and have no clue at all as to what to do about paying an interpreter. All of this is very aggravating. The classification of interpreter fees globally as attorney expenses and the recommended procedures are neither efficient nor workable.

It is the court's responsibility to secure and ensure payment of interpreters for in-court proceedings just as it is the Judge's responsibility to appoint them (SC Rule 42). The way in which this matter is handled by the Federal Courts might also serve as a model, since it parallels what Rule 13 seeks to achieve: While all interpreter services for indigent defendants, both in- and out-of-court, are paid out of funds provided for in the Criminal Justice Act. The court directly hires and pays interpreter services performed during in-court proceedings (the court clerk's office pays invoices directly with CJA funds from Washington), while all out-of-court interpreter expenses are handled through the Public Defender's Office since it is the officially designated source of appointed counsel and possesses a budget or other mechanism to obtain CJA funds for auxiliary services, including interpreting services, required by attorneys (both PDs and private appointed attorneys). This method has several advantages: it preserves certain consistency in the way invoices are handles; it keeps interpreter interests at a distance from defense matters; and it is a very efficient and simple way of keeping the in-court and out-of-court services separate, ensuring the provision of appropriate language services for the court while avoiding any appearance of partiality.

For more reasons why attorneys should not be deemed appropriate as those responsible for "hiring" in-court interpreters, please see Section 5 below.

And one further problem – Rule 13 fails to account for interpreting for the prosecution. If interpreter services are requested by the court exclusively for the interpretation of testimony by prosecution witnesses, as sometimes occurs, what then? In a real-life scenario, some months ago, an interpreter was called to court and informed that she was to interpret for prosecution witnesses. After she performed excellent service, the court refused to pay, since this situation was not covered by the indigent defense fund. The prosecutor refused to pay, saying that his office had no funds for interpreters at all. The interpreter has still not been paid and apparently no one has any plans to solve the problem. For interpreters, increasingly, the solution is simply to avoid suffering this kind of aggravation by not working for any Tennessee state courts at all!

II. Compensation for travel

Rule 13 states that travel time for interpreters shall be paid at half the rate paid for interpreting services. The first and most important reason that the policy of one-half pay for travel time should be rescinded is simply this: TAPIT, whose membership stands currently at more than 70 professional interpreters and translators, has now heard from all of our registered and certified court interpreter members and has confirmed what we

previously predicted: they have universally agreed that they are unwilling to travel to outlying courts under these conditions, and they are already refusing assignments involving travel. Obviously, this means that courts outside of major population centers are now and will remain, until the Rule is changed, severely underserved by the Tennessee State Court Certification Program into which so much hope and taxpayer money has been invested. Allow us to point out that the current problem related to travel to outlying courts is, hopefully, going to be a temporary one. Once more interpreters are certified throughout the state, it will be unnecessary to ask interpreters to travel great distances for those assignments.

In the meanwhile, let us look at the practical reality of the current situation under the interim provisions of Rule 13. (This is a real-life case.) A certified Nashville-based interpreter accepts an assignment for an 11:00 hearing in McMinnville. With rush hour traffic and an unfamiliar destination, the interpreter leaves at 8:30 a.m. in order to arrive punctually, set up her equipment, and be available for possible attorney-client consultation prior to the hearing. Let us suppose that the interpreter arrives at 10:30 and that the 11:00 hearing lasts one hour. The interpreter (having eaten nothing since 7:30 a.m.) leaves at noon arrives back in Nashville after 2 pm. Since she was not informed of the exact length of the hearing, she did not know when she would be able to return to Nashville and thus was not able to book any other work for the remainder of the day. Under Rule 13, what will the interpreter earn? One and one half hour at full pay and 4 hours at half pay. That is to say, \$75.00 plus \$100.00. Thus, for a day in which she could have earned eight hours' fees at \$50.00/hr., or \$400.00, by staying and working in Nashville, instead she earns a maximum of \$175.00. **Unlike attorneys, investigators and experts, she has no follow-up work after this assignment; this is her total billing for that day, and, perhaps, for that entire case.** Under Rule 13, by accepting an assignment requiring travel, she has exposed herself to a loss of \$275.00 for a day's work. How often can any full-time professional afford to do this? Furthermore, let us suppose the interpreter could have had an all-day assignment in a deposition at \$75.00/hour (a common fee in the private sector). Then her loss is even greater -- \$425.00 loss for that one day. It is unimaginable that even the most civic-minded of interpreters could allow herself to continue serving the courts under such blatant conditions of undue hardship.

(To illustrate the value placed on a certified court interpreter's unique skills, please see the attachment titled "Notice of Position Vacancy" (Addendum 2) from the U.S. District Court for the Northern District of Illinois, wherein the pay scale reaches more than \$109,000.00 per year apart from full federal benefits, easily worth an additional \$30,000.00.)

The foregoing scenario could be alleviated in two ways:

1. **Travel time should be remunerated at the same rate as interpreting time.**
2. **A specific number of hours should be established with guaranteed payment for time reserved**, so that the interpreter knows what she will be earning at the hearing and when she will be finished so that she may take other assignments to fill out the day.

interpreters, a closer look reveals that four individuals reside out of state (Yaned Ivens moved to Mississippi in Spring 2003) and one no longer works as an interpreter for the courts, leaving six available certified interpreters. It should further be noted that three of those interpreters, that is half of the available pool, are certified by the federal government and have steady work at higher pay in the federal system, as well as many long-standing clients in the private sector. What incentive is there for them to take unpredictable, potentially less profitable assignments in the state courts? As the pool of state certified interpreters increases, this situation may cease to be a problem. However, it is important that courts retain the ability to negotiate higher rates for interpreter services not only while qualified candidates are scarce, but for other reasons presented below.

It should be noted, furthermore, that the scarcity situation is unlikely to improve substantially in the short-term, since passing rates for the final step in the certification process (the oral proficiency exam) during the last twelve months plummeted to less than 2%. This is proof of the fact that interpreters are not “born” but “made”. As pointed out in section I of this letter, contrary to popular assumption, the skills for excellence in court interpreting are acquired only after extensive investment in study and practice time, along with the purchase of expensive reference and study materials. Bilingual ability is certainly not enough. Many non-credentialed bilingual individuals (some of whom are currently practicing in court) may desire earnestly to become certified but there is no guarantee that they will ever be capable of meeting the stringent requirements and skill levels needed for performance at a certified level.

Currently our state certification exam demands only a threshold of 70% accuracy for passing. This means that except for the six individuals on the list, interpreters currently working in the courts are providing less than 70% accuracy (in some cases, dramatically less). How much less should be tolerated in regard to interpreters who, in effect, are the Court’s tools for fulfilling constitutional guarantees of due process and equal access to justice for non-English speakers, defendants and victims alike? How much accuracy is the Court willing to sacrifice by discouraging the continuing development of credentialed interpreters through caps and wrongheaded travel decisions? Further, even the provision of Registered Interpreters cannot guarantee any degree of accuracy-- the written test required to become a Registered Interpreter is given only in English. It does not test for any level of proficiency whatsoever in a foreign language. Thus, those 67 Registered Interpreters must be encouraged to continue with their training and pass the certification exam in order to assure a more adequate level of interpreting proficiency in the courts, but if they see wages shrinking they are unlikely to invest more time and energy in the certification process.

3. The caps are selective

(a) Courts regularly bypass the Rule already by paying higher rates to agencies that supply them with interpreters, many of whom are not Certified or Registered.

(b) The Court’s recognition of market forces is evidenced by the section in Rule 13 allowing negotiation of fee amounts with interpreters of languages Other Than Spanish (OTS). This is discriminatory – if negotiations are to be allowed, they should be allowed across the board. It is also inappropriate – the majority of OTS interpreters in Tennessee are not only NOT Certified, they are, for the most part, untrained, non-

credentialed and non-professional. And yet the Court is willing to negotiate with amateur interpreters for fees that are higher than the cap established for well-trained certified Spanish interpreters. One of the negative repercussions of this counterproductive policy is that it eliminates any incentive unskilled, non-credentialed OTS bilinguals might have to undertake rigorous, long-term training and expense to become credentialed, since they can command whatever fee they wish without making any efforts to improve. Another is the disillusionment experienced by Certified Spanish Court interpreters when they see that, by comparison, their hard work has produced not appreciation and advancement but, rather, an effort to limit their earnings under this selective imposition of caps. Moreover, while it may seem that market forces are driving this decision because of the relative scarcity of interpreters in "exotic" languages, the fact is that in demographic terms the demand for qualified Spanish language interpreters is proportionally much greater. Finally, it is a fact that some certified interpreters have higher skill levels and more extensive work experience than others, thus it would seem counterproductive to limit the courts' ability to negotiate to obtain interpreters with more advanced expertise for especially demanding or high-stake cases.

4. Caps for interpreters do not reflect recognition of differences in experience and skill levels.

Sections 2 and 3 of Rule 13 clearly reflect that the Supreme Court takes into account the fact that attorneys and experts have differing levels of experience and specialized training. Rates for attorneys in non-capital cases are about half those established for attorneys in capital cases. Sections (3)(c) and (3)(d) outline long lists of attributes for attorneys who may work in capital cases and receive higher compensation and a higher cap for total billing. The list of experts' fees likewise designates much higher rates for some kinds of expertise than others, yet no similar consideration is given for interpreters (save the exception noted directly above, regarding OTS languages, which does not refer to competence or expertise but rather to considerations of supply and demand alone). Yet interpreters, as mentioned above, also have greater and lesser levels of experience, training and skill. Capping interpreter fees at just one fee level does not do justice to this fact. Since it would be unduly difficult at this time for the certification program, still in its infancy, to try to establish distinctions of this nature, the wisest and simplest solution would seem to be to simply eliminate caps altogether and leave courts with suggested minimum fees and discretionary authority to negotiate for the services of interpreters with more experience, training or specialized skills when necessary or desirable.

IV. Recognition of the distinction between registered, certified and non-credentialed interpreters and oversight.

Rule 13 deals with differences in rates of compensation for Certified, Registered, and Non-credentialed interpreters. Therefore, it is of interest to consider whether such distinctions are, in fact, being respected. Despite Rule 42, it seems that in more cases than not, no effort whatsoever is made to ensure the provision of certified interpreters or to verify whether the interpreter being contracted is certified, registered or non-credentialed. Many courts seem unable to understand or recognize the differences between "registered" and "certified" interpreters. This may partly be due to the fact that the letters

issued by the Administrative Office of the Courts, approving an interpreter as Registered or Certified, are identical in format and content -except for that one word; and no clear identification document is issued. It is not infrequent that courts say (and may believe) that they are hiring a Certified interpreter when in reality the individual they have hired is not Certified but Registered, or, in some cases, is not credentialed at all but merely claimed to be. It is imperative that the courts make such distinctions and take pains to verify the credentials of the interpreters they hire. It would be ideal if the AOC would issue clearly differentiated ID cards for its Certified and Registered interpreters. A corresponding ID number could be also then be entered by the interpreter included on his invoices so that the AOC would have no doubts that it is paying the correct rate to the service provider.

In this context it is also important to have some oversight that would include a disciplinary function for the many individuals currently masquerading as interpreters in the courts, claiming to have credentials that are, in reality, non-existent and non-verifiable. As an example, up until recent times, a certain individual worked in some Nashville courts claiming to have certification from a national court interpreting association, when in fact he not only did not possess such certification but had never even been a member of said association. No attempt was made to verify his credentials and he was allowed to work, as a preferred provider in fact, in various courts for more than a decade. Even when such fraudulent claims were brought to the attention of the courts in question, and even after this person subsequently proved himself incapable of passing even the basic written test to become Registered, he was allowed to continue working in the courts and was paid at a preferential rate. This is just one of many such deplorable examples that are occurring throughout our state. If the Supreme Court and the AOC are so desirous of saving money, let it be accomplished by avoiding fraud rather than punishing honest interpreters with reduced fees.

V. Who Should Be Responsible for Obtaining Interpreter Services?

While Rule 13 does not directly address the matter of the obtaining of interpreters services but simply focuses on the way in which they shall be paid, it is clear that no interpreter can be paid unless someone requests his or her services. In this sense, and referring back to the question posed in Section 1 (i.e. should interpreter services be classified as "expenses incident to representation" as stated by Rule 13), TAPIT feels it is appropriate to mention, and important that the Supreme Court be aware, that there are problems brewing regarding the manner in which interpreters are to be obtained for in-court assignments.

A recent communication from the Administrative Office of the Courts to Tennessee Court Administrative Personnel now places the onus of locating and obtaining interpreters for in-court proceedings in the hands of attorneys. It seems that the rationale for such a decision is based on the logic that if attorneys must hire interpreters for their attorney-client conferences, then attorneys should be responsible for informing the interpreter of in-court assignments and assuring their appearance. Why is this fraught with peril? First of all, many attorneys have little experience with or knowledge of interpreter ethics, skills and credentials, and some self-proclaimed bilingual attorneys (whose skills often leave much to be desired) even have a vested interest in NOT using interpreters during conferences with clients (they believe that this will give them an edge

for appointment to cases involving LEP defendants). In addition, historically, lawyers have tended to use family members, friends and volunteers. This is most common in the case of retained counsel. At present, few attorneys even know of the existence of the Roster of Certified and Registered interpreters, nor of the Certification Program itself, in spite of efforts to disseminate information about Rules 41 and 42. If interpreter selection is left to the criteria of attorneys, it is probable that many court proceedings may be delayed or may have to be continued, at greater cost to the court, because the interpreter selected by the attorney does not meet Rule 42 requirements. Prior to the adoption of Rule 42, the hiring of interpreters by attorneys for in-court service was the rule rather than the exception -- that practice was abandoned because it was unsatisfactory and led to frequent use of unprofessional services. Now that it has, again, become the norm, the same problems are likely to surface.

It is also important to note that the provision of proceedings interpreters services by defense attorneys can only serve to strengthen the already overwhelming prejudice held by prosecutors that interpreters are somehow allied to the "defense team" and therefore not impartial or trustworthy.

VI. Judge's Order Appointing Interpreter; Independent, impartial interpreters

Billing under Rule 13 can only be paid when accompanied by a Judge's Order appointing the interpreter. Therefore we consider it pertinent to explore problems we see in the Judge's Order provided by the AOC (downloadable from the website) that must accompany the invoice form under Rule 13. (See Addendum 3)

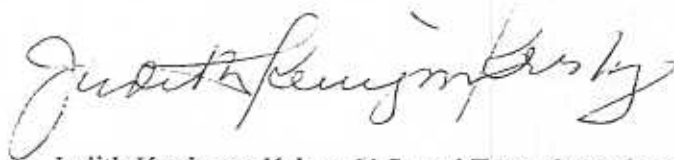
Unlike attorneys, interpreters are not "exclusively connected" to a given case or defendant. As stated in Rules 41 and 42, interpreters are independent, impartial professionals who may work with equal accuracy and integrity for defense, prosecution and the court. Interpreters may also interpret for any or all of the codefendants in a case with no fear of bias or lack of confidentiality. The custom of placing a particular interpreter's name on the court order gives the impression that only that interpreter may work for that particular defendant and his attorney, while in fact any equally skilled interpreter could fill the position. We therefore think it erroneous to specify a specific interpreter's name on the order. The only specification in the Order should be for a Certified interpreter, or a Registered interpreter if a Certified interpreter is not available. This would avoid the need to issue multiple orders for the same case or the same defendant. Given the paucity of certified interpreters, it is unrealistic to suppose that the same interpreter will be available to serve in every event in a given case, or, indeed, that her exclusive services would be requested for each and every such event. Keep in mind that it is highly probably that said interpreter has already been named on several different orders, given the existing shortage. It is also undesirable for interpreters to be limited to performing only one function, i.e., to interpret only for the defense, or only for the prosecution, or only for the proceedings in a given case. This is unnecessary and wasteful of scarce resources, for in that scenario a trial would require two proceedings interpreters, one or more defense interpreters and one or more prosecution interpreters, performing overlapping roles. Since interpreters are impartial, they should be permitted to accept assignments that do not limit them to one role or one party. That is to say an interpreter could interpret attorney-client conferences for a defendant; could be hired by the prosecution to interpret for prosecution witnesses; and/or could be hired for in-court

proceedings in the same case without detriment to the canons of confidentiality and impartiality as stated in the code of ethics outlined in Supreme Court in Rule 41.

CONCLUSION:

TAPIT thanks the Honorable Judges of the Supreme Court for their attention to all of these comments. We realize that we have presented a great deal of detailed information for your consideration, but we believe that the discussion of Rule 13 policies in relation to interpreters can now be carried on with a clearer perspective. The main points we wish to emphasize, in sum, are that court interpreters have a unique position in the justice process. Credentialed interpreters are skilled experts, but unlike expert witnesses, investigators and attorneys, their connection to a given case, in terms of remunerated activities, is generally restricted to discrete and limited assignments performed in court or at attorney-client interviews. While they may occasionally obtain translation or other work related to a case, for the most part interpreters participation in court cases is very limited; if they are to survive, they must fill their working days with fully compensated activities at the highest fees they can obtain. Under current court conditions of unpredictability and inefficiency, this is already difficult. If current Rule 13 measures are adopted as stated, interpreters will be unable to justify continued dedication to court interpreting work. If court interpreters' pay is capped, cut in half for traveling, measured in tenths of an hour, lacking in any kind of minimum guarantee of time or wages, and dependent on attorney selection and invoicing practices, they will gradually abandon the justice system for greener fields. We ask that all of these limitations be removed, that our suggestions in this and our previous letter be implemented, and that consideration be given to a less cumbersome, more logical and efficient system for compensation.

Respectfully submitted,



1-23-04

Judith Kenigson Kristy, U.S. and Tenn. State Certified Court Interpreter,
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Instructor for the Tennessee State Court Interpreter Certification Program
Member of the Board of Directors and Treasurer of the National Association of Judiciary Interpreters and Translators (NAJIT)
Active Member of the American Translators Association (ATA)
Member of the Regional Network of North America (affiliate of the International Federation of Translators), Ethics Committee

ADDENDUM 1



Supreme Court of Tennessee

Administrative Office of the Courts
Nashville City Center, Suite 600
511 Union Street
Nashville, Tennessee 37219
615 / 741-2687 or 800 / 448-7970
FAX 615 / 741-6285

CORNELIA A. CLARK
Director

ELIZABETH A. SYKES
Deputy Director

Reimbursement Process for Spoken Foreign Language Interpreters or Translators in Indigent Cases

The use of a spoken foreign language interpreter or translator in an indigent matter is considered an attorney expense under Tennessee Supreme Court Rule 13, Section 4(a)(3)(K).¹

Effective September 8, 2003, the Administrative Office of the Courts will reimburse spoken foreign language interpreters and translators for services rendered in indigent matters for in-court time as well as out-of-court time.

The court order authorizing the use of the interpreter or translator should be dated prior to the first date of service. The attached claim for reimbursement should be completed by the interpreter and sent to appointed counsel for review and approval. Once reviewed and approved, appointed counsel should forward the invoice and court order to the above address, attention Andrea Ayers.

As with other attorney expenses pursuant to Supreme Court Rule 13, Section 4, invoices which exceed \$50 can be submitted on an interim basis.

¹ (K) Spoken Foreign Language Interpreters and Translators - (i) The reasonable costs associated with an interpreter's and/or translator's services will be compensated when a trial court finds, upon motion of counsel, or sua sponte when counsel has not been appointed, that an indigent party 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. (ii) This section rather than Tennessee Rule of Criminal Procedure 28 applies when an indigent party requires the services of a spoken foreign language interpreter or translator. (iii) Compensation rates for spoken foreign language interpreters shall not exceed the following: Certified Interpreters - \$50 per hour; Registered Interpreters - \$40 per hour; Non-credentialed Interpreters - \$30 per hour. For languages other than Spanish: if the court finds that these rates are inadequate to secure the services of a qualified interpreter, the court shall make written findings regarding such inadequacy and determine a reasonable rate for a qualified interpreter. (iv) Time spent traveling shall be compensated at no greater than fifty (50) percent of the approved hourly rate. (v) Mileage, lodging, meals, and parking expenses may be reimbursed as provided in Section 4(a)(3) (B), (C), (D), and (E). (vi) The court shall determine if it is reasonably necessary for documents to be translated as part of assuring adequate representation of a LEP person. Document translation shall be compensated at no more than twenty (20) cents per word. For languages other than Spanish: if the court finds that these rates are 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. (vii) Claims for compensation of interpreters and translators shall be submitted to the Administrative Office of the Courts on forms provided by the Administrative Office of the Courts.

ADDENDUM 2

UNITED STATES DISTRICT COURT
Northern District of Illinois, Chicago

NOTICE OF POSITION VACANCY

J.A. No. 2004-6
Vacancies: One
Position Title: Official Court Interpreter
Grade Range: 29-01 — 30-61
Salary Range: \$56,898 — \$109,326
Closing Date: February 20, 2004



Date: January 15, 2004
U.S. District Court, NDIL
Human Resources Office, Room 1574
219 South Dearborn Street
Chicago, Illinois 60604

24 Hour Job Line
(312) 435-7633

Qualified candidates must submit a copy of their Administrative Office Interpreter Certificate to be considered for the position.

POSITION OVERVIEW

The United States District Court for the Northern District of Illinois is seeking an Official Court Interpreter (Spanish/English). The interpreter will report to the Judicial Services Manager. The staff interpreter provides simultaneous interpreting services for the Court at all proceedings ranging from initial appearances and arraignments through motions, trials, and sentencings. The incumbent translates written documents that may be introduced into evidence, transmitted by the Court to other parties, used to promote community outreach, or for other purposes. The staff interpreter provides Spanish-language telephone and over-the-counter assistance to non-English speakers. Any additional assignments will not detract from the interpreter's ability to concentrate fully on interpretation tasks and responsibilities. Occasional travel may be required.

QUALIFICATIONS

Applicants must submit a copy of their Administrative Office Interpreter Certificate. Applicants must have and document a minimum of four years of relevant court interpreting experience. Applicants must also have experience in translating a variety of legal and other documents from English into Spanish and Spanish into English. The Court prefers applicants who have earned a bachelor's degree from an accredited college or university. Applicants must have well-developed interpersonal skills to deal professionally with district and magistrate judges, criminal defendants, witnesses, court personnel, members of the Court's bar, and the general public.

COMPENSATION

Compensation and classification level will be based on the work experience, qualifications, and salary history of the successful candidate. The Court will match or exceed the classification level of an applicant who is currently employed as a U.S. District Court interpreter in another district.

NOTICE TO APPLICANTS

Prior to appointment, the final candidate will be required to satisfactorily complete a criminal background investigation. The Court requires employees to adhere to a Code of Conduct which is available upon request. Direct deposit is required for payment of compensation for employees. The Court is a smoke-free environment. Job announcements and employment applications may be obtained by calling (312) 435-7633. Visit our web site at www.ilnd.uscourts.gov.

ADDENDUM 3

IN THE _____ COURT OF _____ COUNTY, TENNESSEE
DIVISION _____

STATE OF TENNESSEE

vs.

)
)
)
) Docket No. _____
)
)
)

ORDER APPOINTING FOREIGN LANGUAGE INTERPRETER

The defendant in this case has been charged with [insert offense(s)] and has been declared indigent by the Court. Based upon the Court's determination that [the defendant/a witness] in this case has a limited ability to understand and/or communicate in English, the Court finds that it is necessary to appoint a foreign language interpreter pursuant to Tennessee Supreme Court Rule 42.

Therefore, the Court hereby appoints [Insert name of specific interpreter. Do not list the name of the interpreter agency if the interpreter is being provided by an agency.], who is a [certified] [registered] [non-credentialed] court interpreter.* The interpreter will be compensated at the rate of [insert rate] per hour for his/her services and at half that rate for travel time.** The total fee may not exceed the amount of [insert amount].

Pursuant to Tennessee Supreme Court Rule 13, the interpreter will be compensated after submitting a claim form to the Administrative Office of the Courts (AOC). This claim form, which must be signed by either the Court or an attorney representing one of the parties in this case prior to its submission to the AOC, must differentiate between time spent in court and time spent traveling to and from court.

ENTERED this the ___ day of _____, 2004.

Judge

* You are required to appoint a certified court interpreter if one is reasonably available. If you appoint a registered or non-credentialed interpreter, your order must include additional findings pursuant to Rule 42, § 3.

** The hourly rates for interpreters are listed in Rule 13, § 4(a)(3)(K).