

# Supreme Court of Kentucky

2004-3

## AMENDED ORDER

**IN RE:           AMENDMENTS TO THE RULES OF ADMINISTRATIVE PROCEDURE  
                  AP PART IX. PROCEDURES FOR APPOINTMENT OF INTERPRETERS**

**It is HEREBY ORDERED that Part IX. of the Rules of Administrative Procedure are hereby deleted in their entirety and shall be replaced by the following:**

### **Section 1. Statement of Purpose**

Pursuant to KRS 30A.405(2), the Supreme Court is required to prescribe standards for the appointment, qualifications, duties, and other matters relating to interpreters.

### **Section 2. Definitions**

As used throughout this Rule, the following definitions shall apply:

- (1) "AOC" shall mean the Administrative Office of the Courts.
- (2) "Acceptable Criminal History" shall mean a criminal history having no conviction of any felony, or of a misdemeanor involving moral turpitude, dishonesty, false statements, or fraud.
- (3) "Appointing/Requesting Authority" shall mean the Judge, Chief Judge, Circuit Court Clerk, Supreme Court Clerk, Clerk of the Court of Appeals, AOC Manager, Pretrial Manager, CDW Manager, or Drug Court Manager, or their designee, who appoints/obtains an interpreter to provide services for a court proceeding or direct services to the Court of Justice.
- (4) "AOC Directory" shall mean the listing of Certified/Licensed and Qualified Level I Freelance Interpreters and Staff Interpreters who have been approved by the AOC for interpreting in a court proceeding and providing

direct services to the Court of Justice. Requirements for approval and entry in the Directory are contained in these rules.

- (5) "Contact person" means the individual, designated by the Chief Circuit Judge or Chief District Judge of the county or counties, to be responsible for communicating the need for interpreting services to the AOC's Court Interpreting Services Division. The "contact person" may be a judge's secretary, court administrator, or other Court of Justice employee.
- (6) "Court Proceeding" shall mean a civil, criminal, domestic relations, juvenile, traffic or other in-court proceeding or, when appropriate, a conference between a deaf or hard of hearing/non-English speaking person and an interpreter that occurs outside the courtroom, hearing room or chambers without the judge that is ancillary to the court proceedings.
- (7) "Court of Justice" shall mean the Kentucky Court of Justice.
- (8) "Court of Justice entity" shall mean any office under the purview of the Judicial Branch.
- (9) "Criminal History" shall mean the KYCourtNet disposition report provided by the AOC.
- (10) "Direct Services" shall mean out-of-court interpreting services provided to a Court of Justice entity which enables the entity to carry out its duties and responsibilities as directed by statute and/or rule of court.
- (11) "Freelance Interpreter" is a contract interpreter who is not employed by the Court of Justice as an interpreter. A Freelance Interpreter must meet the certification/qualification criteria as noted in these rules. The Freelance Interpreter is only scheduled when a Staff Interpreter is not available.
- (12) "Staff Interpreter" is an interpreter who is employed by the Court of Justice to work as an interpreter for court proceedings and direct services. The Staff Interpreter shall be certified or licensed. The Staff Interpreter shall be considered first when scheduling interpreting services for court proceedings and direct services. The Staff Interpreter shall be scheduled

for trials and grand jury proceedings, and Freelance Interpreters may only be used for such proceedings when Staff Interpreters are not available.

- (13) "Uniform Payment Rate" is the hourly pay rate and travel rate given to Freelance Interpreters for services rendered while interpreting for the Court of Justice. This rate shall be set by the AOC Director.

### **Section 3. Oath**

- (1) Before accepting assignment as a Freelance Interpreter in a court proceeding, or at the time of employment as a Staff Interpreter, an individual shall have read the Code of Professional Responsibility for Interpreters, KRE 604 and KRS 422A.0604, and taken the oath as set forth in § 3(2). A copy of the oath shall be signed by the Freelance Interpreter or Staff Interpreter and kept on file at the AOC Court Interpreting Services Division.
- (2) The following oath shall be administered to all Freelance Interpreters and Staff Interpreters in accord with the provisions of this section:

Do you solemnly swear or affirm you have the knowledge, skills, experience, and/or education to interpret this proceeding, and you will interpret accurately, completely and impartially, using your best skill and judgment in accordance with the standards prescribed by law and any Code of Ethics under which you have been certified; and the Code of Professional Responsibility for Interpreters, and will make a true translation pursuant to KRE 604 and KRS 422A.0604.

### **Section 4. Appointment of and Requests for Interpreters**

- (1) Pursuant to KRS 30A.410 to .435, in any court proceeding the court shall appoint an interpreter for each party, juror, or witness as follows:
  - (a) Persons who, because of deafness or who are hard of hearing:
    - (i) Use sign language such as signed English, American Sign Language, or gestures; or
    - (ii) Are oral/aural and use interpreters and assistive technology as their primary mode of communication;

- (b) Persons who cannot communicate in English; and,
  - (c) Any other person who has, in the opinion of the court, another type of disability which will prevent said persons from properly understanding the nature of the proceedings or will substantially prejudice his or her rights.
- (2) The Court of Justice shall provide an interpreter for direct services upon the request of an individual as described in subsection (1) above.
  - (3) The Appointing/Requesting Authority shall not conduct hearings or otherwise attempt to perform services using written language as the mode of communication, except to determine that interpreter services are required.

#### **Section 5. Responsibility for Obtaining an Interpreter**

- (1) Each county shall appoint a contact person to be responsible for communicating the need for Staff Interpreter or Freelance Interpreter services to the AOC Court Interpreting Services Division. The contact person may be a judge's secretary, circuit clerk or deputy circuit clerk, court administrator, or any person currently employed by the Court of Justice.
- (2) Each Court of Justice entity is responsible for notifying the contact person or AOC of the need for scheduling interpreters as necessary for direct services.
- (3) The Court or Court of Justice entity shall make efforts to determine if a conflict exists for an interpreter when scheduling by providing the interpreter with the party's name, county, case type, charge(s) and charge(s) date(s) (if any).
- (4) If there is difficulty in obtaining and scheduling an interpreter, the contact person shall, if possible, notify the AOC at least two (2) weeks prior to the need for the interpreting service to obtain and schedule the interpreter.

- (5) All cases requiring interpreters shall be called at the end of the court docket or at another appropriate time during the docket when they can be called as a group in an effort to reduce the cost of the interpreting service and ensure the interpreter is not unduly fatigued.
- (6) In an effort to promote judicial economy and enhance the judicial process for interpreting services in counties where said services are required on a weekly basis, the contact person or requesting authority should generate an interpreting docket(s) where all such cases may be heard, and Staff Interpreters and Freelance Interpreters should not wait more than thirty (30) minutes to interpret.
- (7) All efforts shall be made to schedule a Staff Interpreter for court proceedings and direct services. If a Staff Interpreter is not available, then an appropriately qualified Freelance Interpreter may be scheduled.
- (8) Absent a showing of extraordinary circumstances, no person who is a family member or friend of the person needing interpretive services shall be appointed/obtained to provide said services.
- (9) Pretrial Services, Court Designated Workers, and other pre-court entities, shall be required, when practical, to inform the contact person when a defendant requires interpreting services at a court proceeding.

#### **Section 6. Team Interpreting Requirements**

- (1) When interpretation for two or more hours is required without breaks, a team of two interpreters should be appointed. Additional two-person teams may be required if more than one person requires services at the same time.
- (2) Team members should rotate every thirty minutes to enhance accuracy and prevent fatigue.

#### **Section 7. Interpreters for the Deaf or Hard of Hearing**

Any person appointed/obtained as a Staff Interpreter or Freelance Interpreter pursuant to these rules shall be qualified by training or experience to interpret

effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(1) Qualifications

- (a) In all proceedings in the Courts of Kentucky, Staff Interpreters and Freelance Interpreters shall be certified with National Association of the Deaf ("NAD") Levels IV or V; or Registry of Interpreters for the Deaf ("RID") levels Certificate of Interpretation ("CI"), Certificate of Transliteration ("CT"), Interpretation Certificate ("IC"), Transliteration Certificate ("TC"), Interpretation/Transliteration Certificate ("IC/TC"), Comprehensive Skills Certificate ("CSC"), Oral Interpreting Certificate ("OIC"), or Technology, Education and Training Unit (cued speech) TSC:4 (Expert), or Specialist Certificate: Legal ("SC:L").
- (b) Staff Interpreters and Freelance Interpreters for the Deaf and Hard of Hearing who are listed in the AOC Directory shall be fully licensed pursuant to KRS 309.301, and shall have the same certification levels described herein above. Interpreters with Certified Deaf Interpreter-Provisional ("CDI-P") or Reverse Skills Certified ("RSC") certification may be obtained to serve as needed by either party to facilitate communication.
- (c) In order to provide services to the Court of Justice, a Freelance Interpreter is required to be listed in the AOC Directory as set forth in § 9.
- (d) Staff Interpreter and Freelance Interpreters shall be required to obtain the hours of court observation or interpreting as required by the AOC, and shall be required to complete the training as required by the AOC.
- (e) Licensed Interpreter identification cards shall be inspected by the contact person and Appointing/Requesting Authority to determine an interpreter's level of certification and any expiration date.

(f) Prior to providing services in a court proceeding, the Freelance Interpreter shall, after reading the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, be administered the oath in § 3.

(2) Other Interpreting Service to be Provided.

Should the deaf or hard of hearing person also have minimal language competency, a secondary disability, and/or extensive use of his/her own gestural system such that a qualified interpreter is unfamiliar with the uniqueness of the communication, the court shall appoint a trained or experienced deaf relay interpreter in addition to the qualified interpreter who shall work with the qualified interpreter in providing interpretation.

(3) Challenge to Eligibility of Interpreter.

Pursuant to KRS 30A.400(3), if the eligibility of the person to receive the services of an interpreter is challenged, the judge may, for good cause shown, hold a hearing to determine the bona fide need for interpretive services. If it is determined the person is not entitled to interpretive services, then no portion of these rules shall apply to said person.

(4) When a party does not request an interpreter, but appears to be deaf or hard of hearing, the court shall conduct a brief voir dire to determine whether or not an interpreter is needed.

(5) Preliminary Inquiry into Ability of Interpreter to Communicate with a Person Requiring Service.

Before commencing the interpretive process, the appointing/requesting authority shall make a preliminary determination that the interpreter is able to readily communicate with the person needing interpretive services and is able to accurately repeat and translate the statements of that person.

## **Section 8. Spoken Language Interpreters**

Any person appointed/obtained to interpret for the Court of Justice as a Staff Interpreter or Freelance Interpreter shall be qualified by training or experience to

interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

If a certified Freelance Interpreter is not reasonably available, a Qualified Level I Freelance Interpreter may be obtained.

If no Qualified Level I Freelance Interpreter is reasonably available, as a last resort, a Qualified Level II Freelance Interpreter may be obtained.

No individual who has worked as a Staff Interpreter or Freelance Interpreter before adoption of these requirements shall be automatically certified or qualified as defined in this section.

The AOC shall have the authority to establish policies and procedures for time limits and scoring standards for the certification/qualification process. The qualifications for certified and qualified interpreters are set forth in (1) and (2) below.

(1) Qualifications for Certified Interpreters

(a) Certified Staff and Freelance Interpreters' requirements:

- (i) Successfully passed the requisite examination(s) administered by AOC.
- (ii) Obtained the hours of court observation or work as required by the AOC.
- (iii) Be listed in the AOC Directory as set forth in § 9.
- (iv) Prior to providing services in a court proceeding, the interpreter shall, after reading the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, be administered the oath contained in § 3.

(b) Equivalent Certified Staff and Freelance Interpreters' requirements:

- (i) Have successfully passed an examination(s) of certification from either the Administrative Office of the United States Courts or any entity administering a National Center for State Courts Interpreter Consortium Exam, or other examinations that met the AOC's standards for certification.



- (ii) Be listed in the AOC Directory as set forth, *infra*, in § 9.
  - (iii) Obtained the hours of court observation or work required by the AOC.
  - (iv) Prior to providing services in a court proceeding, the interpreter shall, after reading the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, be administered the oath required in § 3.
- (c) Renewal of Spoken Language Certification.
- (i) A Certified Staff and Freelance Interpreter shall be required to maintain his/her certified status. Every three (3) years after certification is obtained, the Certified Interpreter shall verify that he/she has:
    - (1) Complied with the continuing education requirements established by the AOC.
    - (2) Complied with the Code of Professional Responsibility.
    - (3) Continued to be listed in the AOC Directory as set forth in § 9.
    - (4) Provided the AOC with current address and telephone information as required in § 9.
    - (5) Obtained the hours of court observation or work as required by the AOC.
  - (ii) It is the responsibility of the certified Staff or Freelance Interpreter to renew his or her certification at the appropriate three (3) year time period. Renewal forms may be obtained at the AOC and should be submitted at least 30 days prior to expiration of certification to avoid a lapse in certification.
  - (iii) Lapse of Spoken Language Certification.

If a certified Staff or Freelance Interpreter has allowed his/her certification to lapse, the interpreter shall be required to successfully complete another Kentucky Certified Court Interpreter Examination; and, to successfully complete the remaining requirements to obtain certification.

(2) Qualifications for Qualified Level I and Level II Interpreters.

(a) Qualified Level I Interpreter requirements:

- (i) Ability to identify the modes (consecutive, simultaneous and sight translation) of interpreting and when to use same, as evidenced by completion of the Orientation Workshop and brief Voir Dire.
- (ii) Successfully passed the requisite examination(s) administered by the AOC.
- (iii) Be listed in the AOC Directory as set forth in § 9.
- (iv) Obtained the hours of court observation or work as required by the AOC.
- (v) Prior to providing services in a court proceeding, the interpreter shall, after reading the Code of Professional Responsibility, KRE 604 and KRS422A.0604, be administered the oath in § 3.

(b) Qualified Level II Interpreter requirements:

- (i) Ability to interpret court proceedings or direct services from English to the required language and from the required language to English.
- (ii) Prior to providing services in a court proceeding, the interpreter shall, after reading the Code of Professional Responsibility, KRE 604 and KRS 422A.0604, be administered the oath in § 3.

A Qualified Level II interpreter should be obtained from universities, schools, or other resources known in the community.

- (3) When a party does not request an interpreter but appears to have limited ability to communicate in English, the court shall conduct a brief voir dire to determine whether or not an interpreter is needed.

- (4) Preliminary Inquiry into Ability of Interpreter to Communicate with Person Requiring Service:

Before commencing the interpretive process, the appointing/requesting authority shall make a preliminary determination that the interpreter is able to readily communicate with the person needing interpretive services and is able to accurately repeat and translate the statements of that person.

- (5) Professional Telephone Interpreting Services for Non-English Speaking Persons.

- (a) Interpreters may be obtained to provide services by telephone for brief, non-evidentiary proceedings, including pre-trial interviews, initial appearances, arraignments, and for direct services for the Court of Justice when necessary.
- (b) The appointing/requesting authority shall ensure the non-English speaking party hears all statements made by the participants if utilizing telephone equipment. If telephone equipment is unavailable for simultaneous interpreting, the appointing/requesting authority shall allow consecutive interpretation of each sentence.
- (c) Written documents which would normally be orally translated by the interpreter shall be read aloud to allow full oral translation of the material by the interpreter.
- (d) AOC shall provide the Court of Justice with instructions necessary for obtaining telephonic interpretive services through contracted telephone interpreting businesses. Only telephonic interpretive services contracted by the AOC shall be used.

## **Section 9. AOC Directory of Providers**

AOC shall maintain a Directory of Providers. Any interpreter who wishes to provide services to the Court of Justice shall make application to the AOC. Only interpreters possessing qualifications set forth in § 7 and § 8 herein shall be listed in the AOC Directory. Additionally, the following procedures shall be required:

- (1) All interpreters shall submit a completed AOC Directory application form(s). The AOC shall obtain a current criminal history on each applicant. An acceptable criminal history shall be required of all interpreter applicants.
- (2) Interpreters who apply for entry into the AOC Directory shall have an acceptable criminal history, complete an orientation session presented by the AOC and attend any other training required by the AOC, or have completed comparable training as approved by the AOC. Interpreters listed in the AOC Directory may be required to take continuing education courses conducted or approved by the AOC concerning legal issues and the court system.
- (3) Freelance Interpreters shall be required to update their personal information annually using the forms prescribed by AOC. An acceptable criminal history shall be required for continued entry in the AOC Directory. The application shall be submitted at least 30 days prior to expiration of the prior year's criminal history report in order to assure timely processing.
- (4) Failure of a Freelance Interpreter to annually update personal information will result in the suspension of the interpreter from Court of Justice interpreting duties until compliance with this requirement is met.

#### **Section 10. Technological Assistance**

- (1) Pursuant to KRS 30A.435, a person who is deaf, hard of hearing, or speech impaired may elect to use assistive technology in lieu of or in addition to the services of an interpreter.
- (2) Pursuant to KRS 30A.435, in the performance of interpreter duties for the Court of Justice, the interpreter may utilize electronic recording, foreign language translation, and other equipment.
  - (a) If the equipment sought to be used is of the type approved by the AOC, no further approval is required.

- (b) If the equipment has not been approved by the AOC, the use of the equipment for court or a court-related matter shall be approved in writing, and in advance, by the Director of the AOC or his/her designee.
- (c) If the equipment is of a type which has been disapproved by the AOC, it shall not be used in any court or court-related matter.
- (d) All equipment utilized in court or court-related matters shall be in proper mechanical and working order and shall be fit for the intended use.

#### **Section 11. Removal of Staff Interpreter and Freelance Interpreter**

(1) **Removal Due to Communication Problems.**

Pursuant to KRS 30A.410(2), upon request of the person for whom the interpreter is appointed or on the court's own motion, an interpreter may be removed for inability to communicate with the person, or if for good cause another interpreter is desired by the person for whom the interpreter is appointed, or because the services of an interpreter are not desired by the person.

(2) **Removal for Good Cause Shown.**

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

- (a) Inability to interpret adequately, including where the interpreter or party reports such inability;
- (b) Knowingly and willfully making false interpretation while serving in an official capacity;
- (c) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
- (d) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Interpreters; and
- (e) Failure to appear as scheduled without good cause.

#### **Section 12. Removal from AOC Directory of Freelance Interpreters**

- (1) The Director of the AOC shall have the authority to remove a Freelance Interpreter from the AOC Directory for good cause which may include, but is not limited to the following misconduct:
  - (a) Knowingly and willfully making false interpretation while serving in an official capacity;
  - (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
  - (c) Failing to follow other standards prescribed by law and the Code of Professional Responsibility for Interpreters;
  - (d) Failure to appear as scheduled without good cause;
  - (e) Failure to follow the Uniform Payment Rate; and
  - (f) Requesting payment from a party for services to the Court of Justice.
- (2) Any allegation of a misconduct found in this section shall be reported to the AOC Director or designee, for purposes of review, for suspension/removal from the AOC Directory, if necessary.
- (3) Freelance Interpreters being suspended/removed from the AOC Directory by the AOC Director shall be given notice by certified mail, return receipt requested, of the Director's action taken and shall be given an opportunity to request reconsideration within ten (10) days of receipt of the notice. The AOC shall maintain a permanent list of individuals and agencies removed from the list.

### **Section 13. Disciplinary Action of Staff Interpreters**

The Personnel Policies of the Court of Justice shall apply to all Staff Interpreters. Furthermore, the AOC Director or designee shall have the authority to take immediate action for misconduct of the Staff Interpreter, including but not limited to the following misconduct:

- (1) Knowingly and willfully making false interpretation while serving in an official capacity;
- (2) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;

- (3) Failing to follow other standards prescribed by law and the Code of Professional Responsibility;
- (4) Failure to appear as scheduled without good cause; and
- (5) Requesting payment from a party.

**Section 14. Compensation of Interpreters by the Court of Justice**

- (1) The Court of Justice shall be responsible for payment, including ordinary and reasonable expenses, for interpretive services for court proceedings and direct services provided to a Court of Justice entity.
- (2) Pursuant to KRS 30A.415(2), in any case in which the interpreter is providing services out of court, even though that service relates to a pending court case, the person or agency requiring the services of the interpreter shall be responsible for payment.
- (3) The AOC shall not pay for interpreting services for non-Court of Justice entities, even when a party is ordered by the Court, or referred by a Court of Justice entity, to obtain services provided by the non-Court of Justice entity.
- (4) Court of Justice compensation for Freelance Interpreters' services shall be established by the Director of the AOC as a statewide Uniform Payment Rate. Refusal to accept and adhere to the Uniform Payment Rate shall be grounds for removal from the AOC Directory.
- (5) For payment as authorized under these rules, the Freelance Interpreter shall provide to AOC an AOC approved statewide form, Statement for Interpreting Services, which shall contain a detailed invoice of services performed, the caption of the case, case number, and county; the recipient(s) involved; the type of services; and the time accrued. The invoice must be signed by the appointing/requesting authority and by the Freelance Interpreter, and shall be submitted to the AOC no later than 7 days after the service has been provided. AOC shall be responsible for using the Statement for Interpreting Services form to analyze and report statistics pertinent to interpreter utilization.
  - (a) For purposes of compensation of the Freelance Interpreter, the AOC shall limit hourly rates to begin no more than fifteen (15)

minutes prior to the scheduled time in which interpreting services are being rendered. Hourly rates shall end upon the completion of the assigned interpreting service(s). Further, payment shall be made for time spent interpreting and waiting to interpret in court proceedings or direct services scheduled for the provision of freelance interpreting services. If the interpreter provides services for multiple cases on the same docket, all cases shall be reported on the same AOC Statement for Interpreting Services form. AOC shall round any "less than one-quarter hour increment" up to the next quarter hour.

- (b) Compensation for travel of Freelance Interpreters shall be established by the AOC Director as part of the Uniform Payment Rate.
- (c) These policies, including those on compensation, shall apply to Court of Justice employees who serve as Freelance Interpreters. Court of Justice employees must, however, utilize annual or compensatory leave for time taken from their regular Court of Justice employment responsibilities while serving as Freelance Interpreters.
- (d) Cancellation and no show policies shall be established by the AOC Director as part of the Uniform Payment Rate.
- (e) Compensation shall not be made to a Freelance Interpreter for time spent in preparation for scheduled interpretive services for a court proceeding or a direct service, except under extraordinary circumstances as determined and approved by the AOC Director or designee.
- (f) Staff Interpreters or Freelance Interpreters shall not request compensation from parties, witnesses or spectators for services provided in a court proceeding for which AOC is responsible for payment.




- (g) Staff Interpreters shall receive salaries and benefits according to the Court of Justice Personnel Policies, and travel shall be compensated according to the Court of Justice Travel Regulations.

**Section 15. AOC Authority to Implement Court Interpreting Services Division**

The AOC shall have the authority to establish additional policies or internal procedures relating to the administration of the Court of Justice interpreting services as authorized/established by the AOC Director. The AOC shall have the authority to hire Staff Interpreters to be employed by the AOC Court Interpreting Services Division.

This Order shall be effective December 1, 2004 and until further Order.

Entered this the 24<sup>th</sup> day of November, 2004.

  
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CHIEF JUSTICE