

**THE COURT OF APPEALS OF MARYLAND
STANDING COMMITTEE ON RULES OF PRACTICE AND PROCEDURE**

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September 25, 2018

The Honorable Mary Ellen Barbera,
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The Court of Appeals of Maryland
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Your Honors:

The Rules Committee submits this brief Supplement to its One Hundred Ninety-Sixth Report. The Supplement comprises what essentially are style changes to the version of Rule 1-333 and the Appendix attached hereto included in Category Two of the Report, as well as a conforming amendment to Rule 2-415.

Rule 1-333 and the Appendix deal with court interpreters. The several changes included in the Report had been recommended by the Court Access and Community Relations Committee of the Judicial Council. On the morning of the Rules Committee meeting, an additional change was requested and approved -- to substitute "qualified interpreter" for "interpreter eligible for certification" in the definition section of the Rule. Unfortunately, through an administrative error, that last-minute change was not included in the draft sent to our Style Subcommittee for final editing and therefore was not included in the version sent to the Court. That change, however, requires a re-lettering of the definition section of Rule 1-333 and the restyling of a few other provisions. Those are shown



principally on pages 5, 6, and 7 of this Supplement. The Rules Committee apologizes for this oversight.

Respectfully submitted,

Alan M. Wilner
Chair

AMW:cmp

cc: Bessie M. Decker, Clerk

MARYLAND RULES OF PROCEDURE
TITLE 1 - GENERAL PROVISIONS
CHAPTER 300 - GENERAL PROVISIONS

AMEND Rule 1-333 by deleting the definition of "interpreter eligible for certification"; by replacing the definition of "non-certified interpreters" with a definition of "non-registry interpreter"; in subsection (a)(4), by adding language referring to an interpreter who has not completed the Maryland Judiciary's Orientation Program and is not listed on the Court Interpreter Registry; in subsection (a)(6), by adding a definition of "qualified interpreter" that incorporates the provisions of the deleted term "interpreter eligible for certification," with stylistic changes; in subsection (a)(7), by adding a new definition of the term "registry"; in subsection (c)(1), by revising terminology to refer to qualified, registry, and non-registry interpreters; in subsection (c)(2)(A), by adding the language "except as provided in subsection (c)(2)(B) of this Rule," and by adding language referring to the interpreter's skills and qualifications, to any potential conflicts or other ethical issues, and to the court permitting parties to participate in the inquiry; by adding a subsection (c)(2)(B) allowing the court to dispense with a certain inquiry if the interpreter is a court-employed staff interpreter; in the

Committee note after subsection (c)(2)(B), by deleting the references to promulgation by the Maryland Judicial Conference Advisory Committee on Interpreters and to publication of the inquiry questions in a certain Report and by adding the word "included"; in subsection (c)(3)(A), by deleting language referring to appointment by the court, to swearing or affirming under the penalty of perjury, and to subscribing an oath and by adding the language "take an oath"; by adding a new subsection (c)(3)(B) and a Committee note following it pertaining to oaths by court-employed staff interpreters; and by making stylistic changes, as follows:

Rule 1-333. COURT INTERPRETERS

(a) Definitions

In this Rule, the following definitions apply except as otherwise expressly provided or as necessary implication requires:

(1) Certified Interpreter

"Certified Interpreter" means an interpreter who is certified by:

- (A) the Maryland Administrative Office of the Courts;
- (B) any member of the Council for Language Access

Coordinators, provided that, if the interpreter was not approved

by the Maryland member of the Council, the interpreter has successfully completed the orientation program required by the Maryland member of the Council;

Committee note: The Council for Language Access Coordinators is a unit of the National Center for State Courts.

(C) the Administrative Office of the United States Courts;
or

(D) if the interpreter is a sign language interpreter, the Registry of Interpreters for the Deaf or the National Association of the Deaf.

(2) Individual Who Needs an Interpreter

"Individual who needs an interpreter" means a party, attorney, witness, or victim who is deaf or unable adequately to understand or express himself or herself in spoken or written English and a juror or prospective juror who is deaf.

(3) Interpreter

"Interpreter" means an adult who has the ability to render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to what is stated or written and without explanation.

~~(4) Interpreter Eligible for Certification~~

~~"Interpreter eligible for certification" means an interpreter who is not a certified interpreter but who:~~

~~(A) has submitted to the Maryland Administrative Office of the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and a statement swearing or affirming compliance with the Maryland Code of Conduct for Court Interpreters;~~

~~(B) has successfully completed the Maryland Judiciary's orientation workshop on court interpreting; and~~

~~(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than \$500 or imprisonment for more than six months unless the interpreter has been pardoned or the conviction has been overturned or expunged in accordance with law.~~

~~(5)(4) Non-certified Interpreters Non-Registry Interpreter~~

~~"Non-certified Non-registry interpreter" means an interpreter other than a certified interpreter or an interpreter eligible for certification who has not completed the Maryland Judiciary's orientation program and is not listed on the Court Interpreter Registry.~~

~~(6)(5) Proceeding~~

~~"Proceeding" means (A) any trial, hearing, argument on appeal, or other matter held in open court in an action, and (B) an event not conducted in open court that is in connection with an action and is in a category of events for which the court is~~

required by Administrative Order of the Chief Judge of the Court of Appeals to provide an interpreter for an individual who needs an interpreter.

(6) Qualified Interpreter

"Qualified Interpreter" means an interpreter who is not a certified interpreter but who:

(A) has submitted to the Maryland Administrative Office of the Courts a completed Maryland State Judiciary Information Form for Spoken and Sign Language Court Interpreters and an oath that the interpreter will comply with the Maryland Code of Conduct for Court Interpreters;

(B) has successfully completed the Maryland Judiciary's orientation workshop on court interpreting; and

(C) does not have, in a state or federal court of record, a pending criminal charge or conviction on a charge punishable by a fine of more than \$500 or imprisonment for more than six months unless the interpreter has been pardoned or the conviction has been overturned or expunged in accordance with law.

(7) Registry

"Registry" means the Court Interpreter Registry, a listing of certified and qualified interpreters who have fulfilled the requirements necessary to receive assignments under the Maryland Court Interpreter Program.

~~(7)~~(8) Victim

"Victim" includes a victim's representative as defined in Code, Criminal Procedure Article, §11-104.

(b) Spoken Language Interpreters

(1) Applicability

This section applies to spoken language interpreters. It does not apply to sign language interpreters.

Cross reference: For the procedure to request a sign language interpreter, see Rule 1-332.

(2) Application for the Appointment of an Interpreter

An individual who needs an interpreter shall file an application for the appointment of an interpreter. To the extent practicable, the application shall be filed not later than 30 days before the proceeding for which the interpreter is requested on a form approved by the State Court Administrator and available from the clerk of the court and on the Judiciary website. If a timely and complete application is filed, the court shall appoint an interpreter free of charge in court proceedings in accordance with section (c) of this Rule.

(3) When Additional Application Not Required

(A) Party

If a party who is an individual who needs an interpreter includes on the application a request for an interpreter for all proceedings in the action, the court shall

provide an interpreter for each proceeding without requiring a separate application prior to each proceeding.

Committee note: A nonparty who may qualify as an individual who needs an interpreter must timely file an application for each proceeding for which an interpreter is requested.

(B) Continued or Postponed Proceedings

Subject to subsection (b)(5) of this Rule, if an individual who needs an interpreter filed a timely application and the proceeding for which the interpreter was requested is continued or postponed, the court shall provide an interpreter for the continued or postponed proceeding without requiring the individual to file an additional application.

(4) Where Timely Application Not Filed

If an application is filed, but not timely filed pursuant to subsection (b)(2) of this Rule, or an individual who may qualify as an individual who needs an interpreter appears at a proceeding without having filed an application, the court shall make a diligent effort to secure the appointment of an interpreter and may either appoint an interpreter pursuant to section (c) of this Rule or determine the need for an interpreter as follows:

(A) Examination on the Record

To determine whether an interpreter is needed, the court, on request or on its own initiative, shall examine a

party, attorney, witness, or victim on the record. The court shall appoint an interpreter if the court determines that:

(i) the party does not understand English well enough to participate fully in the proceedings and to assist the party's attorney, or

(ii) the party, attorney, witness, or victim does not speak English well enough to readily understand or communicate the spoken English language.

(B) Scope of Examination

The court's examination of the party, witness, or victim should include questions relating to:

(i) identification;

(ii) active vocabulary in vernacular English; and

(iii) the court proceedings.

Committee note: Examples of matters relating to identification are: name, address, birth date, age, and place of birth. Examples of questions that elicit active vocabulary in vernacular English are: How did you come to court today? What kind of work do you do? Where did you go to school? What was the highest grade you completed? What do you see in the courtroom? Examples of questions relating to the proceedings are: What do you understand this case to be about? What is the purpose of what we are doing here in court? What can you tell me about the rights of the parties to a court case? What are the responsibilities of a court witness? Questions should be phrased to avoid "yes or no" replies.

(5) Notice When Interpreter Is Not Needed

If an individual who needs an interpreter will not be present at a proceeding for which an interpreter had been

requested, including a proceeding that had been continued or postponed, the individual, the individual's attorney, or the party or attorney who subpoenaed or otherwise requested the appearance of the individual shall notify the court as far in advance as practicable that an interpreter is not needed for that proceeding.

(c) Selection and Appointment of Interpreters

(1) Certified Interpreter Required; Exceptions

When the court determines that an interpreter is needed, the court shall make a diligent effort to obtain the services of a certified interpreter. If a certified interpreter is not available, the court shall make a diligent effort to obtain the services of ~~an~~ a qualified interpreter ~~eligible for certification~~. The court may appoint a ~~non-certified~~ non-registry interpreter only if ~~neither a certified interpreter nor an interpreter eligible for certification~~ a registry interpreter is not available. An individual related by blood or marriage to a party or to the individual who needs an interpreter may not act as an interpreter.

Committee note: The court should be cautious about appointing a ~~non-certified~~ non-registry interpreter and should consider carefully the seriousness of the case and the availability of resources before doing so.

(2) Inquiry of Prospective Interpreter

(A) Except as provided in subsection (c) (2) (B) of this

Rule, Before before appointing an interpreter under this Rule, the court shall conduct an appropriate inquiry of the prospective interpreter on the record with respect to the interpreter's skills and qualifications and any potential conflicts or other ethical issues. The court may permit the parties to participate in that inquiry.

(B) If the interpreter is a court-employed staff interpreter, the court may dispense with any inquiry regarding the interpreter's skills and qualifications.

Committee note: The court should use the Court Interpreter Inquiry Questions ~~promulgated by the Maryland Judicial Conference Advisory Committee on Interpreters and published, together with suggested responses, in the October 20, 1998 Report of the Advisory Committee.~~ The questions and suggested responses are reprinted included as an Appendix to these Rules.

(3) Oath

(A) Generally

~~Upon appointment by the court and before~~ Before acting as an interpreter in ~~the~~ a proceeding, ~~the~~ an interpreter shall ~~swear or affirm under the penalties of perjury~~ take an oath to interpret accurately, completely, and impartially and to refrain from knowingly disclosing confidential or privileged information obtained while serving in the proceeding. If the interpreter is to serve in a grand jury proceeding, the interpreter also shall ~~take and subscribe~~ an oath that the interpreter will keep secret all matters and things occurring before the grand jury.

(B) Court-employed Staff Interpreters

Upon employment, a court-employed staff interpreter shall make the prescribed oaths in writing and file them with the clerk of each court in which the interpreter will serve and with the Administrative Office of the Courts. The oath shall be applicable to all proceedings in which the interpreter is called to serve and need not be repeated on each occasion.

Committee note: Court-employed staff interpreters often are in and out of court, substituting for other court-employed staff interpreters, and the need for an oath may be overlooked. The intent of subsection (c)(3)(B) is to assure that each applicable prescribed oath has been made.

(4) Multiple Interpreters in the Same Language

At the request of a party or on its own initiative, the court may appoint more than one interpreter in the same language to ensure the accuracy of the interpretation or to preserve confidentiality if:

(A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

Committee note: To ensure accurate interpretation, an interpreter should be granted reasonable rest periods at frequent intervals.

(d) Removal From Proceeding

A court interpreter may be removed from a proceeding by a judge or judicial appointee within the meaning of Rule 18-200.3 (a)(1), who shall then notify the Maryland Administrative Office of the Courts that the action was taken.

(e) Compensation of Court Interpreters

Compensation for interpreters shall be in accordance with a schedule adopted by the State Court Administrator consistent with Code, Criminal Procedure Article, §§ 1-202 and 3-103 and Code, Courts Article, § 9-114.

Committee note: Code, Courts Article, § 9-114 provides for the appointment of interpreters for certain parties and witnesses, generally. Code, Criminal Procedure Article, §§ 1-202 and 3-103 provide for the appointment of interpreters for certain defendants in criminal proceedings and proceedings under Title 3 of that Article.

Source: This Rule is derived from former Rule 16-819 (2014).

REPORTER'S NOTE

The Rules Committee recommends amendments to Rule 1-333 based upon proposals developed by the Court Access and Community Relations Committee ("CACRC") of the Maryland Judicial Council.

Current Rule 1-333 refers to two kinds of interpreters - "certified interpreters" and "interpreters eligible for certification." The CACRC has removed the designation of "interpreter eligible for certification" and replaced it with the term "qualified interpreter." The recommended designations are "certified interpreters," "qualified interpreters," "non-registry interpreters," and "registry interpreters." These are defined in section (a). "Qualified interpreters" are not "certified interpreters," but they have submitted to the Administrative Office of the Courts an information form and have completed the Judiciary's orientation workshop on court interpreting. They also are required not to have certain

criminal convictions or charges pending against them. The CACRC has added the term "Registry," which is the Court Interpreter Registry consisting of certified and qualified interpreters who have fulfilled the requirements necessary to receive assignments under the Maryland Court Interpreter Program. In place of the term "non-certified interpreter," the Committee has substituted the term "non-registry interpreter." Non-registry interpreters are usually obtained from other agencies.

In subsection (c)(2), the CACRC added language providing that the court may dispense with an inquiry regarding an interpreter's skills and qualifications if the interpreter is a court-employed staff interpreter. This is intended to streamline the inquiry process.

The CACRC reviewed Rule 1-333 to evaluate changes to address whether and when a trial court is to administer an oath to a court interpreter. This matter was discussed by the Language Access Subcommittee and the full CACRC. The CACRC recommends that the court continue to administer the interpreter's oath at the commencement of court proceedings but that there be an exception for staff interpreters who will record applicable oaths with the Maryland Administrative Office of the Courts and the courts in which the interpreter will serve. The CACRC's recommended changes are shown in a new subsection (c)(3)(B) of Rule 1-333.

MARYLAND RULES OF PROCEDURE

APPENDIX: COURT INTERPRETER INQUIRY QUESTIONS

DELETE the current Appendix: Court Interpreter Inquiry Questions and add the new Appendix: Court Interpreter Inquiry Questions, as follows:

Court Interpreter Inquiry Questions

All spoken and sign language interpreters appointed by the court may be asked the following questions at the beginning of the hearing:

- (a) State your full name.
- (b) Are you listed on the Maryland Court Interpreter Registry?
- (c) Do you have any potential conflicts of interest in this case?
- (d) Did you have an opportunity to speak with the person for whom interpreter services are to be provided before the hearing today to make sure you understand each other?
- (e) Do you anticipate any difficulties in communicating with that person?

Interpreters who are listed on the Maryland Court Interpreter Registry, regardless of whether they are qualified interpreters or certified interpreters, have been trained and

determined eligible for service, and they need not be questioned other than to establish their status on the Registry. The following questions may be used when an interpreter who is not listed on the Registry has been assigned to serve in a court proceeding. This may include interpreters provided through an approved agency. Agency interpreters may not have received training on interpreting in a legal setting. The court also may want to question interpreters who are listed on the Registry if the court is concerned about the interpreter's skills or ability or has a concern about ethical issues.

These questions are intended to elicit from a prospective interpreter, whether sign or spoken language, the information that the court needs to determine whether an individual is a competent court interpreter and whether the individual is an appropriate interpreter for the particular case.

- (1) Where are you employed currently?

(The court needs to determine whether there is any potential conflict due to full- or part-time employment of an interpreter or assignments as an independent contractor.)

- (2) How long have you known [sign/spoken] language?

(Research indicates that it takes between 6 to 10 years of language study and use before an individual has the language skills necessary to learn the interpreting process in his or her second language.)

- (3) Where did you learn [sign/spoken language]?

(A mix of formal and informal language training is an asset.)

- (4) Can you communicate fluently in [sign/spoken language]?

- (5) What is your educational background?

(Formal education may vary dramatically among interpreters, depending on their cultural heritage. Because of the complexity of interpreting, the court is urged not to accept an interpreter on the basis of the court's examination unless the interpreter has at least a high school education or its cultural equivalent.)

- (6) What formal interpreter training have you undertaken?
- (7) Are you certified? By whom? What is your certification called?

(For ASL interpreters, the court should ask whether they are certified by the Registry of Interpreters for the Deaf (RID) or by the National Association of the Deaf (NAD).)

- (8) Have you spent time in a country where the spoken language is used?
- (9) Are you active in any professional organization?
- (10) How many times have you interpreted in court and in what kinds of situations?
- (11) What process would you use to inform the Court of an error in your interpretation?
- (12) Do you have, in a state or federal court of record, a pending criminal charge or criminal conviction on a charge punishable by a fine of more than \$500 or imprisonment for more than 6 months for which you have not been pardoned or for which the charge or conviction has not been expunged?

REPORTER'S NOTE

Currently reprinted as an Appendix in the Rules of Procedure are Interpreter Voir Dire questions, together with explanations of responses to those questions, that were in the October 20, 1998 Report of the Maryland Judicial Conference Advisory Committee on Interpreters and were adapted from the 1981 Legal Interpreting Workshop of the William Mitchell School of Law (St. Paul, Minnesota). After the authors revised them in 1986, the Maryland Judicial Conference's Task Force on Interpreters revised them further in 1994. In May 1997, the Subcommittee on

Court Interpreter Fees, Qualification Standards, and Usage, which was a part of the Advisory Committee on Interpreters, further revised the Interpreter Voir Dire Questions.

In March 2018, the Court Access and Community Relations Committee of the Judicial Council submitted a substantially streamlined revision of the Court Interpreter Inquiry Questions, which the Rules Committee has approved. If the revised Questions are adopted, they will be placed in an Appendix to the Rules, replacing the current Appendix.

MARYLAND RULES OF PROCEDURE
TITLE 2 - CIVIL PROCEDURE - CIRCUIT COURT
CHAPTER 400 - DISCOVERY

AMEND Rule 2-415 (g) to correct an internal reference, as follows:

Rule 2-415. DEPOSITION - PROCEDURE

. . .

(g) Interpreter

If the deponent is an individual who needs an interpreter, as defined in Rule 1-333 (a) ~~(1)~~ (2), the party who issued the notice of deposition is responsible for obtaining an interpreter at that party's expense. The interpreter shall meet the requirements of Rule 1-333 (c) (1).

. . .

REPORTER'S NOTE

An amendment to Rule 2-415 (g) corrects the subsection of an internal reference to Rule 1-333 (a).