

**From:** (SUP) Clerk of Court Office  
**Sent:** Thursday, April 02, 2015 4:12 PM  
**To:** Miller, Penny  
**Subject:** FW: Comment on Interpreter Rules, Sup. Ct. No. 20150067

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STATE OF NORTH DAKOTA

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North Dakota Supreme Court

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**From:** Nick Thornton [mailto:Nick@fremstadlaw.com]  
**Sent:** Thursday, April 02, 2015 4:11 PM  
**To:** (SUP) Clerk of Court Office  
**Cc:** Nick Thornton; Delaney, Jean; Huseby, Robin  
**Subject:** Comment on Interpreter Rules, Sup. Ct. No. 20150067

Hello,

I am writing to provide a comment concerning the proposed interpreter rules. I would ask for a clarification of the rule concerning which agency is supposed to pay for an interpreter under certain circumstances. In particular, I have some concerns about N.D.R.Sup.Ct. Admin. R. 50, sec. 2(C) and 2(D).

I have been a full-time public defender with the Commission for Legal Counsel for quite some time. During that process, the Commission provided me with interpretation services for witness meetings, client consultations, etc., without question. Of course, those interpretation services were only provided within the scope of the cases I was working on for the Commission. I now am in private practice, but I still have a part-time Commission contract to provide some public defense services to indigent defense clients. I also occasionally take appointments from municipalities to provide indigent defense services in city court.

The issue I have with the proposed rule amendment comes in cases where the Commission or law enforcement is not the requesting agency responsible for the cost of interpretation services. In particular, I am thinking about interpretation services for cases where the county or a municipality is responsible for the appointment of counsel instead of the Commission. There are several types of cases referenced in proposed rule 50, sec. 2(A) where this could be a problem—mental health commitment cases, SDI cases, etc. I'm also thinking of cases where municipal court appoints indigent defense contractors, much like the state public defense system before the Commission on Legal Counsel was created.

I had recent occasion to be appointed to an indigent defense case from a municipal court. I am not going to name the municipality or the judge that appointed me, but I will say that my experience illustrates what can and likely will happen if the rule as proposed is adopted. In this case, the client did not speak English. He could not read English. Literally, there was no way for me to communicate with my client in a confidential manner or to ensure we had an appropriate consultation with accurate interpretation (the only possible alternative is to have a "friend" try to interpret for me, which would result in a forced waiver of the attorney-client privilege, the attorney has no way to ensure the interpreter

is accurately interpreting the matter, or has the qualifications listed in current N.D. Sup. Ct. Admin. R. 50, sec. 2). If this case were under a Commission contract, there would have been zero problem. The Commission would have provided me an interpreter to communicate without hesitation. Because I was appointed by the municipal court judge, however, I had to obtain approval for the interpretation expense before incurring it from the judge himself. I contacted the court to request a modest amount of money for an interpreter so I could consult with the client. The municipal court refused, saying that its responsibility was only to provide interpretation services for in court appearances. That makes perfect sense under the Commission system. It did not make any sense when the municipality was also the appointing agency. Frankly, I think the judge's actions denied my client the constitutional right to effective legal counsel, as a foundational bedrock of "effective" legal counsel is counsel that can communicate with the client. When I raised the issue with the Court, the city prosecutor dismissed and the State prosecutor re-charged the offense. The Commission was stuck paying the interpretation services in a case that should have stayed in city court.

As proposed, the rule would allow the municipal court to deny court appointed counsel interpretation services for their clients, even when the court appointed the lawyer to represent the indigent defendant.

I write to ask the Court to consider these types of situations and to include an exception to the payment responsibility rule when counsel is seeking interpretation services to confer with an indigent defendant and the judiciary is the agency appointing representation to the client.

I would be happy to discuss this further if the Court requires. If there are any questions, please contact me at the information below.

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