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Date: 14 Sept 16

Interpreter Qualifications

Discussion

The final definition on “qualified” melds Tex. R. Evid. 604, 702 and 1004 with Tex. Gov’t Code §57.002.

I initially thought the default on qualification should be Tex. R. Evid. 604, based on Goode, Wellborn, and Sharlot, *COURTROOM HANDBOOK ON TEXAS EVIDENCE*, Rule 604, *Authors Comments*, and Goode, Wellborn, and Sharlot, *TEXAS PRACTICE SERIES: GUIDE TO TEXAS RULES OF EVIDENCE*, §604.1. They construed Rule 604 to treat the interpreter’s qualifications as an expert competency issue under Rule 702; this normally would incorporate the standards for use of licensed or certified translators under Government Code §57.002. Outside §57.002, qualifications were addressed to the judge’s discretion to determine like other expert witness questions.

Then I read the treatise’s authorities. All of them were criminal cases involving Code of Criminal Procedure arts. 38.30, -.31. I did not reach their conclusion. The Criminal Code does not mandate use of licensed or certified interpreters. Qualification/competency are addressed to the judge’s discretion based on the level of competency needed to ensure the accused can communicate with the court and confront the witnesses. *Linton v. State*, 275 S.W.3d 493, 501 (Tex. Crim. App. 2009); *Shu Guo Kan v. State*, 4 S.W.3d 38, 41 (Tex. App.–San Antonio 1999, no pet.). There is a split in authority whether art. 38.30 requires use of certified/licensed interpreters. *Ridge v. State*, 205 S.W.3d 591 (Tex. App.–Waco 2006, pet. ref’d)(opinion would require

licensed/certified interpreters, but recognizes split).

I believe Profs. Goode, et al., borrowed from Fed. R. Evid. 604, which has different language. Borrowing from the federal practice is not entirely satisfactory because it does not parallel Texas law. Federal Rule 604 expressly treats qualification under the Rule 702 standard for experts; Texas Rule 604 does not. Moreover, there is a statutory overlay. 28 U.S.C. §1827(a), the federal O.C.A. prescribes requirements for interpreter certification and oversees the program. Under §1827(d) the judge must appoint a “the most available certified interpreter” if the party or a testifying witness either

(a) speaks only or primarily a language other than English, or

(b) suffers from a hearing impairment

so as to inhibit understanding of the proceeding, communication with the court, or presenting the testimony. If a certified interpreter is not “reasonably available,” then the judge will select an “otherwise qualified interpreter.” 28 U.S.C. §1827(a)(2). The OCA provides guidelines to select “otherwise qualified interpreters” to ensure the highest standards of accuracy in court cases. *Id.* Where §1827(d) applies, the courts absorb the fees. If §1827(d) does not mandate appointment, then court may make interpreters available at the requesting party’s expense. 28 U.S.C. §1872(b)(4).

Tex. Gov’t Code §57.002(e) provided that when the court may appoint an uncertified, unlicensed interpreter, the person must qualify as an expert under the Texas Rules of Evidence. Otherwise, §57.002 requires use of licensed or certified interpreters, who must also be an adult capable of giving the oath. Unlicensed/uncertified may be

appointed (1) in counties with less than 50,000 people, (2) in larger counties for languages other than Spanish if no licensed interpreters are within 75 miles, or (3) when allowed by Texas Civil Practices and Remedies Code, §21.021.