

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO THE
FLORIDA RULES FOR
CERTIFICATION AND REGULATION
OF SPOKEN LANGUAGE COURT
INTERPRETERS**

CASE NO. SC15-

**PETITION OF THE COURT INTERPRETER CERTIFICATION BOARD
TO AMEND THE FLORIDA RULES FOR
CERTIFICATION AND REGULATION OF
SPOKEN LANGUAGE COURT INTERPRETERS**

The Court Interpreter Certification Board (the Board), by and through its undersigned Chair, the Honorable J. Kevin Abdoney, Circuit Court Judge, Tenth Judicial Circuit, respectfully files this petition pursuant to Florida Supreme Court Administrative Order AOSC06-56, In Re: Court Interpreter Certification Board (Sept. 22, 2006). See Appendix C. The order directs the Board to perform duties prescribed by the Rules for Certification and Regulation of Spoken Language Court Interpreters (Interpreter Rules). Among these duties, Rule 14.110(f)(3) provides the Board shall have authority to make recommendations to the Court regarding amendment of court rules relating to provision of spoken language court interpreting services.

Further, by letter dated May 6, 2013, then-Chief Justice Polston advised the Board it had been designated by the Court to serve as a language access advisory committee. See Appendix D. In this capacity, the Board is charged with responsibility for advising the Court regarding policy issues and recommending

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improvements in the quality and accessibility of language access services in the state courts system. The present filing is responsive, in part, to this charge.

BACKGROUND

Twice in little more than a year, the Court has approved substantial changes in the Interpreter Rules. The purpose in each instance has been to effect revisions strengthening the quality of court interpreting services and further ensuring meaningful access to the courts by non-English speaking and limited-English-proficient persons.

In March 2014, the Court adopted amendments to the Interpreter Rules establishing, and setting more exacting standards for new interpreter designations. See In re Amendments to the Florida Rules for Certification and Regulation of Court Interpreters, 136 So. 3d 584 (Fla. 2014). More clearly articulating the level of performance required of persons earning official designation, the revised rules elevate testing standards and encourage interpreters to become certified by affording them a preference in selection over individuals meeting a lesser threshold of eligibility. Interpreters earning language skilled and provisionally approved designations are similarly afforded a preference over persons achieving no designation under the rules. Redefining terms in a manner more clearly informing rule provisions which govern appointment of court interpreters under the Rules of Judicial Administration, the 2014 amendments set the stage for measurable

improvement in the ability of the courts to capably administer spoken language court interpreting services statewide.

In March 2015, the Court adopted amendments implementing a registration requirement. See In re Amendments to the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters, 159 So. 3d 804 (Fla. 2015). More broadly defining “court interpreter,” the amendments apply the rules, with some limitations, to all persons who provide spoken language interpreting services in any court or court-related proceeding. This includes privately retained interpreters in civil matters. While not requiring an expansion of *services*, the amended rules do provide for an extension of *standards*, including provisions relating to professional conduct. Disciplinary provisions are also applicable to all court interpreters. Full implementation speaks to the purpose of ensuring both the quality of interpretation and accountability of interpreters will not differ from one court or court-related proceeding to the next simply because services are provided in the absence of court appointment.

Also in March of this year, the Court requested the Rules of Judicial Administration Committee (RJAC) and the Board to submit a joint report proposing a new rule similar to Rule 2.560 for the purpose of governing private retention of court interpreters. See Appendix E. While not explicitly included in the Court’s request, the Board and RJAC have inferred similar concern with

respect to selection of interpreters by governmental counsel. The Court has also requested the joint report consider whether one or more additional Rules of Judicial Administration may be needed to address noncompliance with preference provisions in the Interpreter Rules. Responding to the Court's request, the RJAC and the Board will, on or about the date of this filing, submit a time-sensitive out-of-cycle joint report with respect to which a coincidental matter is addressed in this filing.

PRESENT FILING

The present filing follows from careful and repeated review of the Interpreter Rules in relation to issues raised when preparing the above-referenced joint report. While questions relating to proposed changes in the Florida Rules of Judicial Administration are included in that report, others specific to actual practice under the Interpreter Rules are offered separately here for the Court's consideration.

A subcommittee preparing material provided to the RJAC was composed of three members: Fifteenth Circuit Trial Court Administrator Barbara Dawicke, Nineteenth Circuit Trial Court Administrator Thomas A. Genung, and Board Chair, Circuit Judge J. Kevin Abdoney. The Chair, with staff assistance, separately cataloged matters in relation to which this petition is submitted, then circulated draft text proposing the amendments now before the Court. Upon

proper motion and second, the Board unanimously approved all of the proposed changes.

Largely technical, these proposed amendments are otherwise principally for purposes of clarifying and conforming existing provisions under the Interpreter Rules. With respect to administrative matters, the Board has noted a disconnect between the registration process and the process by which individuals may attain official designation. Consequently, the Board is proposing a restructuring of the rules, for the most part simply relocating existing provisions in order to unify the two processes. These and additional revisions proposing remedial text are set forth in summary below and in full as appendices. Incorporating recently approved changes effective October 1, 2015, the proposed rules appear first in full-page legislative format in Appendix A and in a two-column chart with explanations of new and changed text in Appendix B.

**PROPOSED AMENDMENTS TO FLORIDA RULES
FOR CERTIFICATION AND REGULATION OF
SPOKEN LANGUAGE COURT INTERPRETERS**

PART I. GENERAL PROVISIONS

Rule 14.100. Definitions

Rule 14.100(a) presently excepts from the definition of “Court Interpreter” individuals providing services free of charge to “indigent persons” in circumstances not requiring appointment of an interpreter. Concerns relayed to the Board suggest that courts and practitioners may believe a person must be declared “indigent” by the Clerk before the exception applies with respect to persons who are simply unable to pay. This was not the Board’s intent upon initially recommending this language, for which reason it is now proposed “persons demonstrating an inability to pay” might be substituted for the current reference to “indigent” persons.

Proposed changes in the definition of “Certified Court Interpreter” are entirely technical.

A conforming provision mirroring language also included in the RJAC and Board’s joint report proposes a new Rule 14.100(i), defining “Limited-English-Proficient Person,” and re-letters subsequently defined terms. The proposed text more clearly acknowledges the extent to which essential comprehension of the English language affects access to courts. The text is borrowed largely from the

U.S. Department of Health and Human Services and referenced generally by the Department of Justice in the context of required interpreter services.

Specifically in relation to making uniform requirements for maintaining and renewing registration and official designation and streamlining administrative processes, the Board also proposes to redefine “Compliance Period” in a manner tying renewal of all court interpreter designations to a uniform two-year cycle for renewal of registrations. This will avoid administratively managing multiple renewal processes. Rather, renewal of certified and language skilled designations would coincide with renewal of registration regardless of when an interpreter’s official designation is obtained. On the other hand, because provisionally approved status may be maintained for no more than two years, no renewal of this designation would result as an incident to renewal of registration. Rather, such status may be extended only by the Board in exceptional circumstances.

Rule 14.110. Court Interpreter Certification Board

Proposed changes in Rule 14.110(a) more clearly reflect the Board’s responsibility for supervising a “process” encouraging certification of court interpreters. The text acknowledges involvement in that process anticipates possible attainment of lesser skill levels prior to achieving full certification.

Proposed revision of Rule 14.110(g) strikes unnecessary references to specific fees. The proposed change further acknowledges expenses associated with

potential outsourcing of written examination administration and other matters currently undertaken by the program office are neither fees nor costs of administration otherwise payable to the state when handled under contract by third party vendors.

PART II. INTERPRETER REGISTRATION AND DESIGNATIONS

Proposed revision of rule language under Part II is largely technical, chiefly relocating substantive provisions under current Rules 14.230 and 14.240 relating respectively to renewal of certificates and maintenance of official designation.

Rule 14.200. Registration

Though proposed changes may at first appear extensive, the body of amended text relocates and restructures existing language in a manner re-purposing these provisions as part of a single process governing maintenance and renewal of both registration and continuing court interpreter designation.

Proposed revision of Rule 14.200(b)(7) is a technical change acknowledging the loss of designation provision under Rule 14.215.

Though extensively restructured, Rule 14.200(c) proposes changes incorporating language already existing under Rules 14.230 and 14.240. The first of only two substantive changes here is the addition of an unintentionally omitted condition of renewal with respect to registration requiring completion of 20 law-related professional interpreting assignments or a lesser number if totaling 40

hours. The second acknowledges requests for extensions of time to complete such law-related assignments may be granted based either on exceptional circumstances or a limited need for interpreting services in a given language.

The re-lettered notice provision under Rule 14.200(f) would permit alternate e-mail notification consistent with planned implementation of an enhanced database system.

The addition of date text within proposed changes to re-lettered Rule 14.200(j) provides certified, language skilled, or provisionally approved interpreters who are deemed registered before October 1, 2015 will thereafter be required to register at the end of their current compliance period.

Rule 14.205. Certified Court Interpreter Designation

Rule 14.210. Language Skilled Designation

Rule 14.215. Provisionally Approved Designation

Proposed deletion of Rules 14.205(b)(4), 14.210(b)(3), and 14.215(a)(3) would strike text inconsistent with more recently approved rule provisions under Rule 14.200. Specifically, Rule 14.200(b)(7) requires registered individuals diligently pursue official designation. Similarly, Rule 14.200(c) presently authorizes renewal of registered status for successive two-year periods.

On one hand, the more recently approved provisions under Rule 14.200 and the strict time limitation now subject to proposed deletion both recognize a goal of expanding availability of more highly skilled court interpreters. On the other,

expansion of a more highly skilled pool of persons providing interpreter services would, in concert with the preference now afforded certified interpreters, more realistically be achieved with substantially less oversight by permitting all registered interpreters a longer period of time within which to attain designation. As remnant provisions of the initially approved designation process, Rules 14.205(b)(4), 14.210(b)(3), and 14.215(a)(3) are now inconsistent with the purposes of revised Rule 14.200. Consequently, the existing time limitation is without effect and might be stricken simply as a conforming amendment.

All other proposed changes under Rules 14.205, 14.210, and 14.215 are clarifying, conforming, or technical in nature. Proposed revision of Rule 14.205(c) more specifically limits the time restriction to interpreters employed in the state courts system for whom a state-certifying examination is available. Proposed revision of Rule 14.210(a) clarifies that the language skilled designation is recognized as the highest qualified state-level designation for languages in which there is currently no state-certifying examination and eliminates its subordination to that of the certified designation. The addition of proposed new subdivision (a) under Rule 14.215 provides clarification with respect to a preference properly afforded interpreters holding a provisionally approved designation when services of certified and language skilled interpreters are unavailable. Deleting text under Rule 14.215(b), now re-lettered subdivision (c), more clearly differentiates time

limits applying to loss of a provisionally approved designation from the time limitations otherwise applying to required certification of court-employed interpreters under Rule 14.205(c).

Rule 14.220. Waiver of Examination Requirement

Additional text would conform the waiver provision with proposed rule language relating to registration.

Rule 14.225. Issuance of Certificates

Proposed amendment of Rule 14.225 would require certificates issued to persons attaining any of the three court interpreter designations include an expiration date coinciding with expiration of one's registration. Certified and language skilled designations do not require renewal, only regular reissuance of certificates upon renewing registration. The rules do not permit reissuance of certificates to provisionally approved interpreters, though the two-year provisionally approved designation may be extended in exceptional circumstances.

Rule 14.230. Renewal of Certificates

Rule 14.240. Maintenance of Official Designation

Rules 14.230 and 14.240 are stricken and relocated in substantially the same form under Rule 14.200(c) and (d). Restructuring the existing rule provisions within the context of registration more clearly describes requirements under a single scheme unifying the registration process and the associated process by which individuals may attain official designation.

PART III. CODE OF PROFESSIONAL CONDUCT

Rule 14.310. Accuracy and Completeness

Rule 14.320. Representation of Qualifications

Rule 14.370. Assessing and Reporting Impediments to Performance

Proposed amendment of Rule 14.320 updates existing text upon including specific reference to registrations, official state-level designations, and other certifications. Language in the Committee Notes following current Rules 14.310 and 14.370 would be stricken as the text relates solely to sign language interpreters not governed by the Interpreter Rules. All other provisions of the Code of Professional Conduct would remain unchanged.

PART IV. DISCIPLINE

Rule 14.405. Suspension or Revocation

Rule 14.410. Disciplinary Procedures

Rule 14.450. Reinstatement

Enumerating matters constituting cause for suspension or revocation of registration or state-level interpreter designation, Rule 14.405(b)(7) would be amended to permit consideration of any unpaid fee. Technical amendment of Rule 14.410(a) would substitute publication of guidelines in Board operating procedures for the current text referring to rules established by the Board. Finally, language under Rule 14.450 presently permitting the Board “sole and absolute discretion” in granting or denying requests for reinstatement would be stricken. In its place, new

language is proposed in deference to concepts of reasonableness and evidence-based determinations. All other substantive provisions remain unchanged.

EFFECTIVE DATE

As noted when discussing matters preliminary to filing this petition, the Board and RJAC will soon submit a joint report proposing amendment of the Rules of Judicial Administration as they relate to appointment and retention of spoken language court interpreters. The joint report observes Rule 14.200(a), effective October 1, 2015, provides an interpreter must be registered with the Office of the State Courts Administrator before providing interpreting services in any court or court-related proceeding. The report further acknowledges circumstances may exist requiring an exception that would permit occasional use of non-registered interpreters. For this reason, the RJAC and Board's report recommends the proposed amendments to the Rules of Judicial Administration be afforded expedited consideration. Because related matters are addressed here, the Board respectfully requests the Court consider this petition in concert with its review of the joint report and, to the extent practicable, assign all rule amendments an effective date on or soon following October 1, 2015.

WHEREFORE, the Court Interpreter Certification Board respectfully requests this Court consider and adopt these proposed amendments to the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters.

Respectfully submitted this 26th day of August 2015.

/s/ J. Kevin Abdoney
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CERTIFICATES OF SERVICE AND TYPEFACE COMPLIANCE

I CERTIFY a true and correct copy of the foregoing Petition of the Court Interpreter Certification Board to Amend the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters, with all appendices, has been furnished by electronic mail through the Florida Courts E-Filing Portal to the following persons this 26th day of August 2015:

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I FURTHER CERTIFY the petition has been prepared in MS Word using Times New Roman 14-point font, which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.100(l).

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