

IN THE SUPREME COURT OF FLORIDA

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

CASE NO. SC14-

**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 William E. Davis, Circuit Court Judge, Eighth 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. Its effect preserved through successive reappointments and regular selection of new members, the order directs the Board to perform such duties as articulated in Rules 14.100 through 14.460, Florida Rules for Certification and Regulation of Spoken Language Court Interpreters (Interpreter Rules or 14-Series Rules). Rule 14.110(f)(5) states the Board shall have authority to make recommendations to the Court regarding amendment of the Interpreter Rules.

BACKGROUND

Florida is home to the fourth largest non-English speaking and limited English speaking population in the nation. Consequently, the state is among principal stakeholders with respect to spoken language access issues. Over the course of years, the judicial branch has embraced efforts to improve the capacity of the courts to address matters involving non-English speaking and limited English proficient (LEP) persons. The branch's numerous initiatives in this area have focused on guaranteeing meaningful access to courts by removing linguistic barriers and increasing both the availability and effectiveness of qualified spoken language interpreters.

Summary History

In 1998, the Court directed the Office of the State Courts Administrator to begin offering spoken language court interpreter training and testing on a voluntary basis. In 2002, the Commission on Trial Court Performance and Accountability (TCP&A) issued a report developed by its Court Interpreting Workgroup recommending standardized policies and practices for use of spoken language interpreters in the courts. Subsequently, a Supreme Court Interpreter's Committee (SCIC) was tasked with evaluating the ability of the courts to effectively deliver court interpreting services. See Fla. Admin. Order No. AOSC03-8 (Feb. 12, 2003). Submitting its report in October 2003, the SCIC recommended the Court adopt

certification rules previously recommended by the TCP&A. Legislative authorization and funding followed in 2006. Days later, the Court adopted the 14-Series Rules and, affording interpreters an opportunity to comply with testing and other requirements, full implementation followed in 2008.

In November 2009, the TCP&A established a successor Court Interpreting Workgroup for purposes of considering matters potentially included in a formal language access plan. Within a year's time, the TCP&A finalized recommendations, operational standards, and best practices, submitting same to the Court in early 2011. See *Recommendations for the Provision of Court Interpreting Services in Florida's Trial Courts* (Nov. 1, 2010). To the extent measures might be implemented within existing resources, the Court adopted numerous Commission recommendations in 2012. See AOSC11-45 *Corrected*, *In Re: Court Interpreting Services in Florida's Trial Courts* (Jan. 30, 2012).

Four months before the Court issued its January 30, 2012 order, the Board initiated an extensive evaluation of interpreter classifications and possible restructuring of official state-level designations. The Board considered several issue areas with respect to which improvements might better enable the courts to administer spoken language court interpreting services statewide. Eventual recommendations centered upon changes ensuring limited English proficient persons otherwise disadvantaged by language barriers might be routinely afforded

the assistance of more highly skilled interpreters. The Board filed its petition proposing amendments to the Interpreter Rules in February 2012.

On March 27, 2014, the Court adopted, as proposed, amendments to the Interpreter Rules substantially restructuring interpreter designations, raising testing standards, and affording more highly skilled individuals a preference in appointment. The amended rules create three court interpreter designations in substitution for the former two-tiered system and set time frames within which entry level interpreters will be expected to achieve increasing expertise. The amended rules also extend required compliance with rules of professional conduct to all persons who, in the absence of an officially designated court interpreter, are appointed by the courts to provide interpreting services. Similarly, persons having no official designation, but appointed by the courts to provide interpreting services on a regular or recurring basis, will now be subject to the disciplinary provisions of the Interpreter Rules. The amended Interpreter Rules became effective May 1, 2014. See In Re: Amendments to the Florida Rules for Certification and Regulation of Court Interpreters, No. SC13-304 (Mar. 27, 2014).

Following from many of the same concerns, Chief Justice Polston advised then-chair Judge Ronald N. Ficarrota, by letter dated May 6, 2013, the Court had designated the Board 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 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.

Present Filing

By letter dated February 3, 2014, Clerk of Court John Tomasino notified the Board's current chair of the Court's request the Board consider and make additional recommendations regarding possible changes to the Interpreter Rules. See Appendix E. Noting the Court then had for consideration the Board's proposed amendments under Case No. SC13-304, the letter observes then-pending rules do not apply to civil cases and all proceedings. The letter specifically requests the Board consider proposing rules making the court interpreter program and rules applicable to all persons providing interpreter services in all court and court-related proceedings. In considering the matter, the Board is directed to take into account privately retained, as well as court-appointed interpreters, and interpreters providing services in civil cases.

At a meeting of the Board on February 12, the Chair appointed a three-member workgroup to consider matters as directed by the Court. Chaired by the Honorable J. Kevin Abdoney, County Court Judge, Polk County, other members are the Honorable Carlos A. Rodriguez, Circuit Court Judge, Seventeenth Judicial Circuit, and Thomas A. Genung, Trial Court Administrator for the Nineteenth

Judicial Circuit. Board Chair William E. Davis participated in an ex officio capacity.

Discussing the matter at length at its February 12 meeting –all agreeing work would not be completed by the April 1 response date initially set by the Court– the Board sought, and was permitted, an extension of time to June 2, 2014. See Appendices F and G.

The workgroup met by conference call five times beginning February 25, again March 7 and 20, also April 2 and 8. Members engaged in extensive discussion by e-mail over the course of months, and, on May 6, 2014, unanimously approved draft proposed amendments to the Interpreter Rules. Members of the Board were afforded an opportunity to review and comment on specifics, following which the Board met by conference call May 14, voting unanimously to offer proposed amendments to the Interpreter Rules for the Court’s consideration.

The Board’s proposals are set forth in summary below and in full as appendices. 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**

The concern underlying the Board’s proposal follows from initial application of the Interpreter Rules only to certified spoken language court interpreters.

Recently adopted rule amendments address the matter, in part, by expanding application of the 14-Series Rules to all officially designated interpreters and to court-appointed persons holding no official designation who provide interpreting services on a regular or recurring basis. The recently adopted rule amendments do not, however, extend regulation to non-designated interpreters who are privately retained, many of whom may be providing interpreter services in civil cases absent assurances they possess even threshold skills under the rules.

Consequently, this proposal seeks expansion of the 14-Series Rules in a manner applying them, with some limitations, to *all* persons –including privately retained individuals in civil matters– who provide spoken language interpreting services in any court or court-related proceeding. The proposal does not require an expansion of interpreter *services*. The proposed changes would, instead, extend *standards* in a manner uniformly applying the Interpreter Rules to presently unregulated individuals who are already providing these services in the courts and court-related proceedings. Many of them may be doing so without first attaining a formal court interpreter designation or otherwise serving by court appointment.

In the absence of formal court interpreter designation or court appointment, the proposed changes meet two principal considerations. First, proposed amendments would maintain recently adopted changes affording a preference for use of certified court interpreters. Second, privately retained interpreters in court and court-related proceedings would be required to meet standards under the 14-Series Rules, including adherence to the Code of Professional Conduct.

Interpreters providing services in depositions and other civil matters would continue to be privately retained and privately remunerated, but would be required to be certified or hold other official designation, or otherwise comply with standards under the Interpreter Rules. Again, the question is not whether the courts should provide an appointed interpreter for proceedings outside the scope of Florida Rule of Judicial Administration 2.560. Rather, the question is whether the quality of interpretation and accountability of interpreters should be permitted to differ from one court or court-related proceeding to the next simply because an individual provides services absent court appointment.

As for case-specific interpreter services requiring court appointment outside the scope of Florida Rule of Judicial Administration 2.560, the matter might be addressed in the context of other rules of court. The Board takes no position with respect to expansion of services, anticipating any request later made of the Rules of

Judicial Administration Committee, Civil Rules, or other court committees will be undertaken consistent with the Court's determination in this matter.

Concerned solely with expansion of interpreter standards, the proposed change would require all persons providing interpreting services in court or court-related proceedings to comply with the same rules. Application of the same rules to privately retained interpreters would effectively raise the skills threshold and require compliance with uniform standards. Common standards may be presumed to facilitate informed selection of interpreters based on an assurance all registered individuals possess adequate skills. A presumption of increasing skills further provides a basis for increased public confidence in, and meaningful access to, the courts system.

The Board unreservedly recommends the following changes in the Interpreter Rules.

PART I. GENERAL PROVISIONS

Rule 14.100. Definitions

Recent amendments to the 14-Series Rules substantially revised definitions permitting implementation of new interpreter designations and more rigorous qualifications and testing requirements. Leaving the revised definitions in place, proposed new amendments would define additional terms permitting expanded application of the Interpreter Rules.

As proposed, a definition of “court interpreter” now precedes and is inclusive of persons attaining any of the three official state-level court interpreter designations. The term is, however, more broadly descriptive of others now commonly assisting non-English speaking and LEP individuals in the courts. Specifically, in addition to persons appointed by the courts, the term also includes individuals who may be privately retained to provide court interpreting services in civil matters and various court-related proceedings. The term is limited, however, upon exclusion of persons performing such services without remuneration on behalf of indigent persons in circumstances not requiring appointment of a court interpreter.

A “court proceeding” is defined as any hearing or trial presided over by a state court judge, general magistrate, special magistrate, or hearing officer within the state courts system. Permitting application of the Interpreter Rules to privately retained and other individuals performing interpreting services, a “court-related proceeding” is defined in a manner including depositions, mediations, arbitrations, and examinations which occur or could be made to occur as a result of a court order, subpoena, or general law. The term is limited by identifying as its primary purpose the communication or exchange of information related to a claim or defense in, or settlement of, a pending or impending court case. The definition is

further limited by text excluding law enforcement investigations not yet involving participation of a prosecuting authority.

Among other terms under proposed rule 14.100, new text defines “transcription” and “translation” in substantially the same manner as they are defined in the *Florida Benchguide on Court Interpreting*. These terms are included by way of guidance as AOSC11-45 *Corrected* recommends among procedural best practices the *transcription* of audio/video recordings first from source language to source language, then *translation* from source language to the target language. The definition of “court” is relocated, now more intuitively appearing immediately before “court proceeding” and “court-related proceeding.”

Rule 14.110. Court Interpreter Certification Board

Proposed changes in rule 14.110 revise provisions relating to duties of the Board. New language more succinctly addresses duties of the Board with respect to regulation and discipline of all court interpreters, including responsibilities relating to registration.

PART II. INTERPRETER DESIGNATIONS [re-named INTERPRETER REGISTRATION AND DESIGNATIONS]

Part II of the Interpreter Rules presently sets forth general prerequisites as well as more specific qualifications required of all applicants seeking any of the three court interpreter designations. This proposal does not substantially affect

recently approved rules provisions relating to qualifications specific to these categories. The proposal does, however, recommend extensive revision of current rule 14.200. These changes are designed to ensure standards presently governing court-appointed interpreters and others holding formal designation are uniformly applied to all persons providing interpreter services in all court and court-related proceedings, including persons privately retained to interpret in civil and other matters outside the scope of rule 2.560.

Rule 14.200. Qualification [re-named Registration]

Rule 14.200 presently recognizes certified, language skilled, and provisionally approved court interpreter designations as exclusive designations under the Interpreter Rules. The rule further enumerates general prerequisites for all applicants for any of the three interpreter designations. Though recently approved amendments to rule 14.200 remain an integral aspect of the overall purpose of the 14-Series Rules, proposed changes under rule 14.200 would relocate and otherwise assign existing language a new context.

Proposed revision of the current rule would extract text relating to exclusive designations and relocate the text in substantially the same form under new rule 14.202. Substituted language would require all court interpreters to register with the Office of the State Courts Administrator prior to providing services in any court or court-related proceeding. The proposal would further modify remaining

provisions which now delineate general prerequisites for court interpreter designations, and re-purpose them, instead, along with additional provisions, as requirements specific to registration.

Required registration is proposed, in part, recognizing privately retained persons holding no formal court interpreter designation who interpret in civil cases and court-related proceedings currently serve under a different standard than interpreters who earn designation or are otherwise appointed by the courts. Such persons are not presently subject to the Interpreter Rules. Neither are they subject to provisions under rule 2.560 requiring a judge or hearing officer to find they are competent to interpret. Absent a judge or hearing officer's finding to this effect, and without training necessary to become a certified, language skilled, or provisionally approved interpreter, the quality of services and accountability of interpreters may differ substantially from one court or court-related proceeding to the next.

Just as previous application of the 14-Series Rules only to certified interpreters unintentionally fostered a disparity in skills as compared with others providing interpreting services in the courts, so too it seems limiting application of the rules to officially designated interpreters may, in practice, have a similar unintended effect.

Required registration is proposed also as a means of encouraging increasing skills among all persons providing court interpreting services statewide. At present, persons who are privately retained and remunerated to interpret in depositions and other civil matters may have little incentive to become certified. If, however, a registration requirement anticipates acquisition of specific skills, many individuals now providing interpreter services absent designation may choose to undertake additional steps leading to certification. As a result of expanding application of the 14-Series Rules to all court interpreters, one might anticipate a corresponding expansion of the pool of certified interpreters available to satisfy current preference requirements under the rule.

Availability of a list of all persons registering under the rule, including those deemed registered in consequence of formal designation, will better permit the courts to undertake the diligent search required under rule 2.560(e) before appointing an individual holding no official designation. Similarly, such a listing will also assist the courts in determining whether individuals holding no formal designation are competent to interpret. Further presuming most attorneys are already making a best effort to rely upon highly skilled interpreters in order to present a best case to the courts, required registration will serve as an additional check with respect to the skills acquired by listed individuals.

As noted above, if proposed revisions are approved, existing general prerequisites under an amended rule 14.200 would be re-purposed as requirements for *registration*. These requirements remain substantially unchanged, but for context. They include participation in an initial two-day orientation providing essential background, not only for persons seeking designation, but also for individuals holding no formal designation who are providing court interpreting services in any court or court-related proceeding. Also required under the current rule and similarly included among prerequisites for registration, are a passing score on a written examination addressing ethics issues, an oath to uphold professional standards, a background check, courtroom observation, and agreement to satisfy a continuing education requirement.

New prerequisites specific to registration include submission of an application for registration and agreement to diligently pursue designation as a certified, language skilled, or provisionally approved interpreter. During the initial year of registration a registrant would also be required to commit to the process by sitting for an appropriate examination or oral proficiency interview. Specific requirements applying to certified, language skilled, and provisionally approved interpreters remain substantially unchanged and are set forth respectively under rules 14.205, 14.210, and 14.215.

Additional language relating to registration provides for renewal following a two-year registration period and automatic revocation upon failure to pursue formal designation. Registration would also be subject to revocation in the Board's discretion upon failure either to meet cut-score requirements on a full or abbreviated oral performance examination or to demonstrate satisfactory functional speaking ability in oral proficiency interviews. Persons attaining and maintaining a formal court interpreter designation would be deemed registered.

Regarding measures of threshold performance required to maintain registration, proposed rule 14.200(e) provides interpreters must attain minimum exam scores in a single test administration assessing sight translation, simultaneous interpretation, and consecutive interpretation. The standards prescribed by the Board will be published in board operating procedures available to all persons seeking registration. The Board has preliminarily approved cut-scores only marginally less than those required of persons seeking a provisionally approved designation. The requirement follows from concern no person registered under the proposed rules should provide interpreter services in evidentiary or other proceedings potentially dispositive of charges unless first qualifying in accordance with minimum standards. Set no less than ten points below the threshold for a provisionally approved status, the prescribed qualifying scores serve as a point of entry encouraging registered individuals to pursue official designation. At the

same time, and even absent a registered individual's subsequently attaining official designation, it is a far more rigorous standard than any applying to privately retained non-designated individuals presently providing court interpreting services in civil and other matters outside the scope of rule 2.560.

All other language under current rule 14.200 would remain unchanged.

Rule 14.202 [from 14.200]. Exclusive Designations

Recognizing certified, language skilled, and provisionally approved court interpreter designations as the only formal designations under the 14-Series Rules, rule text now appearing under subdivision (a) would be relocated more prominently under proposed new rule 14.202. Specific references to the respective qualifying provisions are substituted for the current general reference to "qualifying in accordance with these rules." Mirroring a defined term and associated provisions having to do with preferences in selection of interpreters, the text under current rule 14.200(a) relating to duly qualified interpreters is unnecessary and would be eliminated.

Rule 14.205. Certified Court Interpreter Designation

Rule 14.205 now provides the certified court interpreter designation not only represents the highest qualified state-level interpreter designation, but shall also be the preferred designation when selecting court-appointed interpreters, arranging for contractual interpreter services, and making staff hiring decisions.

Proposed revision of rule 14.205 would preserve this requirement and extend the preference in a manner not limited to court-appointed interpreters, interpreter services contracts, and staff hiring decisions. Specifically, the changed text under subdivision (a) includes private retention of court interpreters. By definition, “court interpreters” are persons providing interpreting services in any court or court-related proceeding. Coupled with an expressed preference for selection of certified interpreters, the proposed revision would effectively expand application of existing standards by promoting reliance upon more highly qualified interpreters. Subdivision (a), now referencing only preferred appointment, would be re-titled in a manner more descriptive of this end.

Under subdivision (b), registration would be made a requirement for certification. Submission of an application for registration would replace the orientation as the mark following which the current mandatory two-year time frame for earning certification would be calculated. Requirements relating to examination would be modified upon providing interpreters must attain minimum exam scores in accordance with standards prescribed by the Board and published in board operating procedures. Other requirements for persons applying to become certified would be revised in a manner conforming existing language with new registration provisions under proposed rule 14.200.

Rule 14.210 [to 14.220]. Waiver of Examination Requirement

The text permitting waiver of the examination requirement under current rule 14.210 would be stricken and relocated in substantially the same form as new rule 14.220. Repositioning the text following rule provisions relating to all state-level designations is intended to emphasize application of the waiver provision in instances other than those affecting certification alone.

Rule 14.215 [re-numbered 14.210]. Language Skilled Designation

Rule 14.215 would be reassigned rule number 14.210. The rule relates to language skilled individuals who are presently unable to attain certification owing only to unavailability of a state-certifying examination in the individual's language of expertise. Language skilled interpreters are presently afforded a preference over non-designated interpreters in the selection of court-appointed interpreters in the area of the language skilled individual's linguistic expertise.

Proposed revisions are essentially the same as changes proposed in provisions relating to the certified court interpreter designation under rule 14.205. Proposed revision of subdivision (a) would extend the preference now afforded language skilled individuals over non-designated interpreters not only in regard to court appointment and selection of interpreters under contract or in staff positions, but also in relation to selection of privately retained court interpreters. Much as has been stated in regard to a preference for use of certified interpreters, the

proposed revision would similarly expand application of existing standards by promoting reliance upon more highly skilled interpreters. Now referencing only preferred appointment, the title would be amended in a manner including preference with respect to retention and staffing as well.

Under subdivision (b), registration would be made a requirement for persons seeking a language skilled designation. An inadvertent omission in the current rule would be corrected upon requiring applicants for the language skilled designation to complete the process leading to designation within two years. Submission of an application for registration would replace the orientation as the mark following which the two-year time frame for earning the designation would be calculated. The proposal further provides interpreters would be required to attain minimum exam scores in accordance with standards prescribed by the Board and published in board operating procedures. Other requirements for persons applying to become language skilled would be revised in a manner conforming existing language with new registration provisions under proposed rule 14.200.

Rule 14.220 [re-numbered 14.215]. Provisionally Approved Designation

Rule 14.220 would be reassigned rule number 14.215. The rule presently details requirements for persons seeking designation as provisionally approved court interpreters. Court interpreters who are provisionally approved are afforded

a preference in appointment over individuals holding no designation, but only if a certified interpreter is unavailable.

Proposed revisions would make registration a requirement for all persons seeking a provisionally approved designation. As with other official court interpreter designations, submission of an application for registration would replace the orientation as the mark following which the current mandatory two-year time frame for earning a provisionally approved status would be calculated. Conforming language applying to each of the three court interpreter designations, the proposal also provides interpreters would be required to attain minimum exam scores in accordance with standards prescribed by the Board and published in board operating procedures. Other requirements for persons applying to become provisionally approved would be revised in a manner conforming existing language with new registration provisions under proposed rule 14.200.

Rule 14.220 [from 14.210]. Waiver of Examination Requirement

The rule text presently permitting waiver of the examination requirement under current rule 14.210 would be stricken and relocated in substantially the same form as new rule 14.220. Placement following rule provisions setting forth requirements for all state-level court interpreter designations more intuitively provides context for language relating to both federal certification and reciprocity.

Rule 14.225. Issuance of Certificates

Rule 14.225 currently provides the Board shall issue certificates to persons satisfying all requirements for any of the three court interpreter designations. Proposed amendment of the rule would require, in addition, issuance of letters confirming registration.

Rule 14.230. Renewal of Certificates

Rule 14.230 now provides for renewal of certificates, taking into account the conditional and time-limited designation of language skilled and provisionally approved interpreters. Specifically, renewal of a language skilled designation is conditioned upon continued unavailability of a state-certifying examination in the language for which designation has been granted. As provisionally approved interpreters must become certified within two years (or within one year after employment in a court interpreting position), renewal is permitted only upon board approval in exceptional circumstances.

Proposed revision of rule 14.230 would permit renewal of registration as provided under rule 14.200(c). All other language under the current rule would remain unchanged.

PART III. CODE OF PROFESSIONAL CONDUCT

Rule 14.300. Professional Conduct

Under current rule 14.300, the Code of Professional Conduct at Part III of the Interpreter Rules applies to all certified, language skilled, and provisionally approved court interpreters. The Code also applies to any person, whether or not holding formal designation, who provides interpreter services by court appointment.

Proposed revision of rule 14.300 would expand application of the Code to *all* court interpreters. By definition under proposed rule 14.100(a), expanded application would include persons providing spoken language court interpreting services during any court or court-related proceeding. The court interpreter definition excludes only persons who perform interpreting services without remuneration on behalf of indigent persons in circumstances not requiring appointment of a court interpreter. The proposal would, in effect, require all persons registering with the Office of the State Courts Administrator in advance of providing court interpreting services in any court or court-related proceeding to comply with the Code.

All other provisions of the Code of Professional Conduct, rules 14.310 through 14.390, would remain unchanged.

PART IV. DISCIPLINE

Rule 14.400. Application

Under current rule 14.400, disciplinary provisions at Part IV, rules 14.405 through 14.460, apply to persons holding any court interpreter designation, as well as persons without designation who are appointed on a regular or recurring basis to provide spoken language court interpreting services.

Consistent with an extension of standards applying the Interpreter Rules to presently unregulated individuals who provide interpreter services in civil cases and various court-related proceedings, proposed revision of rule 14.400 would make the disciplinary provisions under Part IV applicable to all court interpreters. As explained above, the proposed rule defines “court interpreter” in a manner including most persons providing spoken language court interpreter services in any court or court-related proceeding. An exception applies with respect only to persons who perform interpreting services without remuneration on behalf of indigent persons in circumstances not requiring appointment of a court interpreter. The proposed change would effectively subject all persons registering under rule 14.200 to disciplinary provisions under the 14-Series Rules.

Rule 14.405. Suspension or Revocation

Rule 14.405 presently permits the Board to suspend or revoke any official state-level court interpreter designation for cause. Under the proposed revision, the

rule would provide for suspension or revocation of registration as well. Other substantive provisions remain unchanged.

Rule 14.430. Disciplinary Dispositions

Current provisions under rule 14.430 relating to suspension and revocation would be revised in a manner conforming existing language with the proposed registration requirement under proposed rule 14.200. Additionally, an inadvertently retained reference to a “certified court interpreter examination” at subdivision (c)(6) would be revised in a manner permitting sanctions requiring re-testing with respect to one or more parts of any court interpreter examination.

Rule 14.450. Reinstatement

Rule 14.450 presently permits any court interpreter whose certificate has been suspended or revoked to petition the Board for reinstatement. Proposed revision of the rule would enlarge this provision upon permitting application for reinstatement by any court interpreter whose official state-level designation or registration has been suspended or revoked. All other substantive provisions remain unchanged.

ENFORCEMENT

When first considering extension of existing and additional standards to presently unregulated individuals, the workgroup also addressed questions relating to enforcement. Unlike an extension of standards to all persons providing

interpreter services in court and court-related proceedings, suggested mechanisms for enforcement among persons neither officially designated nor appointed by the courts invariably seemed directed to parties acquiring their services. A means of enforcement properly residing within the four corners of the 14-Series Rules proved more elusive.

Initial drafts of the proposed rule included language which would have required interpreters providing services for depositions, sworn statements for court use, or for in-court translations to hold official designation. Such persons would also be required to sign a form affirming they have read, understand, and agree to adhere to the Code of Professional Conduct. A party relying on a lesser qualified interpreter would be compelled to file with the court the interpreter's written affirmation, contact information, and a list of his or her qualifications, along with a digital record of the statement. Upon reviewing the recording prior to hearing or trial, an objecting party might request the offering party voluntarily withdraw the material or pay for translation by a certified interpreter. Absent agreement, a party raising the objection would be permitted to move for a rehearing or new trial based on mistranslation, in which event a certified interpreter's translation would control.

In the end, the Board concluded required compliance with the Code is sufficiently incorporated in proposed revision of rule 14.300. Existing language under this rule provides failure to adhere to Code requirements may lead to

disciplinary action under existing and proposed provisions under Part IV of the Interpreter Rules. In this regard, the Board's principal authority would reside in suspension or revocation of registration or official designation. Other enforcement mechanisms involving procedural matters as noted above or potential exclusion of evidence are questions with respect to which the Court may wish to seek recommendations from one or more rules committees. Matters not involving practice and procedure are properly within the province of the Legislature.

ENABLING AUTHORITY

The Legislature adopted House Bill 849 relating to regulation of foreign language court interpreters in 2006, immediately preceding the Court's adoption of the Interpreter Rules. See Ch. 2006-253, § 1, at 2761, Laws of Fla. (codified at § 25.386, Fla. Stat. (2013)). Revised but once, see Ch. 2010-162, § 4, at 2019-20, Laws of Fla. (renaming Trust Fund), the originally enacted language remains substantially unchanged. The current statute provides as follows:

25.386 Foreign language court interpreters.—

The Supreme Court shall establish minimum standards and procedures for qualifications, certification, professional conduct, discipline, and training of foreign language court interpreters who are appointed by a court of competent jurisdiction. The Supreme Court shall set fees to be charged to applicants for certification and renewal of certification as a foreign language court interpreter. The revenues generated from such fees shall be used to offset the costs of administration of the certification program and shall be deposited into the Administrative Trust Fund within the state courts system.

The Supreme Court may appoint or employ such personnel as are necessary to assist the court in administering this section.

Id. (emphasis added).

The statutory text unquestionably requires the Court to establish standards with respect to court-appointed interpreters. While this provision is mandatory, no part of section 25.386, Florida Statutes, *proscribes* action otherwise undertaken by the Court, acting within the sphere of its judicial function, as necessary to provide for the conduct of proceedings in a manner furthering the administration of justice. The Court's responsibility in this regard applies even in the absence of court appointment. Consequently, the text may be read in a manner more broadly permitting the Court to direct compliance with standards pertaining to otherwise unregulated privately retained individuals providing interpreter services in any court or court-related proceeding.

Brief historical perspective may be in order. In late 2003, a committee appointed by then-Chief Justice Harry Lee Anstead submitted its final report and recommendations, including proposed rules, for the Court's consideration. See SUPREME COURT INTERPRETER'S COMMITTEE, REPORT AND RECOMMENDATIONS, (Oct. 2003) (J. Joseph P. Farina, Chair). The committee also included in its report draft statutory text in substantially the same form as current section 25.386. See id. at 38. Upon assessing the need to seek enabling legislation, the report observes:

Though the Supreme Court, by its inherent authority, is afforded great latitude to develop and implement rules of judicial procedure governing the use and qualifications criteria for foreign language court interpreters, enabling legislation is the preferred vehicle for initiating this process. In the spirit of political cooperation and outreach, the Court should seek input from the Legislature to ensure a thorough evaluation and understanding of the need for this codified set of policy guidelines governing the provision of court interpreter services.

Id. at 36. Similarly included in the report, and explaining, in part, the recommendation to pursue enabling legislation, is an additional recommendation the Court seek limited funding ensuring effective management of the program. Id. at 40. The report further notes the committee’s “sensitiv[ity] to the political implications of pursuing these goals with little or no Legislative input.” Id. at Chairman’s Remarks.

THEN AND NOW

Although circumstances then prevailing weighed heavily in favor of securing legislative approval of a new court program, the present instance suggests a less protracted process might now be in order. Unlike initial adoption of the Interpreter Rules in 2006, the current proposal does not create a new court program. Proposed changes would, instead, facilitate more uniform application of *existing* standards to persons already providing interpreting services in court and court-related proceedings. Moreover, the proposed extension of standards, rather

than a wide-scale expansion of services, would entail little restructuring of the program and minimal start-up costs requiring no significant additional funding requests of the Legislature.

Additionally, while the courts system managed for a time in the absence of uniform standards under the previous voluntary program, time given legislative consideration perpetuated no shortcoming brought about by a prior rule. Similarly, no harm proceeded from systemic bias in which the branch then purposefully acquiesced. A systemic bias arguably arises, however, with the adoption of standards under the current rule now applying to some, but not all, persons providing interpreter services in court and court-related proceedings. To delay remedial action in these circumstances, even in deference to the legislative process, may unnecessarily prolong the disparate application of existing standards with respect to which the Court exercises primary responsibility.

As fundamental interests are at stake, and given markedly different concerns then and now, the Court might proceed in the absence of further enabling legislation if following only from fundamental authority to accomplish those purposes naturally within the sphere of its judicial function.

INHERENT AUTHORITY OF THE COURT

In comparable circumstances, the committee proposing initial adoption of Interpreter Rules determined “[t]he Court possesses inherent authority to adopt

standards of training and professional conduct for court interpreters in judicial proceedings.” Id. at 29.

The access to courts provision under article I, section 21 of the Florida Constitution provides “[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.” For no lesser reason, “[i]t is a fundamental principle of constitutional law that each department of government . . . has, without any express grant, the inherent right to accomplish all *objects naturally within the orbit of that department.*” (emphasis in original) Peters v. Meeks, 163 So. 2d 753, 755 (Fla.1964) (quoting Sun Ins. Office, Ltd. v. Clay, 133 So. 2d 735, 742 (Fla. 1961) (finding adoption of rule of practice and procedure pursuant to power vested in the Supreme Court under article V is a valid exercise of the court’s organic power).

In other words, when the constitution gives the courts a general power, it also gives, by implication, every power necessary to perform its judicial function. See Rose v. Palm Beach County, 361 So. 2d 135, 139 (Fla. 1978) (invocation of doctrine of inherent power is most compelling when the judicial function at issue is the safe-guarding of fundamental rights). Subject to valid existing laws and constitutional provisions, Florida courts have the inherent power to control the conduct of proceedings in a manner furthering the administration of justice. See Miami Herald Publishing Co. v. Lewis, 426 So. 2d 1, 3 (Fla. 1982).

CONCLUSION

Affording all persons meaningful access to courts remains the underlying concern following from which the Board proposes these revisions in the Interpreter Rules. To be sure, recently approved amendments will facilitate measurable improvement in the ability of the courts to administer spoken language court interpreting services statewide. As the Court aptly notes in its request, however, the interpreter program and regulations do not apply in all circumstances.

Specifically, the Interpreter Rules do not apply to individuals who are serving either without attaining formal court interpreter designation or who are privately retained in the absence of court appointment. For this reason, the courts have, in many instances, no assurances all interpreters possess threshold skills otherwise required under the Interpreter Rules. This is a concern with respect to provision of interpreter services in civil cases as well as other court and court-related proceedings outside the scope of rule 2.560. Such proceedings include, but are not limited to, depositions, mediations, arbitrations, and examinations which may be compelled by court order, subpoena, or general law. In these circumstances, it is foreseeable, perhaps even to be presumed, many seeking access to courts may suffer deprivation of a fundamental right unless existing standards apply uniformly to *all* persons providing interpreter services in all court and court-related proceedings.

To this end, the Board proposes expansion of the Interpreter Rules in a manner uniformly applying them to presently unregulated individuals providing interpreter services in all court and court-related proceedings. Importantly, the proposal does *not* require an expansion of services with attendant costs. Those now securing the services of interpreters for proceedings outside the scope of rule 2.560 would continue to retain and remunerate interpreters in their employ. Such privately retained interpreters would shoulder responsibility for securing registration warranting they have demonstrated skills at a level equal to or exceeding requirements under the Interpreter Rules.

Requiring registration under the rules and compliance with uniform standards irrespective of the court or court-related proceeding in which services are provided is not a complete remedy. Proposed changes would, however, promise an increase in the number of skilled interpreters available to the courts. Maintenance of a list of all interpreters securing registration would afford those seeking the services of court interpreters a more informed means of selection. Moreover, changes intended to strengthen the quality of interpretation and accountability of interpreters will affirmatively address present disparities between one court or court-related proceeding and another simply because an individual provides services absent court appointment. Most importantly, by removing systemic barriers and increasing both the availability and effectiveness of qualified spoken

language interpreters providing services in all court and court-related proceedings, the Board believes the proposed revisions constitute steps reasonably undertaken to ensure meaningful access to the courts.

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 30th day of May 2014.

/s/ William E. Davis

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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 30th day of May 2014:

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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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