

**IN THE SUPREME COURT OF FLORIDA**

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

**CASE NO. SC14-1055**

**RESPONSE OF THE COURT INTERPRETER CERTIFICATION BOARD  
TO COMMENTS ON ITS PETITION  
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, respectfully files this response to comments on its Petition to Amend the Florida Rules for Certification and Regulation of Spoken Language Court Interpreters (Interpreter Rules or 14-Series Rules).

By notice published in the July 15, 2014 edition of The Florida Bar News, the Court invited all interested persons to comment on the proposed amendments by August 15, 2014. The Court initially directed the Board to respond to any comments filed with the Court by September 2, 2014. Citing pressing issues regarding implementation of recently approved amendments to the 14-Series Rules, new appointments, and anticipated end-of-summer scheduling difficulties, the Board moved for, and was granted, an extension of time to and including September 22, 2014.

Prior to filing its petition with the Court on May 30, 2014, the Board communicated regarding the proposed amendments with the Chairs of the Rules of Judicial Administration Committee and Civil Procedure Rules Committee, both potentially interested in this matter. At or about the same time the proposed amendments appeared in The Florida Bar News, the Board posted notice on the Florida State Courts website and included a link to the online notice published by the Bar. The Board contemporaneously e-mailed notice to trial court administrators, court interpreter services coordinators, certified interpreters, more than 1000 additional court interpreter program participants, as well as others in the court interpreting community. All interested persons were again invited to comment on the proposed amendments by August 15, 2014.

Among all persons potentially interested in the proposed amendments, only the Trial Court Administrator for the Seventeenth Judicial Circuit, Kathleen R. Pugh, has filed comments. While briefly summarized by the Board in its response, the full text of Ms. Pugh's comments appears online at <http://www.floridasupremecourt.org/clerk/comments/2014/index.shtml>.

## **RESPONSE TO COMMENTS**

The Board expresses its appreciation for the investment of time, effort, and considered opinion reflected in the comments filed in response to the Court's request. Observations and concerns, as well as suggestions specific to proposed

rules, are numbered, then briefly summarized in italics, and appear in the order in which each matter is addressed. The Board next offers its response, either agreeing, offering alternative text, or more fully explaining the basis upon which it favors the rule language initially proposed.

Based on the comments, the Board believes two technical changes should be incorporated in the proposed rules. The first inserts introductory text relating to definitions under rule 14.100. The second modestly revises a defined term under proposed rule 14.100(c) in a manner providing greater symmetry with respect to related definitions. Both of the proposed changes appear at page 3 of Appendix A to this response and are more fully discussed in numbered sections 1 and 4 below.

*1. Observing judges will be required to construe the proposed rules with all other rules of procedure, the comment takes issue with the definition of “court proceeding” under proposed rule 14.100(g). So defined, the term appears to expand the required inquiry and responsibility of the courts in relation to appointment of interpreters under Florida Rule of Judicial Administration 2.560. The comment suggests “an undue burden will be placed upon court administration staff, judges, and the circuit’s budget for interpreters” if the inquiry under rule 2.560 must take into account every hearing and trial over which any judge, general magistrate, special magistrate, or hearing officer presides.*

While the observation regarding construction of proposed rules in relation to other rules of procedure is a well-settled principle of law, any requirement

potentially expanding interpreter *services* –as opposed to *standards*– is an entirely unintended consequence.

By way of brief explanation, the Board initially advanced the rules proposal recognizing a substantial number of persons who are neither certified nor otherwise officially designated are routinely providing unregulated court interpreting services. These unregulated individuals are providing services in the courts absent assurances they possess even threshold skills required under the rules. Proposed changes seek an extension of *standards* applying, with some limitations, to all persons who provide spoken language interpreting services in any court or court-related proceeding. It has been the Board’s intention from the outset to accomplish this end without triggering an expansion of interpreter *services* outside the present scope of Florida Rule of Judicial Administration 2.560. (Petition, 7-9)

A similarly brief observation may be in order regarding construction of court rules in relation to other rules of procedure. As noted in the comment, rule 2.560 does not define the term “proceeding,” relying, instead, upon “the plain reading of the rule and its historical application.” (Comment, 1-2) In the absence of ambiguity, a text plain on its face elicits no duty to construe the language in a manner supporting any other meaning. *See Caminetti v. United States*, 242 U.S. 470, 490 (1917). In other words, when determining the meaning of “proceeding”

under rule 2.560, an unambiguous text does not require an *in pari materia* reading of the proposed amendments to the 14-Series Rules.

The foregoing to one side, however, the Board acknowledges the concern raised in the comment might affirmatively be addressed by redefining terms. Unfortunately, modifying the definition of “court proceeding” in the manner suggested would limit both the kind and number of proceedings with respect to which uniform standards governing court interpreters might otherwise apply. Alternatively, the Board might avoid use of the term “proceeding,” though this seems an inartful approach with respect to proposed rules purposefully extending uniform standards to unregulated individuals who are already providing spoken language interpreting services in court or court-related proceedings. Similarly, the Rules of Judicial Administration Committee might propose rule 2.560 be amended to include a rule-specific definition of “proceeding.” Though the Rules of Judicial Administration Committee may later choose to do so consistent with the Court’s determination in this matter, a response in this instance is, instead, a matter before the Board.

As the comment contests a presumed expansion of interpreter *services* as a result of a term defined in a manner singularly intended to facilitate an extension of *standards* to unregulated individuals, the Board suggests the matter be resolved by

including the following technical emendation at the beginning of, and as a useful introduction to, rule 14.100:

“The following terms have the meanings shown as used in these rules:”

This text is drawn, unchanged, from the definitions section under Florida Rule of Judicial Administration 2.120. It is substantially the same as a similar provision relating to defined terms under Probate Rule 5.015(b). Numerous statutory provisions also restrict defined terms as used in a given chapter. *See, e.g.*, §105.011(1), Fla. Stat. (2014). The Board is further instructed in this regard by cases cited in the introduction to the comment, both stating rules must be construed in the same manner as statutes. *See Syndicate Properties v. Hotel Floridan Co.*, 94 Fla. 899, 903, 114 So. 441, 443 (1927); *Bryan v. State*, 94 Fla. 909, 914, 114 So. 773, 775 (1927).

*2. Observing “registered” individuals are included along with certified, language skilled, and provisionally approved court interpreters under proposed rule 14.110(h), the comment notes no definition for this term is included in the proposed rules. The comment requests the Board consider defining a category of “registered” individuals. Proposing a definition, the comment further suggests such a change would render rule 14.200(f) unnecessary.*

Reference to “registered” individuals under rule 14.110(h) conforms existing language relating to record-keeping with proposed amendments requiring

registration under rule 14.200. Specifically, proposed revision of rule 14.200(a) provides *all* court interpreters will be required to register with the Office of the State Courts Administrator before providing interpreter services. Rule 14.200(f) provides persons holding, or later earning, any official designation will be deemed registered. Registration alone, however, denotes only a threshold level of eligibility and, in the absence of official designation, will not afford interpreters a preference in selection, appointment, staffing, or private retention of services. It is simply an entry point.

The “registered court interpreter” category differs markedly in character from the three state-level designations. A definition for a category of registered individuals has not been included among defined terms, in part, as a means of further distinguishing registration alone from formal designations signifying higher levels of expertise. It is essentially a functional requirement under the rules. Like other undefined terms, among which one might count “issuance,” “renewal,” “suspension,” “revocation,” and “reinstatement,” registration is aptly described in substantially greater detail by the rule itself.

With or without defining “registered court interpreter,” rule 14.200(f) remains a useful component of the proposal as it clarifies for persons holding any state-level interpreter designation obligations with respect to registration and renewal.

While not strongly averse to including “registered court interpreter” among defined terms, the Board believes the better course lies in recognizing registration as a functional requirement under the proposed rules, as opposed to a term denoting substantive expertise. Additionally, the Board finds no basis for striking rule 14.200(f).

*3. The comment raises several questions with respect to enforcement, first observing proposed rules do not address circumstances in the event a private litigant fails to retain or makes no attempt to secure preferred services of a certified or language skilled interpreter under rules 14.205(a) and 14.210(a).*

The Board readily acknowledges the importance of the comment’s observation and related questions relating to enforcement issues.

Struggling with these and similar matters at length, initial drafts of proposed rules included enforcement provisions which required filing of notices or affidavits averring best efforts to secure the services of certified or other qualified interpreters. Draft language soon began to take on an aura of civil rules or an expansion of rule 2.560, and, in some instances, rules of evidence. The more helpful the draft enforcement language would appear, the more likely its specific provisions would fall outside the scope of the Board’s authority to recommend rules appropriately regulating court interpreters.



Although convinced of the need to include procedures specific to private retention of court interpreters, the Board is equally certain its authority with respect to these matters is limited. Consequently, the proposed rules govern interpreters only, not private litigants. Similarly, no changes are proposed with respect to any part of rule 2.560. As such, the Board cannot speak to the effect on private litigants of any provision under rule 2.560 dealing with diligent search, after-the-fact approvals pursuant to rule 2.560(e)(2), whether a proceeding is voidable for failure to secure services of a certified or language skilled interpreter, or approvals under rule 2.560(e)(4) for successive use of previously approved interpreters.

Still, certain of these questions may be addressed absent enforcement provisions in the Interpreter Rules under authority of the courts with respect to case management and general oversight regarding branch matters. For example, private retention of interpreters under rules 14.205(a) and 14.210(a) might routinely be facilitated by the courts upon apprising private litigants regarding availability of registries listing qualified individuals as maintained in accordance with rule 14.110(h).

Given these and other questions regarding matters neither within the scope of its authority nor otherwise addressed under rule 2.560, the Board has suggested the Court might address such concerns in the context of other rules of court. As both the Rules of Judicial Administration and Civil Procedure Rules Committees

have a continuing interest in this area, further consideration of these issues might follow consistent with the Court's determination in this matter.

*4. The comment offers a final suggestion, once more in relation to the definitions section, specifically proposing the term "Language Skilled" under proposed rule 14.100(c) be revised in a manner providing greater symmetry in relation to definitions of "Certified Court Interpreter" and "Provisionally Approved."*

The Board concurs in the following revision of proposed rule 14.100(c):

**(bc) Language Skilled.** A designation reserved for interpreters who have completed all requirements in accordance with these rules, but who are seeking certification in a spoken language for which there is no state-certifying examination, ~~such persons holding and~~ hold a valid certificate issued by the Office of the State Courts Administrator.

In conclusion, a shared intention of all involved with these issues lies in affording non-English speaking and limited English proficient persons meaningful access to Florida's courts. The Board recognizes the common concern based upon which comments in this matter are offered and extends its thanks to the Trial Court Administrator for the Seventeenth Judicial Circuit for affording the Court the benefit of her views.

In light of the comments, and given the suggested technical changes discussed in numbered sections 1 and 4 above, the Board requests the Court accept

Appendix A to this Response in substitution for the original Appendix A filed with the Petition.

Respectfully submitted this 17<sup>th</sup> day of September 2014.

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

I CERTIFY a true and correct copy of the foregoing Response to Comments has been furnished by electronic mail through the Florida Courts E-Filing Portal to the following persons this 17<sup>th</sup> day of September 2014:

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I FURTHER CERTIFY the Response 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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