

RE: Proposal to Amend Hawai'i Rules for Certification of Spoken and Sign Language Interpreters (CSSLI)

AMENDMENTS TO THE HAWAII RULES FOR CERTIFICATION
OF SPOKEN AND SIGN LANGUAGE INTERPRETERS (CSSLI)

The Supreme Court of Hawai'i seeks public comment regarding proposals to amend the Hawai'i Rules for Certification of Spoken and Sign Language Interpreters (CSSLI).

The amendments are intended to clarify terminology and to establish a disciplinary process for court interpreters. The proposed amendments are attached hereto.

Comments about the proposed amendment should be submitted, in writing, **no later than Wednesday, July 25, 2018**, to the Judiciary Communications & Community Relations Office by mail to 417 South King Street, Honolulu, HI 96813, by facsimile to 539-4801, or via the Judiciary's website.

Attachment

**PROPOSED AMENDMENTS TO THE
HAWAI'I RULES FOR CERTIFICATION OF
SPOKEN AND SIGN LANGUAGE INTERPRETERS (CSSLI)**
(Deleted material is bracketed and stricken; new material is underlined)

**Rule 1. PRINCIPLES, APPLICATION, AUTHORITY
AND SCOPE**

1.4 The Office of the Administrative Director shall administer the program established by these rules for certification and for providing language interpretation services for court users who are LEP, deaf, or hard-of-hearing, who are principal parties in interest and/or witnesses, or persons with a substantial interest ~~[participating]~~ in legal proceedings in Hawai'i State Courts, in accordance with Judiciary Policy 12 (Language Assistance Policy).

**Rule 2. GENERAL ELIGIBILITY FOR COURT
INTERPRETER CERTIFICATION**

2.1 An applicant shall be eligible for consideration for certification as a spoken or sign language court interpreter upon establishing to the satisfaction of the Administrative Director that the applicant:

- (a) is at least 18 years of age;
- (b) is a citizen, permanent resident alien or national of the United States, or a non-citizen with employment authorization from the United States Citizenship & Immigration Services;
- (c) possesses a valid General Excise Tax license issued by the State of Hawai'i;
- (d) is of good character and fit to serve as a court interpreter;
- (e) attended and successfully completed a two-day court interpreter ~~[certification]~~ basic orientation training administered by the Administrative Director;
- (f) passed a written English proficiency examination administered by the Administrative Director;
- (g) passed a written basic court interpreter ethics examination administered by the Administrative Director; and
- (h) passed clearance of a criminal ~~[background]~~ history record check as required by Rule 9.

Rule 6. BASIC ORIENTATION TRAINING

6.1 Each applicant must fully attend and complete, at the applicant's own expense, a two-day court interpreter ~~[-certification]~~basic orientation training conducted by the Administrative Director. The training shall be designed to:
(a) familiarize the applicant with the Court Interpreter Certification Program and the Hawai'i State Court system
and (b) provide instruction on the role of the interpreter and the skills and ethics required of an interpreter in the courtroom.

Rule 7. WRITTEN ENGLISH PROFICIENCY EXAMINATION

7.2 Each applicant may take any single version of the written English proficiency examination a maximum of two times. An applicant ~~[and]~~ may not take any version of the written English proficiency examination ~~[same version within a]~~ until a six-month waiting period has elapsed since the last exam taken.

Rule 8. WRITTEN BASIC COURT INTERPRETER ETHICS EXAMINATION

8.2 The number of times an applicant may take any single version of the written basic court interpreter ethics examination is unlimited; provided that an applicant may not re-take the written basic court reporter interpreter ethics examination until a six-month waiting period has elapsed.

Rule 9. CRIMINAL RECORD CHECK AND EVALUATION OF CHARACTER AND FITNESS

9.1 A court interpreter must be one whose record of conduct justifies the trust of the court, witnesses, jurors, attorneys, parties, and the public. To protect the integrity of court and legal proceedings and the safety of the public, applicants shall undergo a criminal history record check and may be subject to other lawful reference and/or background checks as required by the Administrative Director.

9.2 Following full attendance and completion of the two-day court interpreter [~~certification~~] basic orientation training and passage of both the written English proficiency and basic court interpreter ethics examinations, a criminal history record check shall be conducted on applicants consistent with applicable law.

9.3 Applicants must provide required information necessary to conduct the criminal history record check and must pay any associated fees as required by the Administrative Director.

9.5 Each applicant shall be notified in writing by regular mail of the outcome of the criminal history record check and evaluation of the applicant's character and fitness to serve as a court interpreter.

Rule 10. ORAL/SIGN LANGUAGE INTERPRETER PROFICIENCY EXAMINATION

10.1 Spoken and sign language interpreters who have fully attended and completed the court interpreter [~~certification~~] basic orientation training, passed both the written English proficiency and basic court interpreter ethics examinations, cleared the criminal history record check and character and fitness evaluation, and achieved a passing score on an oral/sign language interpreter proficiency examination administered or recognized by the Administrative Director[;] will be given a tier designation in accordance with Rule 12.

10.2 Each applicant may take any single version of any of the oral language interpreter proficiency examination administered by or through the Administrative Director a maximum of two times.~~[, and]~~ An applicant may not take [a single version] an oral language interpreter proficiency examination in the same language from the same testing organization more than once in a calendar year.

**Rule 13. HAWAI‘I STATE COURT INTERPRETER
REGISTRY**

13.1 Interpreters who ~~[receive certificates]~~ achieve tier designation status pursuant to Rule 11 shall be listed in the Hawai‘i State Court Interpreter Registry.

**Rule 17. PROCEDURES FOR COMPLAINTS AND
DISCIPLINE**

17.1 ~~[The Administrative Director shall, subject to supreme court approval, promulgate procedures for complaint and discipline.]~~ **Grounds for Discipline.** An interpreter issued a certificate pursuant to Rule 11.1 is subject to disciplinary sanctions for any of the following reasons:

- (a) Any felony or misdemeanor conviction;
- (b) Fraud, dishonesty, or deception related to the functions and duties of an interpreter, including willfully and knowingly making false interpretation while serving in an official capacity;
- (c) Gross incompetence;
- (d) Failure to appear as scheduled without good cause;
- (e) Willfully and knowingly making a material misstatement on an application submitted pursuant to Rule 4.1; or
- (f) Willful violation of the Code of Professional Conduct for Court Interpreters, the Hawai‘i Rules for Certification of Spoken and Sign Language Interpreters, or any other official policies and procedures, including the Policies for Interpreted Proceedings in the Courts of the State of Hawai‘i.

17.2 Complaint Procedure.

(a) Initiation.

(1) Any person may submit to the Administrative Director a written complaint regarding the conduct of an interpreter. All complaints must be submitted within 180 days from the date of the alleged disciplinary breach. The time for submission may be extended by the Administrative Director for good cause. The Administrative Director may appoint a designated officer to act on his or her behalf to carry out any duties in this Rule.

(2) If a complainant is unable to communicate in written English, the complainant may submit the complaint in the language in which he or she is most proficient.

(3) Alternative forms of documentation, such as video or audio formats, will be considered when the complainant is unable to document a complaint in writing due, for example, to illiteracy or where no written form of the complainant's language exists.

(4) The Administrative Director may, in the absence of a documented complaint, initiate an inquiry as to whether an interpreter has engaged in misconduct.

(b) Privilege. A qualified privilege shall attach to any complaint submitted to the Administrative Director and to any testimony related to a complaint. Any civil action predicated on such complaint instituted against any complainant or witness, or their counsel, shall be subject to said qualified privilege.

(c) Discretionary Notice. Notice of a complaint or inquiry regarding the conduct of an interpreter may be given to the interpreter.

(d) Screening of Complaints.

(1) Upon receipt of a complaint or inquiry, the Administrative Director shall forward the complaint or inquiry to the Judiciary's Office on Equality and Access to the Courts ("OEAC"), which shall determine whether the complaint or inquiry alleges grounds for disciplinary sanction pursuant to Rule 17.1. If such grounds are alleged, OEAC shall forward the complaint to the Chair of the Hawai'i Supreme Court Committee on Court Interpreters and Language Access ("CILA").

(2) The CILA Chair shall review OEAC's initial decision regarding the complaint or inquiry. If the CILA Chair determines that the complaint or inquiry does not allege conduct warranting disciplinary action, the complaint shall be dismissed. OEAC shall send written notice of the dismissal via U.S. mail to the complainant and, if the interpreter received notice of the complaint, to the interpreter.

(3) If the CILA Chair determines that further investigation of the complaint or inquiry is required, the CILA Chair shall forward the matter to a three-member panel ("Initial Panel") comprised of CILA members. The Initial Panel shall be *ad hoc* and appointed by the CILA Chair for each case.

17.3 Preliminary Investigation and Evaluation.

(a) The Initial Panel shall meet in person or by conference call within 30 calendar days of appointment to initiate review of the complaint or inquiry and determine whether further action is required. Time may be extended for reasonable cause with approval of the CILA Chair.

(b) The Initial Panel may consider information other than that included in the complaint.

(c) If the Initial Panel does not find sufficient cause to

warrant further investigation against the interpreter, it shall recommend to OEAC dismissal of the complaint or closure of the inquiry. If OEAC concurs, it shall send written notice of the disposition via U.S. mail to the complainant and, if the interpreter received notice of the complaint, to the interpreter. If OEAC concludes the Initial Panel's determination is unlawful, clearly erroneous, arbitrary, or an abuse of discretion, it may remand the matter for further proceedings based upon the details of that written determination.

17.4 Formal Investigation.

(a) If the Initial Panel finds sufficient cause to warrant further investigation of the matter, it shall notify the interpreter by serving a petition upon the interpreter, detailing the allegations made in the complaint, and shall request that the interpreter respond in writing to the allegations of misconduct within 30 calendar days from the date of written notification. The respondent interpreter shall serve his or her answer upon the Initial Panel within 30 days after the service of the petition, unless such time is extended by Initial Panel. In the event the respondent fails to answer, the allegations may be deemed admitted; provided, however, that a respondent who fails to answer within the time provided may obtain permission of the Chair of the Initial Panel to file an answer if such failure to file an answer was attributable to mistake, inadvertence, surprise or excusable neglect.

(b) The Initial Panel shall consider the interpreter's response, information obtained from the interpreter's file maintained by OEAC, and all other information gathered during the course of the Initial Panel's investigation.

(c) A hearing may be conducted at which the Initial Panel may, at its discretion, call witnesses and consider or clarify any evidence presented. The interpreter may be represented by counsel at the interpreter's own expense, and shall be given the opportunity to testify, comment on the allegations, present evidence, and call witnesses. Testimony shall be under oath. The rules of evidence shall not apply, but the Initial Panel shall admit only trustworthy evidence. Hearing proceedings shall be reported or recorded electronically and shall be confidential except upon request of the interpreter facing the allegations.

(d) Efforts to informally resolve the complaint or inquiry may be initiated by the Initial Panel or the interpreter at any time. Any resolution informally reached shall be submitted in writing to OEAC. Both the complainant and the interpreter shall be notified of the agreed resolution in writing by U.S. mail by OEAC.

(e) If no informal resolution of the matter is reached, the Initial Panel, following any further investigation it deems necessary

in its discretion, shall submit a report to OEAC. The Initial Panel shall include in its report, based upon a standard of clear and convincing evidence, written findings of fact and conclusions of law, and a recommendation for the disposition of the matter, including dismissal or imposition of one or more forms of disciplinary sanction specified in Rule 17.5.

(f) Upon review of the Initial Panel's report and recommendation, OEAC shall promptly either affirm the recommended discipline and issue an Administrative Disciplinary Letter, imposing upon the interpreter one or more forms of disciplinary sanction specified in Rule 17.5, remand the matter for further proceedings before the Initial Panel, or dismiss the petition with the consent of the Initial Panel Chair, provided that no such consent shall be required where the Initial Panel recommended dismissal of the petition. In the event OEAC determines the proceeding shall be concluded by private or public reprimand, such reprimand shall be imposed in accordance with procedures established by OEAC. If a public reprimand, reassignment, suspension, or revocation is imposed, electronic notice of discipline shall be forwarded by OEAC to all state court presiding judges, chief court administrators, and court interpreter assignment coordinators, if deemed appropriate by OEAC. Both the interpreter and the complainant shall be notified of the disposition in writing by U.S. mail by OEAC.

17.5 Disciplinary Sanctions. Disciplinary sanctions may consist of one or more of the following:

- (a) Private reprimand;
- (b) Public reprimand;
- (c) Restriction on the types of cases to which the interpreter may be assigned;
- (d) Reassignment of the interpreter to a lower tier of court interpreter designation on a permanent or temporary basis;
- (e) Suspension of the certificate issued pursuant to Rule 11.1 for a specified period of time;
- (f) Revocation of the certificate issued pursuant to Rule 11.1, including specification as to whether the interpreter will be allowed to apply for reinstatement following a specified period of time;
- (g) Requiring that one or more interpreter examinations be retaken and passed;
- (h) Requiring continuing education courses, mentoring, or other training options;
- (i) Restitution; or
- (j) Payment of costs and expenses incurred by the Initial Panel in connection with the proceeding, including investigative and hearing costs.

The specific disciplinary sanction and the degree of discipline imposed should depend upon factors that include: (a) aggravating and mitigating factors including, but not limited to, the nature and seriousness of the violation, the intent of the interpreter, and the interpreter's level of experience; (b) whether there is a pattern of improper activity by the interpreter; and (c) the effect of the interpreter's improper activity on others or on the judicial system.

17.6 Secondary Review.

(a) The interpreter may request a review of the Administrative Disciplinary Letter issued by OEAC no later than 30 calendar days after the decision is mailed to the interpreter.

(b) The request for review shall be directed to the Administrative Director and shall include the interpreter's written objections to the Administrative Disciplinary Letter.

(c) The Administrative Director shall consider the request for review based upon the written record including, but not limited to: the interpreter's file maintained by OEAC; written material submitted by the interpreter; the written findings, conclusions, and recommendation of the Initial Panel; and the Administrative Disciplinary Letter issued by OEAC.

(d) The Administrative Director shall determine whether the Initial Panel's findings, conclusions, and recommendation and the Administrative Disciplinary Letter issued by OEAC were unlawful, clearly erroneous, arbitrary, or an abuse of discretion. There shall be no hearing on the matter unless required at the Administrative Director's discretion.

(e) The Administrative Director shall issue a Final Decision within 30 calendar days of receipt of the written request for review. Written notice of the Final Decision shall be sent to the interpreter and the complainant, if any, by U.S. mail by the Administrative Director. If a public reprimand, reassignment, suspension, or revocation is imposed, electronic notice of discipline shall be forwarded by the Administrative Director to all state court presiding judges, chief court administrators, and court interpreter assignment coordinators, if deemed appropriate by the Administrative Director.

17.7 Request for Reinstatement. An interpreter who has been restricted from cases, or reassigned to a lower tier of court interpreter designation, or whose certificate has been suspended or revoked, may apply in writing to the Administrative Director for reinstatement to the Court Interpreter Certification Program pursuant to time frames established in the final notification. The request shall explain why the interpreter believes reinstatement should occur. The Administrative Director shall have sole discretion to grant or deny reinstatement,

or to impose conditions upon reinstatement, as the Administrative Director deems appropriate.

17.8 Immunity. Members of any Initial Panel, the Administrative Director or designee, and CILA shall be absolutely immune from suit to the extent provided by law, for all conduct in the course of their official duties under this Rule.

17.9 Confidentiality.

(a) In General. All proceedings involving allegations of misconduct by an interpreter shall be kept confidential to the extent permitted by law until and unless: (1) the interpreter agrees that the matter shall be public, or (2) an Administrative Disciplinary Letter or Final Decision is issued for the imposition of public reprimand, reassignment, suspension, or revocation. All participants in the proceeding shall conduct themselves so as to maintain the confidentiality of the proceedings. This Rule shall not preclude the Initial Panel or OEAC from providing to the complainant reasonable information regarding the status of the matter and its disposition, nor shall it preclude internal administrative communications necessary for the management of the disciplinary process.

(b) Disclosure. This provision shall not be construed to automatically deny access to relevant information by authorized agencies investigating the qualifications of interpreters for certification or employment.

(c) Public Statements by Administrative Director. In any case in which the subject matter becomes public through independent sources or through a waiver of confidentiality by the interpreter, the Administrative Director may issue statements as deemed appropriate to confirm the pendency of an inquiry or investigation, to clarify the procedural aspects of the disciplinary proceedings, to explain the right of the interpreter to a fair hearing without pre-judgment, and to state that the interpreter denies the allegations.

17.10 Criminal conduct. Matters involving possible criminal conduct may be referred to the Department of the Attorney General, State of Hawai'i, and/or other law enforcement agency.