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SCRU-12-0000600

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

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In the Matter of the

HAWAI'I RULES FOR CERTIFICATION OF SPOKEN  
AND SIGN LANGUAGE INTERPRETERS

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ORDER VACATING THE HAWAI'I RULES FOR CERTIFICATION OF SPOKEN  
AND SIGN LANGUAGE INTERPRETERS AND PROMULGATING THE  
HAWAI'I RULES FOR CERTIFICATION OF SPOKEN-LANGUAGE INTERPRETERS  
(By: Recktenwald, C.J., Nakayama, McKenna, Pollack, and Wilson, JJ.)

IT IS HEREBY ORDERED that the Hawai'i Rules for  
Certification of Spoken and Sign Language Interpreters are  
vacated, effective July 1, 2019, in favor of the Hawai'i Rules  
for Certification of Spoken-Language Interpreters and appendix,  
attached to this order, which shall become effective on July 1,  
2019.

IT IS FURTHER ORDERED that the Clerk shall enter this  
order in SCRU-12-0000600 and, contemporaneously, create a new  
SCRU case in the Judiciary Information Management System for the  
Hawai'i Rules for Certification of Spoken-Language Interpreters

and file this order in the new SCRUI case, along with the appended materials.

DATED: Honolulu, Hawai'i, March 1, 2019.

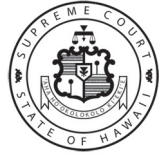
/s/ Mark E. Recktenwald

/s/ Paula A. Nakayama

/s/ Sabrina S. McKenna

/s/ Richard W. Pollack

/s/ Michael D. Wilson



## **HAWAI‘I RULES FOR CERTIFICATION OF SPOKEN-LANGUAGE INTERPRETERS**

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

**1.1** The purpose of these Rules for Certification of Spoken-Language Interpreters is to establish a Court Interpreter Certification Program that will provide a process by which court interpreters may be registered, certified, and otherwise qualified in order to assist judges, attorneys, and other court personnel in selecting quality interpreter services in the Hawai‘i State Courts.

**1.2** All persons involved in proceedings before the Hawai‘i State Courts, regardless of literacy or proficiency in the English language, have the right to equal access to the courts and to services and programs provided by the Hawai‘i State Courts.

**1.3** A person who is Limited English Proficient (LEP) shall, throughout a legal proceeding, have the right to the assistance of a spoken-language interpreter appointed by the court as provided by court rule.

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

**1.5** For purposes of these Rules for Certification of Spoken-Language Interpreters, any reference to the Administrative Director or the Office of Administrative Director includes the Judiciary’s Office on Equality and Access to the Courts and such other offices as the Administrative Director shall designate with responsibility for the program.

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

**2.1** An applicant shall be eligible for consideration for certification as a spoken-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 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 history record check as required by Rule 9 of these Rules.

**2.2** An applicant shall be designated as a certified or otherwise approved spoken-language court interpreter if the applicant meets all of the requirements set forth in Rule 2.1 (a) through (h) above and passes an oral language interpreter proficiency examination administered by the Administrative Director. *See* Appendix A.

**Rule 3. WAIVER OF CERTIFICATION REQUIREMENTS**

**3.1** The Administrative Director may waive the requirements of Rule 2.1(e), 2.1(f), 2.1(g), 2.1(h), or 2.2 upon trustworthy evidence that the applicant has otherwise met the requirement.

**Rule 4. APPLICATION FOR ADMISSION TO THE COURT INTERPRETER CERTIFICATION PROGRAM**

**4.1** An applicant desiring admission to the Court Interpreter Certification Program for spoken-language interpreters shall complete and submit a written application on a form provided by the Administrative Director.

**4.2** Applications shall be screened and processed by the Office of the Administrative Director. This process includes a review of each applicant's eligibility under Rule 2.1 of these Rules, academic background, language proficiency, and prior interpreting/translation experience. Each applicant shall be advised in writing of the time and place at which the next phase of the certification process will be conducted. Any applicant whose application is denied shall be promptly notified.

**Rule 5. POLICIES FOR INTERPRETED PROCEEDINGS IN THE COURTS OF THE STATE OF HAWAII**

**5.1** Each applicant shall, when notified that the applicant's application has been processed, receive a copy of the Order Adopting the Policies for Interpreted Proceedings in the Courts of the State of Hawai'i, including the Code of Professional Conduct for Court Interpreters, issued by the Hawai'i Supreme Court on June 22, 1995. Knowledge of the Code of Professional Conduct for Court Interpreters is an important component of: (a) the Court Interpreter Certification Program basic orientation training; and (b) written English proficiency and basic court interpreter ethics examinations. Each interpreter

shall be subject to the Code of Professional Conduct for Court Interpreters issued by the Hawai'i Supreme Court on June 22, 1995 and subsequent amendments thereto.

**Rule 6. BASIC ORIENTATION TRAINING**

**6.1** Each applicant must fully attend and complete, at the applicant's own expense, a 2-day court interpreter 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.

**6.2** Dates, times, locations, and registration fees for the basic orientation training shall be determined by the Administrative Director.

**Rule 7. WRITTEN ENGLISH PROFICIENCY EXAMINATION**

**7.1** Following full attendance and completion of the court interpreter basic orientation training, each applicant must take the written English proficiency examination administered by the Administrative Director and achieve a passing score as determined by the Administrative Director.

**7.2** Each applicant may take any single version of the written English proficiency examination a maximum of 2 times. An applicant may not take any version of the written English proficiency examination until a 6-month waiting period has elapsed since the last exam taken.

**7.3** Each applicant shall be notified in writing by regular mail of the applicant's score on the written English proficiency examination.

**Rule 8. WRITTEN BASIC COURT INTERPRETER ETHICS EXAMINATION**

**8.1** Following full attendance and completion of the court interpreter basic orientation training, each applicant must take the written basic court interpreter ethics examination administered by the Administrative Director and achieve a passing score as determined by the Administrative Director.

**8.2** The number of times an applicant may take any single version of the written basic court interpreter ethics examination is unlimited. However, an applicant may not take any version of the written basic court interpreter ethics examination until a 6-month waiting period has elapsed since the last exam taken.

**8.3** Each applicant shall be notified in writing by regular mail of the applicant's score on the written basic court interpreter ethics examination.

**Rule 9. CRIMINAL HISTORY 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 2-day court interpreter 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.

**9.4** An applicant may be disqualified from registration and/or certification as a court interpreter if deemed unfit by the Administrative Director. In evaluating an applicant's character and fitness to serve as a court interpreter where the applicant's criminal or other record indicates any deficiency in the applicant's honesty, trustworthiness, diligence, or reliability that is material to the applicant's performance as a court interpreter, the following, non-exclusive factors may be considered in assigning weight and significance to prior conduct:

- (a) the applicant's age at the time of the conduct;
- (b) the recency of the conduct;
- (c) the reliability of the information concerning the conduct;
- (d) the seriousness of the conduct;
- (e) the factors underlying the conduct;
- (f) the cumulative effect of the conduct;
- (g) evidence of rehabilitation;
- (h) the applicant's positive social contributions since the conduct;
- (i) the applicant's candor in the certification process; and
- (j) the materiality of any admissions or misrepresentations.

**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 LANGUAGE INTERPRETER PROFICIENCY EXAMINATION**

**10.1** Spoken-language interpreters who have fully attended and completed the court interpreter 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 language interpreter proficiency examination administered or recognized by the Administrative Director will be given a tier designation in accordance with Rule 12 of these Rules.

**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 2 times. An Applicant may not take an oral language interpreter proficiency examination in the same language from the same testing organization more than once in a calendar year.

**10.3** Each applicant shall be notified in writing by regular mail of the applicant's score on the oral language interpreter proficiency examination.

**Rule 11. ISSUANCE OF CERTIFICATE OF COURT INTERPRETER TIER DESIGNATION STATUS**

**11.1** Upon satisfactory completion of the specified requirements in these rules, the Administrative Director shall issue a certificate to the court interpreter indicating the tier designation status achieved, subject to any continuing education requirements determined by the Administrative Director under Rule 18 below. *See Appendix A.*

**Rule 12. TIERS OF COURT INTERPRETER DESIGNATION STATUS**

**12.1** Spoken-language interpreters meeting requirements under Rule 2.1 (a) through (h) shall be designated Tier 1 "Registered" court interpreters and are eligible to pursue higher Tier designations based on passage of oral language interpreter proficiency examinations approved by the Administrative Director.

**12.2** Spoken language Tier 1 "Registered" interpreters shall be designated

Tier 2 "Conditionally Approved";  
Tier 3 "Approved";  
Tier 4 "Certified"; or  
Tier 6 "Certified Master"

interpreters by achieving the requisite scores on oral language interpreter proficiency examinations of the National Center for State Courts or LionBridge. *See Appendix A.*

**12.3** Spoken language Tier 1 “Registered” interpreters shall be designated

Tier 6 “Certified Master” interpreters by achieving requisite scores on the Federal Court Interpreter Certification Examination (FCICE);

Tier 3 “Approved” interpreters by achieving “Conference Interpreter” designation through the U.S. Department of State oral examination;

Tier 2 “Conditionally Approved” by achieving “Seminar Interpreter” designation through the U.S. Department of State oral examination.

*See Appendix A.*

**Rule 13. HAWAII STATE COURT INTERPRETER REGISTRY**

**13.1** Interpreters who achieve tier designation status pursuant to Rule 11 of these Rules shall be listed in the Hawai‘i State Court Interpreter Registry.

**Rule 14. APPOINTMENT OF COURT INTERPRETER**

**14.1** Court interpreters shall be appointed in accordance with the rules of court. When making an appointment, a court should give preference to court interpreters within that circuit who have been qualified under these Rules for Certification of Spoken-Language Interpreters in Hawai‘i State Courts. A court interpreter who has been qualified under these rules shall be paid in accordance with the interpreter’s designation. *See Appendix A.*

**14.2 Remote Interpreting.** The court may appoint an interpreter to provide interpreter services remotely, such as by telephone or other electronic means, when an interpreter is not available to appear in court in person under Rule 14.1 of these Rules. The use of remote interpreter services should, unless special circumstances exist, be limited to matters that are relatively short in duration and do not involve testimonial evidence. “Special circumstances” may include situations in which an interpreter is needed to interpret a language that is rare or uncommon within the circuit in which the proceeding is situated.

**Rule 15. DISQUALIFICATION OR REMOVAL OF COURT INTERPRETER FROM LEGAL PROCEEDING**

**15.1** A court may disqualify or remove a court interpreter from a legal proceeding for good cause, including but not limited to, failing to follow applicable laws, rules of court, or the Order Adopting the Policies for Interpreted Proceedings in the Courts of the State of Hawai‘i, filed June 22, 1995.



**15.2** Any of the following actions shall be good cause for a court to disqualify or remove an interpreter in an individual legal proceeding:

- (a) inability to interpret adequately, including where the interpreter self-reports such inability;
- (b) knowingly and willfully making false interpretation while serving in an official capacity;
- (c) knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity; and
- (d) failing to appear as scheduled without good cause.

**Rule 16. EXPENSES AND FEES**

**16.1** The expenses and fees for administering the certification requirements, including complaint procedures, shall be set and revised as necessary by the Administrative Director.

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

**17.1 Grounds for Discipline.** An interpreter issued a certificate pursuant to Rule 11.1 of these Rules 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 of these Rules; or
- (f) Willful violation of the Code of Professional Conduct for Court Interpreters, the Hawai'i Rules for Certification of Spoken-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 the Administrative Director's 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 the complainant 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 of these Rules. 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 3-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 interpreter shall serve the interpreter's answer upon the Initial Panel within 30 days after the service of the petition, unless such time is extended by the Initial Panel. In the event the interpreter fails to answer, the allegations may be deemed admitted; provided, however, that a interpreter 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 of these Rules.

(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 of these Rules, 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 of these Rules, for a specified period of time;
- (f) Revocation of the certificate issued pursuant to Rule 11.1 of these Rules, 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 recommendations 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.

**Rule 18. CONTINUING EDUCATION REQUIREMENTS**

**18.1** The Administrative Director shall, subject to supreme court approval, develop continuing education requirements.

## APPENDIX A

### Tiers of Court Interpreter Designation

Tier	Designation	Hourly Fee	Requirement
<b>All Tiers of Court Interpreter Designations must fulfill the minimum requirements set forth under Tier 1</b>			
<b>6</b>	Certified Master	\$55	Full Consortium Oral Exam: 80% for Simultaneous; 80% for Consecutive; 80% overall for Sight Translation, with at least 75% for each subpart; or Federal Court Interpreter Certification Exam (FCICE)
<b>5</b>	N/A	N/A	N/A
<b>4</b>	Certified	\$45	Full Consortium Oral Exam: 70% for Simultaneous; 70% for Consecutive; 70% overall for Sight Translation, with at least 65% for each subpart
<b>3</b>	Approved	\$40	Full Consortium Oral Exam: 60% for Simultaneous; 60% for Consecutive; 60% overall for Sight Translation, with at least 55% for each subpart; or Abbreviated Consortium Oral Exam: 70% for Simultaneous; 70% for Oral English Proficiency component; or Alternative Credential Recognition for passage of an exam approved by the Judiciary; or U.S. Department of State Oral Exam "Conference Interpreter" designation
<b>2</b>	Conditionally Approved	\$35	Abbreviated Consortium Oral Exam: 60% for Simultaneous; 60% for Oral English Proficiency component; or Alternative Credential Recognition for passage of an exam approved by the Judiciary; or U.S. Department of State Oral Exam "Seminar Interpreter" designation
<b>1</b>	Registered	\$25	2-Day Basic Orientation Workshop: 70% for Consortium Written Exam; 80% for Hawai'i Basic Ethics Test; and Passage of Criminal Background Check

## APPENDIX B

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Adoption )  
 )  
 of )  
 )  
 the Policies for Interpreted )  
 Proceedings in the Courts of )  
 the State of Hawai'i )  
 )

FILED  
JUN 22 8 32 AM '95  
I HAKAIAWA  
CLERK SUPREME COURT

ORDER ADOPTING THE POLICIES FOR INTERPRETED  
PROCEEDINGS IN THE COURTS OF  
THE STATE OF HAWAI'I

IT IS HEREBY ORDERED that the attached Policies for Interpreted Proceedings in the Courts of the State of Hawai'i are adopted, effective immediately.

DATED: Honolulu, Hawai'i, June 22, 1995.

  
Chief Justice





**POLICIES FOR INTERPRETED PROCEEDINGS IN THE COURTS**  
**OF THE STATE OF HAWAII**

**PREAMBLE**

Many persons who come before the courts are partially or completely excluded from full participation in the proceedings due to limited English proficiency or speech or hearing impairment. Interpreters are highly skilled professionals who fulfill an essential role in the administration of justice. When interpreters act as officers of the court, they help assure that such persons enjoy equal access to justice and that court proceedings function efficiently and effectively.

These policies are offered to give our courts, those who appear before our courts, and those who are working to improve language interpretation in our courts, a guide to providing needed language services. Application of these policies must be considered in the context of state and federal constitutional rights and other relevant state and federal law.

## **INTERPRETED PROCEEDINGS**

### **I. STANDARDS FOR DETERMINING THE NEED FOR A COURT INTERPRETER**

(A) **When an interpreter is needed.** An interpreter is needed if, upon examination by the court, (1) a party or witness is unable to speak English so as to be understood directly by counsel, court, and jury, or (2) if a party is unable to hear, understand, speak and/or use English sufficiently to comprehend the proceedings and to assist counsel in the conduct of the case. One interpreter should interpret witness testimony for the court. Additional, separate interpreters may be needed for each non-English speaking party.

(B) **When an Examination is Required.** If it appears that a party's or witness' primary language is not English or that a party or witness may not hear, understand, speak and/or use English well enough to participate fully in the proceedings, the court, with or without a motion, should conduct an examination on the record to determine whether a court interpreter is needed. After the examination, the court should state its conclusion on the record. If the court concludes an interpreter is needed, the case file should be clearly marked to ensure that an interpreter will be present when needed in any subsequent proceeding.

(C) **Examination of Party or Witness.** The examination of a party or witness to determine if an interpreter is needed should usually include questions about the following:

(1) Identification (for example: name, address, birthdate, age, place of birth);

(2) Active vocabulary in vernacular English (for example: "How did you come to the court today?" "What kind of work do you do?" "Where did you go to school?" "What was the highest grade you completed?" "Describe what you see in the courtroom." "What have you eaten today?"). Questions should be phrased to avoid "yes-no" replies;

(3) The court proceedings (for example: the nature of the charge or the type of case before the court, the purpose of the proceedings and function of the court, the rights of a party or criminal defendant, and the responsibilities of a witness).

(D) **Qualifications of Interpreters.** Courts should use interpreters who can (a) understand terms generally used in the type of proceeding before the court, (b) explain these terms in English and the other language being used, and (c) interpret these terms into the other language being used. If a list of recommended interpreters is not available, or if it appears an interpreter cannot understand and interpret the terms used in the

proceeding, the judge should conduct a brief examination of the interpreter to determine if the interpreter is qualified to interpret in the proceeding. When conducting the examination the judge should, if possible, seek the assistance of an interpreter whose qualifications have been established.

**(E) When a Sound Recording of Interpreted Testimony is Needed.** Upon the motion of a party, the judge shall determine whether to require electronic sound recording of a judicial proceeding in which an interpreter is used under this section. The electronic sound recording shall record both the testimony of the witness and the interpreter's interpretation. In making this determination, the judge shall consider, among other things, the qualifications of the interpreter and the interpreter's prior experience in interpretation of court proceedings; whether the language to be interpreted is one of the languages for which the court has qualified interpreters, and the complexity or length of the proceeding. In a grand jury proceeding, the presiding judge shall require electronic sound recording of any portion of the proceeding in which an interpreter is used.

## **II. INSTRUCTING PARTICIPANTS ABOUT PROCEDURE**

In interpreted proceedings the court shall instruct the participants about the procedure to be followed. These instructions may be given either in writing or orally and should usually include:

### **(A) Instructing Interpreters.**

(1) A preappearance interview should be held with the party or witness under the supervision of the court to enable the interpreter to become familiar with speech patterns and linguistic traits and to determine what technical or special terms may be used. Pending proceedings should not be discussed with the party unless the party's counsel is present or with a witness unless counsel for all parties are present.

(2) During the preappearance interview with a non-English speaking witness, the interpreter should give the following instructions on procedure:

(i) Speak in a loud, clear voice so that the entire court and not just the interpreter can hear.

(ii) All responses should await the full interpretation of the question in English, and then be directed to the person asking the question, not to the interpreter.

(iii) All questions should be directed to counsel or to the court and not to the interpreter. Do not seek advice from or engage in discussion with the interpreter.

(3) During the preappearance interview with a non-English speaking party, the interpreter should give the following instructions on the procedure to be used when the party is not testifying:

(i) The interpreter will interpret all statements made that are a part of the record in the case.

(ii) All questions should be directed to counsel for the party. The interpreter will interpret all questions to counsel and the responses. Do not seek advice from or engage in discussion with the interpreter.

(4) Communications between counsel and client are not to be disclosed.

(5) Interpreters shall not give legal advice to a party or witness. Legal questions should be referred to the attorney for the party or to the court.

(6) All statements made by any witness should be interpreted, including statements or questions to the interpreter. No summary of any testimony should be made except on instruction by the court.

(7) The court should be informed if the interpreter needs to consult a dictionary or other linguistic reference aid or is unable to interpret a word, expression, or special terminology.

(8) All words, including slang, vulgarisms, and epithets, should be interpreted to convey the intended meaning.

(9) All statements made in the first person should be interpreted in the first person. For example, a statement or question should not be introduced with the words, "He says . . . ."

(10) All inquiries or problems should be directed to the court and not to the witness or counsel. In unusual circumstances, the interpreter may request permission to approach the bench with counsel to discuss the problem. The court may instruct the jury that no adverse inference may be drawn from the interpreter's request.

(11) The interpreter should be positioned near the witness or party but should not block the view of the judge, jury, or counsel.

(12) The court should be informed if the interpreter becomes fatigued during the proceedings.

(13) An interpreter who is to interpret for a party at counsel table should speak loudly enough to be heard by the party or counsel but not so loudly as to interfere with the proceedings.

(14) Whenever an objection is made, the interpreter shall interpret everything that was said up to the objection and instruct the witness by hand gesture not to speak until the court has ruled on the objection. The court may at that time explain to both the jury and the witness that the interpreter has been instructed not to interpret until the

court rules on the objection pending, in order that the interpreter not lose his or her credibility.

(15) Each court interpreter shall be sworn for the record before engaging in the interpretation of a proceeding as follows: "Do you solemnly swear or affirm that you will interpret accurately and impartially to the best of your ability, in the case now pending before this court?"

**(B) Instructing Counsel.**

(1) All questions by counsel examining a witness with an interpreter present should be directed to the witness and not to the interpreter. For example do not say, "Ask him if . . . ."

(2) If counsel understands both languages and disagrees with the interpretation, any objection should be directed to the court and not to the interpreter. Counsel should ask permission to approach the bench to discuss the problem.

(3) If counsel believes that a prospective interpreter lacks the qualifications necessary to serve as an interpreter in the matter before the court, counsel may be permitted to conduct a brief supplemental examination of the interpreter before the court decides whether to appoint the interpreter.

**III. CODE OF PROFESSIONAL CONDUCT FOR COURT INTERPRETERS**

Rule 1. Court interpreters shall act strictly in the interests of the court they serve.

Rule 2. Court interpreters shall reflect proper court decorum and act with dignity and respect toward the officials and staff of the court and all other participants in the proceedings.

Rule 3. Court interpreters shall avoid professional or personal conduct which could discredit the court.

Rule 4. A court interpreter shall not disclose privileged communications between counsel and client. A court interpreter shall not make statements about the merits of the case during the proceeding. Court interpreters, except upon court order, shall not disclose confidential information about court cases obtained while performing interpreting duties.

Rule 5. A court interpreter shall disclose to the judge and to all parties any actual or apparent conflict of interest. Any condition that may interfere with the objectivity of an interpreter constitutes a conflict of interest. A conflict may exist if the interpreter is acquainted with or related to any witness or party to the action or others significantly involved in the case, or if the interpreter has an interest in the outcome

of the case. An interpreter shall not engage in conduct creating the appearance of bias, prejudice, or partiality.

**Rule 6.** Court interpreters shall work unobtrusively with full awareness of the nature of the proceedings.

**Rule 7.** Court interpreters shall interpret accurately and faithfully without indicating personal bias and shall avoid even the appearance of partiality.

**Rule 8.** Court interpreters shall maintain impartiality by avoiding undue contact with witnesses, attorneys, and parties and their families, and by avoiding contact with jurors. This should not limit, however, appropriate contacts necessary to prepare adequately for their assignment.

**Rule 9.** A court interpreter shall not give legal advice to parties and witnesses, nor recommend specific attorneys or law firms. Court interpreters shall refrain from giving advice of any kind to any party or individual and from expressing personal opinion in a matter before the court.

**Rule 10.** Court interpreters shall perform to the best of their ability to assure due process for the parties, accurately state their professional qualifications and refuse any assignment for which they are not qualified or under conditions which substantially impair their effectiveness.

A court interpreter's best skills and judgment shall be used to interpret accurately without embellishing, omitting or editing. Court interpreters shall preserve the level of language used, and the ambiguities and nuances of the speaker and the language used. They shall also correct any error of interpretation, and shall request clarification of ambiguous statements or unfamiliar vocabulary and analyze objectively any challenge to their performance. Interpreters shall call to the attention of the court any factors or conditions that adversely affect their ability to perform adequately.

**Rule 11.** Court interpreters shall accept no remuneration, gifts, gratuities, or valuable consideration in excess of the authorized compensation for the performance of their interpreting duties, and shall avoid conflicts of interest or the appearance thereof.

**Rule 12.** Court interpreters should support other court interpreters by sharing knowledge and expertise with them to the extent practicable in the interests of the court.

**Rule 13.** Court interpreters shall not take advantage of knowledge obtained in the performance of duties, or by their access to court records, facilities, or privileges, for their own or another's personal gain.

**Rule 14.** A court interpreter performing interpretation services in connection with any state court proceeding agrees to be bound by this Code, and understands that appropriate sanctions may be imposed by the court for willful violations.

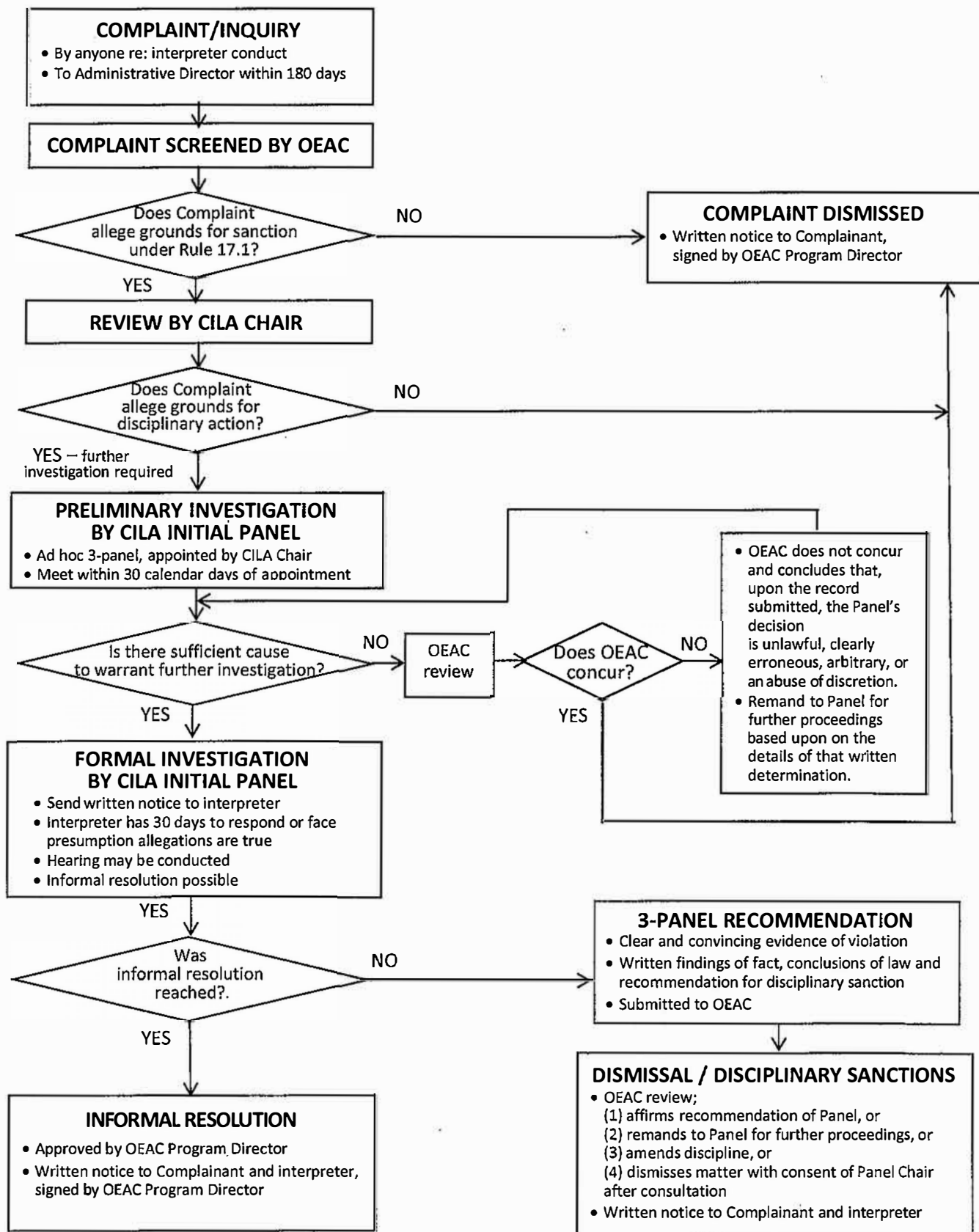
**Rule 15.** A court interpreter should, through continuing education, maintain and improve his or her interpreting skills and knowledge of procedures used by the courts. A court interpreter should seek to elevate the standards of performance of the interpreting profession.

**Rule 16.** Court interpreters should inform the court of any impediment to the observance of this Code or of any act by another in violation of this Code.

# APPENDIX C

## RULE 17 FLOWCHART: INTERPRETER COMPLAINT PROCESS

(revised 5/16/18)





**RULE 17 FLOWCHART: COMPLAINT REVIEW PROCESS**  
(rev. 5/16/18)

