

IN THE TWENTIETH JUDICIAL CIRCUIT IN AND FOR THE STATE OF FLORIDA

IN RE: CERTIFICATION AND)
REGULATION OF CERTIFIED) Administrative Order
PROCESS SERVERS) No. 2.30
_____) (formerly AO 1.11)

WHEREAS, section 48.27, Florida Statutes, authorizes the Chief Judge of a judicial circuit to establish an approved list of Certified Process Servers as an alternative means for the service of initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses; and

WHEREAS, the undersigned Chief Judge has determined that establishing an approved list of Certified Process Servers for the Twentieth Judicial Circuit would, in fact, serve the interest of justice and judicial economy throughout the Twentieth Judicial Circuit; and

WHEREAS, the undersigned Chief Judge has further determined that the establishment of the Twentieth Judicial Circuit Certified Process Server Review Board will serve to provide oversight and to make recommendations to the Chief Judge of this Circuit;

It is hereby **ORDERED** that an approved list of Certified Process Servers for the Twentieth Judicial Circuit shall be created, maintained and regulated in accordance with the following policies and procedures:

1. Definitions.

A. A "Certified Process Server" means a natural person who has met the requirements for certification provided for in section 48.29, Florida Statutes, and this Administrative Order, and who is on the approved list of Certified Process Servers by order of the Chief Judge of the Twentieth Judicial Circuit.

B. The "Board" means the Twentieth Judicial Circuit Certified Process Server Review Board, as established by this Administrative Order.

2. Authority.

Placement of a person's name on the Twentieth Judicial Circuit's approved list of Certified Process Servers authorizes that person to serve initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses on a person found within the Twentieth Judicial Circuit, in accordance with section 48.27, Florida Statutes. A Certified Process Server shall serve at the discretion of the Chief Judge and the authority granted herein may be suspended or revoked by the Chief Judge.

3. Purpose.

This Administrative Order is intended to ensure proficiency and professionalism in the service of initial nonenforceable civil process, criminal witness subpoenas, and criminal summonses, in keeping with the public trust and legal importance of proper service.

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4. Twentieth Judicial Circuit Certified Process Server Review Board.

A. Board Composition. The Twentieth Judicial Circuit Certified Process Server Review Board shall be under the supervisory authority of the Chief Judge. It shall be composed of two Certified Process Servers, one member of the Florida Bar practicing in this Circuit who regularly employs the services of a Certified Process Server, one representative of the Lee County Sheriff, and one representative of a Sheriff within this Circuit other than Lee County. All members shall be appointed by the Chief Judge and shall serve at the pleasure of the Chief Judge.

B. Officers; Quorum. The Board shall elect one of its members to serve as chair, and one to serve as vice-chair. A majority of the Board shall constitute a quorum.

C. Vacancies. Any vacancy on the Board shall be filled by appointment by the Chief Judge. A person appointed to fill a vacancy shall serve for the remainder of the term of the member being replaced.

D. Terms. The Board members shall be appointed for two year terms, and may be eligible for reappointment.

E. Duties. The duties of the Board shall include the following:

(1) The Board shall be responsible for recommending application forms, recommending training courses and certification requirements, , addressing complaints referred by the Chief Judge in accordance with the disciplinary procedures set forth herein, and recommending discipline of Certified Process Servers to the Chief Judge.

(2) The Board may make additional recommendations as the Board may deem appropriate.

(3) The Board shall have the authority to adopt rules governing its operating procedures, subject to the approval of the Chief Judge.

(4) The Board may make recommendations to the Chief Judge regarding the amendment of these rules and procedures.

F. Fees. Application and renewal fees shall be determined by the Chief Judge or upon recommendation by the Board.

G. Minutes. The Board shall manage and approve the recording of its meetings, hearings, and all other official actions.

H. Expenses. Members of the Board shall serve without compensation and shall not be entitled to reimbursement for any expenses.

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5. **Application for Certification.** All applicants seeking certification shall apply on an application form approved by the Chief Judge. The application shall include an agreement to be signed by all applicants in the presence of a notary. All applicable fees must be included with the application. Applications shall be accepted during normal business hours during an open application period to be determined by the Chief Judge.

6. **Qualification.**

Applicants must satisfy the following requirements to apply for certification:

- A. be at least 18 years of age;
- B. have no mental or legal disability;
- C. be a permanent resident of this state;
- D. attest that they have read and become familiar with the laws and rules governing the service of process;
- E. submit to and pass a written examination recommended by the Board and approved by the Chief Judge;
- F. submit to a background investigation, at the applicants expense, which shall include any criminal record of the applicant;
- G. file with the Board a certificate of good conduct certifying:
 - (1) no record of any pending criminal case against the applicant;
 - (2) no conviction within the preceding 5 years for which civil rights have not been restored;
 - (3) no record of conviction of a misdemeanor involving moral turpitude or dishonesty within the proceeding 5 years;
- H. take an oath of office that he or she will honestly, diligently, and faithfully exercise the duties of a Certified Process Server;
- I. execute and file a bond in the amount \$5,000 with a surety company authorized to do business in this state for the benefit of any person injured by any misfeasance, malfeasance, neglect of duty, or incompetence of the applicant in connection with his or her duties as a process server. Such bond shall be renewable annually.

7. **Examination.**

The Board shall recommend a training program administered by third party entities which include a written examination to all applicants seeking Certified Process Server certification, to ensure that such applicants possess a satisfactory level of knowledge of the laws and rules regarding the service of process. The administrator of any training program shall issue a

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certificate demonstrating that the applicant has satisfactorily passed the written examination. Examinations shall be offered at least once each year.

8. Issuance of Certification.

Upon satisfactory completion of the specified prerequisites, and if the Chief Judge further determines within his or her discretion that the applicant is otherwise an appropriate candidate to serve as a Certified Process Server, the Chief Judge shall issue an order placing the applicant on the list of Certified Process Servers and provide a copy of the order to the Clerk of Court for each county within the Circuit. The Court Administrator and the Clerk of Court for each county shall maintain a list of Certified Process Servers based upon the court orders.

9. Identification Card.

Upon certification as a Certified Process Server, the applicant shall be issued an identification card in the form prescribed by section 48.29(5)(b), Florida Statutes. Costs incident to the preparation and issuance of the card shall be paid by the applicant as part of the application fee. Each identification card shall be renewable annually upon proof of good standing, current bond, and payment of a renewal fee.

10. Renewal of Certificate.

A. Annual renewal. Each Certified Process Server shall pay an annual certificate renewal fee in the amount determined by the Chief Judge or upon recommendation by the Board. A certificate shall be suspended automatically upon nonpayment on or before the renewal date, but shall be reinstated upon application, accompanied by payment, made within 30 days of the renewal date. Upon expiration of the 30 day grace period, any request for reinstatement must be made pursuant to the application process set forth under paragraphs 5, 6, and 7 of this Administrative Order.

B. Annual Recertification. To assure that Certified Process Servers have maintained adequate knowledge of current laws and rules applicable to service of process, renewal shall, on an annual basis, require the successful completion of a refresher course and examination administered by a third party entity. The administrator of the refresher program shall issue a certificate demonstrating that the applicant has satisfactorily passed the written examination. The recertification examination may be given more frequently and at different locations than the initial certification examination.

11. Prohibited Conduct Generally.

The following conduct is prohibited, and may lead to a recommendation by the Board of disciplinary action:

A. accepting employment for service of process in which the certified process server has an interest, or continuing employment after becoming aware of the existence of an interest;

B. making unlawful representations to any person with regard to certified process server's identity or legal authority in order to effect service of process;

- C. alcohol or drug abuse, physical incapacity, or mental instability, which interferes or is likely to interfere with the performance of the duties of a Certified Process Server;
- D. executing a false return of service;
- E. obtaining certification by fraudulent means;
- F. revocation of certification in another state, circuit or county;
- G. submitting fraudulent information on any document in connection with service of process;
- H. engaging in any conduct, whether or not connected to performing duties as a process server, that may reflect negatively on the Twentieth Judicial Circuit or Chief Judge;
- I. breaching any terms set forth in the Certified Process Server application or agreement;
- J. any other practice that may constitute or reflect malfeasance, misfeasance, neglect of duty, or incompetence.

12. Suspension or Revocation of Certification.

A certificate issued pursuant to these rules may be suspended or revoked for any of the following reasons:

- A. a pending criminal case or conviction of a felony or of a misdemeanor involving moral turpitude, dishonesty, or false statements;
- B. fraud, dishonesty, or corruption either related or unrelated to the functions and duties of a Certified Process Server;
- C. fraud or misrepresentation in obtaining or renewing certification;
- D. nonpayment of renewal fees;
- E. engaging in any of the prohibited activities listed in paragraph 11 above;
- F. any other cause at the discretion of the Chief Judge.

13. Disciplinary Procedures.

A. Initiation. Disciplinary proceedings may be initiated upon a written and signed complaint asserting a violation of these rules submitted to the Chief Judge, or upon the Chief Judge's own motion, or upon recommendation by the Board to the Chief Judge. If sufficient grounds are set forth and a specific Certified Process Server is identified by the complainant, the Chief Judge will refer the matter to the Board for a determination of probable cause and further proceedings as set forth herein.

B. Probable Cause; Notification. Upon referral of a complaint to the Board, if a majority of the Board finds probable cause to believe that a violation of these rules has occurred, it shall send written notice thereof, identifying the rule or rules alleged to have been violated, to the Certified Process Server by certified United States mail directed to the last mailing address on file. The Board shall further notify the Chief Judge of its finding, who shall have the authority to temporarily suspend the certification of the Certified Process Server pending the outcome of the disciplinary process set forth herein.

C. Response. Within 15 days of service of a finding of probable cause, the Certified Process Server shall file a written response with the Board. If the Certified Process Server does not respond, the violations identified in the finding of probable cause shall be deemed admitted.

D. Board Review. Within 15 days after the filing of the written response to the finding of probable cause or within 15 days following the expiration of the time within which to file a response if none is filed, the Board shall review the complaint, the finding of probable cause, the response (if any), and any other pertinent materials, and decide whether to:

- (1) dismiss the proceeding;
- (2) issue a proposed disposition; or
- (3) set a hearing.

Written notice of any decision shall promptly be sent to the Certified Process Server, by certified United States mail to the last mailing address on file, and the Board shall notify the Chief Judge.

E. Hearing Demanded. A proposed disposition issued pursuant to subdivision D shall become final unless the Certified Process Server demands a hearing within 15 days of the date on which it was issued and mailed.

F. Finality of Decision without Hearing. In cases in which the Board issues a proposed disposition without setting a hearing and a hearing is not demanded within the time limitation of subdivision E, the Board's decision shall become final upon expiration of that time limitation and shall then be forwarded to the Chief Judge as a recommendation of disposition.

G. Identity of Complainant. Upon written request filed with the Board, the Board shall promptly reveal to the Certified Process Server the identity of the complaining party.

H. Legal Representation. The Certified Process Server may be represented by an attorney at any stage of these proceedings. The Certified Process Server shall be responsible for all of his or her costs and expenses, including attorney fees.

14. Disciplinary Hearings.

A. Timing of Hearing. A hearing shall be held if set by the Board pursuant to paragraph 13.D or if demanded pursuant to paragraph 13.E. Absent good cause, no hearing shall take place less than 15 days, nor more than 30 days, from the date of notice pursuant to paragraph 13.D or of the Certified Process Server's demand pursuant to paragraph 13.E.

B. Rules of Evidence. Strict rules of evidence shall not apply. The Board may in its discretion, consider any evidence presented, including affidavits, giving such evidence the weight it deems appropriate.

C. Record of Hearings. The Board shall ensure that a record of all disciplinary hearings is made, either by the use of recording devices or by the taking of minutes documenting the evidence and substance of all testimony.

D. Hearing Procedure. At the hearing, both the Board and the Certified Process Server shall be afforded the opportunity to introduce documents and other relevant evidence.

E. Board Deliberations. Following the presentation of evidence, the Board shall deliberate regarding its decision and make its recommendation to the Chief Judge in accordance with subdivision F below.

F. Finality of Decision after Hearing; Rehearing. In cases in which a hearing is held, unless the Certified Process Server files a request for rehearing within 10 days of the date he or she receives the decision, the Board's decision shall be forwarded to the Chief Judge as a recommendation of disposition. If a timely request for rehearing is filed, the decision shall not be forwarded to the Chief Judge until the request has been disposed of by written decision, a copy of which shall be sent to the Certified Process Server by certified United States mail.

15. Disciplinary Dispositions.

A. Burden of Proof. If the Board finds that there is clear and convincing evidence that the Certified Process Server has violated one or more of these rules, it shall recommend to the Chief Judge such discipline as it may deem appropriate, consistent with these rules.

B. Vote Required; Notification. All decisions of the Board shall be by majority vote, in writing and, if adverse to the Certified Process Server, shall contain factual findings supporting the decision. A copy of the decision shall be sent to the Certified Process Server by certified United States mail.

C. Sanctions. Discipline recommended by the Board and imposed by the Chief Judge may consist of one or more of the following:

- (1) a reprimand by the Board;
- (2) a reprimand by the Chief Judge;
- (3) the imposition of costs and expenses incurred by the Board in connection with the proceeding, including investigative costs;
- (4) restitution;
- (5) requiring that the Certified Process Server certification exam be successfully retaken;

(6) limiting the geographic scope of practice by county;

(7) suspension of certification for a specified period of time, after which the individual may seek reinstatement of his or her certification as provided in paragraph 16 hereof, and upon any other conditions the Chief Judge may deem appropriate.

(8) revocation of certification.

D. If after reviewing the Board's recommendation and factual findings, the Chief Judge determines that sanctions are appropriate, the Chief Judge shall enter an order imposing sanctions, and the list of Certified Process Servers shall be updated, as appropriate..

16. **Chief Judge's Discretion; Suspension, Revocation or Denial of Certification**

All Certified Process Servers serve at the pleasure of the Chief Judge, and nothing here shall be construed as granting to any person the right to be included on the Chief Judge's list of Certified Process Servers. The Chief Judge maintains the discretion to suspend, revoke, or deny certification of a Certified Process Server, with good cause and in the best interest of the Twentieth Judicial Circuit, even in the absence of disciplinary proceedings or recommendation of the Board. The suspension, revocation or denial of certification does not automatically deprive a person of the ability to serve initial nonenforceable civil process by motion and order pursuant to Fla. R. Civ. P. 1.070.

17. **Reinstatement.**

A Certified Process Server whose certificate has been suspended or revoked may apply in writing for reinstatement. Such request shall explain why the applicant believes that he or she should be reinstated. The Board shall recommend for or against such a request to the Chief Judge who shall have final and absolute discretion.

18. **General Provisions.**

A. This Administrative Order was originally enacted to be effective on November 1, 2007. The amendments herein are effective immediately.

B. To the extent that this Administrative Order may conflict with any law or rule, the law or rule shall control.

DONE AND ORDERED in Chambers in Fort Myers, Lee County, Florida, this 29

day of July, 2010.

G. Keith Cary
G. Keith Cary, Chief Judge

History.- Administrative Order 1.11 (October 29, 2007); Administrative Order 1.11 (July 28, 2008); renumbered as Administrative Order 2.30 to account for legislative changes to Fla. Stat. §§ 48.021 and 48.27, Ch. 2009-215, Laws of Florida; Administrative Order 2.30 (July 30, 2009).

STATE OF FLORIDA, COUNTY OF LEE

FILED FOR RECORD This 29 Day of July, 2010 Record in Circuit

Book 54 Page 211-212 and Record Verified.

By CHARLIE GREEN Deputy Clerk
Clerk Circuit Court

Correct copy of the
an file in my office,
Charlie Green, Clerk Circuit
Court, Lee County, Florida
Dated 7/29/10
By Charlie Green
Deputy Clerk