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06/30/2003 at 07:58 AM, BOB INZER, CLERK OF COURTS

IN THE SECOND JUDICIAL CIRCUIT OF FLORIDA

OFFICE OF THE CHIEF JUDGE

ADMINISTRATIVE ORDER NO.: 2003-11

IN RE: CERTIFICATION AND REGULATION OF CIVIL PROCESS SERVERS.
_____/

WHEREAS, since the inception of Administrative Rule 90-12, In re: Certification of Civil Process Servers, the number of Certified Civil Process Servers in this Circuit has increased ten-fold; and,

WHEREAS, the administrative burden of certification and regulation of Civil Process Servers pursuant to Section 48.25, et seq., Florida Statutes, has increased comparatively to the increase in the number of Certified Civil Process Servers; and,

WHEREAS, the Legislature of the State of Florida clearly intended to supplement service of process by the various Sheriffs of Florida Counties with an alternate means of service of civil process by Certified Civil Process Servers when it enacted Section 48.25, et seq., Florida Statutes; and,

WHEREAS, if this Court is to continue to exercise its discretionary power to certify and regulate Certified Civil Process Servers pursuant to Section 48.025, et seq., Florida Statutes, the procedures to be followed in the Second Judicial Circuit must be reformed and clarified;

WHEREAS, Administrative Order 2000-07, as amended, created the Second Judicial Circuit Certified Civil Process Server Review Board which has been operating thereunder since, and the need has arisen for the modification of the procedures and guidelines by which the Second Judicial Circuit Certified Civil Process Server Review Board functions;

IT IS THEREFORE

ORDERED that:

1. Definitions & Authority.

(a) " Certified Civil Process Server" means a natural person who has met the requirements for certification provided for in Section 48.29, Florida Statutes and this Administrative Rule, and who has been placed on the approved list of certified process servers by the Chief Judge of the Second Judicial Circuit.

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(b) " Board" means the Second Judicial Circuit Certified Civil Process Server Review Board, as established by this Administrative Rule.

(c) Authority. Placement of a person's name on the approved list of Certified Civil Process Servers authorizes him or her to serve initial nonenforceable civil process on a person found within the circuit where the process server is certified when a civil action has been filed against such person in the Circuit or County Court in the state. The Chief Judge may certify a civil process server in a specific County or Counties within the Circuit rather than Circuit-wide, in the Chief Judge's discretion and upon request of the applicant.

2. Purpose.

This administrative order is intended to ensure proficiency and professionalism in the service of civil process, in keeping with the public trust and legal importance of proper service of process.

3. Second Judicial Circuit Certified Civil Process Server Review Board.

(a) Board Composition. The Second Judicial Circuit Certified Civil Process Server Review Board is hereby created to monitor the certification and conduct of persons certified pursuant to this rule and Section 48.25, et seq., Florida Statutes. The Board shall be under the supervisory authority of the Chief Judge of this Circuit. It shall be composed of two (2) Certified Civil Process Servers, one member of the Florida Bar practicing in this Circuit who regularly employs the services of a Certified Civil Process Server, one representative of a Clerk of Court within this Circuit who is familiar with the service of process, one representative of the law enforcement community in this Circuit who is familiar with the service of process, and 1 lay person from the general public. All members shall be appointed by the Chief Judge. Service on the Board at the Chief Judge's request shall be a condition of continued certification for the Certified Civil Process Servers.

(b) Officers; Quorum. Annually, 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 initial terms of Board members shall be as follows:

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(1) one year: the first Law Enforcement representative, the first representative of a Clerk of Court, and the first member of the Florida Bar appointed by the Chief Judge;

(2) two years: the first lay person and the first Certified Civil Process Server appointed by the Chief Judge;

(3) three years: the second Certified Civil Process Server appointed by the Chief Judge.

Following the initial terms, all terms shall be three years. Board members shall be eligible for reappointment. However, no person shall serve more than two consecutive 3-year terms.

(f) Duties. The duties of the Board shall include the following:

(1) The Board shall be responsible for the recommendation of certification, receipt and review of complaints regarding Certified Civil Process Servers, issuance of notice of complaints to Certified Civil Process Servers, receipt and review of responses of Certified Civil Process Servers to complaints, conduct of hearings, and recommendation of discipline of Certified Civil Process Servers to the Chief Judge of the Circuit.

(2) The Board shall have the authority to adopt rules governing its operating procedures.

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

(g) Fees. Applicants shall pay an application and testing fee of $250.00, payable to Leon County. The annual renewal fee shall be $150.00, payable to Leon County, and shall be submitted with the request for renewal of certification. Fees are non-refundable.

(h) Records. The Board shall maintain records and minutes of its meetings, hearings, and all other official actions.

(i) Expenses. Members of the Board shall serve without compensation.

4. Application for Certification.

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All applicants seeking certification shall apply to the Board on the application form attached hereto as Attachment Number 1. The application and testing fee must be included with the application.

The Board shall accept applications for certification during normal working hours throughout the year. The Board will act on new applications as provided herein no later than March 15 of the then current year, for certification effective April 1 of that same year. All certifications shall be good for one (1) year, except as set forth in Sections 10 through 14 hereof.

5. Qualification.

Applicants must satisfy the following requirements to qualify for certification in this Circuit:

(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) Take and pass a written examination administered by the Court and approved by the Chief Judge;

(f) Submit to a background investigation, at the applicant's 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 record of any felony conviction for which civil rights have not been restored;

(3) no record of conviction of the applicant of a misdemeanor involving moral turpitude or dishonesty within the preceding 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 with the Board a bond in the amount of $5,000 with a surety company authorized to do business in this state for the benefit of any

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person injured by misfeasance, malfeasance, neglect of duty, or incompetence of the applicant in connection with his or her duties as a process server;

(j) File the forms, attached hereto as Exhibit 2, from the Sheriff of each County in the Circuit indicating whether the Sheriff has any objection to the applicant being certified as a Certified Civil Process Server.

6. Examination.

The Court shall develop and administer a written examination to all applicants seeking Certified Civil 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 contents of the examination shall be subject to the approval of the Chief Judge. A passing score shall be no less than 80% of the questions answered correctly. The examination shall be administered not less than once each year, at such time and place as may be designated by the Court. Notice of the time and place for the test shall be provided by the Court to all applicants.

7. Issuance of Certification.

Upon satisfactory completion of the specified prerequisites, the Board shall recommend the applicant to the Chief Judge for entry on the list of Certified Civil Process Servers. If the Chief Judge is satisfied that the conditions have been met, 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 Court Administrator and 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.

8. Identification Card.

Upon certification as a Certified Civil Process Server, the applicant shall be issued an identification card by the Court 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. Each identification card shall be renewable annually upon proof of good standing, current bond, and payment of the renewal fee set out in section 3.(g)(3) above.

9. Renewal of Certificate.

(a) Annual renewal. Each Certified Civil Process Server shall pay an annual certificate renewal fee, payable to Leon County, in the amount of $150.00. A certificate shall be suspended automatically upon nonpayment, but shall be

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reinstated upon application to the Board, accompanied by payment, made within 60 days of the date of suspension. Upon expiration of the 60-day grace period, any request for reinstatement must be made pursuant to sections 4, 5, and 6 of this Order.

(b) In addition to the renewal fee, the Certified Civil Process Server shall be the subject of inquiry to each of the Sheriffs of this Circuit to determine if any has any objections to the certification renewal of the Certified Civil Process Server.

(c) Biennial testing. To assure that Certified Civil Process Servers have maintained adequate knowledge of current laws and rules applicable to service of process, renewal shall require the successful completion of the written examination within two years of the initial certification. A passing score shall be no less than 80% of the questions answered correctly. The renewal examination may be given more frequently and at different locations than the initial application. The Board may require every Certified Civil Process Server to submit to the written examination at any time prior to the renewal of his/her certification.

(d) The Board shall take action as required herein no later than March 15 of the then current year for certification effective April 1 of that same year. All certifications shall be good for one (1) year, except as set forth in Sections 10 through 14 hereof.

10. Prohibited Conduct Generally.

The following conduct is prohibited, and may lead to disciplinary action:

(a) accepting employment in which the Certified Process Server has an interest, or continuing employment after becoming aware of the existence of an interest;

(b) making false statements or misrepresentations regarding other Certified Process Servers in this Circuit to any person with the intent to obtain business as a result of such false statements or misrepresentations;

(c) making false statements or omissions to any person with regard to the Certified Process Server's identity or legal authority in order to effect service of process;

(d) continuation of false or deceptive advertising or other activity intended to generate business after receipt of a cease and desist letter from the Board;

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(e) use of threatening or intimidating tactics to obtain client lists or other business records from other Certified Process Servers' offices or from client's offices;

(f) 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 Civil Process Server;

(g) misrepresentation as to the identity of the party receiving service or the process server who actually delivered the service. (Note that knowingly executing a false return of service is a felony of the third degree);

(h) obtained the certification by fraudulent means;

(i) has had his/her certification revoked in another state and/or circuit;

(j) has been the subject of a court order adjudicating the certified civil process server delinquent on his/her child support obligation

(k) accepting a gratuity, gift or favor that might influence professional judgment;

(l) failing to maintain honesty in all professional dealings;

(m) making malicious or intentionally false statements about a colleague;

(n) misrepresenting one's own professional qualifications;

(o) submitting fraudulent information on any document in connection with professional activities;

(p) misrepresenting one's own identity in order to avoid service of process;

(q) any other practices which constitute malfeasance, misfeasance, neglect of duty, or incompetence.

11. Conduct Warranting Revocation of Certification.

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

(a) conviction of a felony, or of a misdemeanor involving moral turpitude, dishonesty, or false statement;

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(b) fraud, dishonesty, or corruption which is related to the functions and duties of a Certified Civil 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 Subsection 10. above.

12. Disciplinary Procedures.

(a) Initiation. Disciplinary proceedings may be initiated before the Board, either by a signed written complaint asserting a violation of these rules, or by the Board, on its own motion.

(b) Probable Cause; Notification. 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 Civil Process Server by certified United States mail directed to the last mailing address on file with the Board. The Board shall further notify the Chief Judge of its finding, who shall have the authority to temporarily suspend the certification of the Certified Civil Process Server pending the outcome of the disciplinary process set forth herein.

(c) Response. Within 30 days of the issuance of a finding of probable cause, the Certified Civil Process Server shall file a written response with the Board. If the Certified Civil Process Server does not respond, the violations identified in the finding of probable cause shall be deemed admitted.

(d) Board Review. Within 60 days after the filing of the written response to the finding of probable cause or within 60 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.

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The Board shall promptly send written notice of its decision to the Certified Civil Process Server, by certified United States mail to the last address on file.

(e) No Hearing Demanded. A proposed disposition issued pursuant to subdivision (d)(ii) shall become final unless the Certified Civil Process Server demands a hearing within 30 days of the date on which it was issued.

(f) Timing of Hearing. Absent good cause, no hearing shall take place less than 30 days, or more than 90 days, from the date of notice pursuant to subdivision (d)(iii) or of the Certified Civil Process Server's demand pursuant to subdivision (e).

(g) Identity of Complainant. Upon written request filed with the Board after a hearing has been set, the Board shall promptly reveal to the Certified Civil Process Server the identity of the complaining party.

(h) Legal Representation. The Certified Civil Process Server may be represented by an attorney at any stage of the proceeding. The Certified Civil Process Server shall be responsible for all of his or her costs and expenses, including attorney fees.

13. Disciplinary Hearings

(a) Pre-hearing Discovery. Pre-hearing discovery shall not be permitted unless expressly authorized by the Board, in response to a written request.

(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) Hearings to be Reported. The Board shall ensure that all hearings are reported.

(d) Hearing Procedure. At the hearing, both the Board and the Certified Civil Process Server shall be afforded the opportunity to introduce documents and other relevant evidence, and to elicit sworn testimony.

(e) Board Deliberations. Following the presentation of evidence, the Board shall deliberate regarding its decision. Such deliberations shall take place in private.

(f) Finality of Decision; Rehearing. Unless the Certified Civil Process Server files a request for rehearing within 10 days of the date he receives the

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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 Civil Process Server by certified United States mail.

14. Disciplinary Dispositions

(a) Burden of Proof. If the Board finds that there is clear and convincing evidence that the Certified Civil 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 Civil Process Server, shall contain factual findings supporting the decision. A copy of the decision shall be sent to the Certified Civil 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 from the Board;

(2) a reprimand from 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 Civil Process Server certification examination be successfully taken, or retaken;

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

(7) suspension of certification not to exceed one (1) year, after which the individual may seek reinstatement of his/her certification as provided in Section 9 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

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Judge shall enter an order imposing sanctions. However, if a reprimand by the Board is the appropriate penalty, the Chief Judge need not enter an order. The Office of the Court Administrator and the Clerk of Court for each County shall update the list of Certified Civil Process Servers with notations or removals based upon the court orders.

15. Confidentiality of Disciplinary Proceedings

When a disciplinary proceeding is either dismissed or results in a reprimand from the Board, all records of the proceeding shall remain confidential; otherwise, all such records shall become public when the Chief Judge makes a final disposition.

16. Review of Adverse Disciplinary Dispositions.

Within 30 days of a final adverse disciplinary disposition after a hearing, the Certified Civil Process Server may seek review by common law certiorari to the First District Court of Appeal pursuant to Rule 9.100, Florida Rules of Appellate Procedure.

17. Reinstatement.

A Certified Civil Process Server whose certificate has been revoked may apply in writing for reinstatement. Such request shall explain why the applicant believes that he or she should be reinstated, and shall be accompanied by current Sheriffs' Advisory Forms from each Sheriff in the Circuit and a renewal fee of $150.00. Whether to recommend to the Chief Judge for or against such a request shall rest in the sole and absolute discretion of the Board. The Board may recommend such conditions upon reinstatement as it deems appropriate.

18. Effective Date.

This Rule shall take effect on June 26, 2003. The provisions of this rule shall apply to all applicants filing applications on or after July 1, 2003, and all renewals sought after July 1, 2003. Current certifications shall remain in effect but shall be renewed under these rules when the current certification expires. Current certifications are subject to the restrictions and disciplinary provisions herein as of July 1, 2003. Administrative Order 90-12, as amended, and 2000-07, as amended, are hereby SUPERSEDED.

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DONE and **ORDERED** this 26th day of June 2003.

WILLIAM L. GARY
Chief Judge

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