

RULES GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS

1986 Recompilation

Article

SCRA 22-001 (1992 Repl.)

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES GOVERNING

THE : 8000 Misc.
RECORDING OF JUDICIAL PROCEEDINGS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Scarborough, Senior Justice Sosa, Justice Stowers, Justice Walters and Justice Ransom concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 22-102, 22-402, 22-403, 22-601 and 22-606 be and the same are hereby amended;

IT IS FURTHER ORDERED that the amendment of Rules 22-102, 22-402, 22-403, 22-601 and 22-606 of the Rules Governing the Recording of Judicial Proceedings shall be effective on and after September 1, 1988;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules Governing the Recording of Judicial Proceedings by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 10th day of June, 1988.

/s/ TONY SCARBOROUGH

Chief Justice

/s/ DAN SOSA, JR.

Senior Justice

/s/ HARRY E. STOWERS, JR.

Justice

/s/ MARY C. WALTERS

Justice

/s/ RICHARD E. RANSOM

Justice

SCRA 22-002 (1992 Repl.)

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES GOVERNING

THE : 8000 Misc.
RECORDING OF JUDICIAL PROCEEDINGS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Sosa, Justice Stowers, Justice Scarborough, Justice Ransom and Justice Baca concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 22-203, 22-205, 22-207, 22-401, 22-402, 22-403 and 22-502 be and the same are hereby amended;

IT IS FURTHER ORDERED that the amendment of Rules 22-203, 22-205, 22-207, 22-401, 22-402, 22-403 and 22-502 of the Rules Governing the Recording of Judicial Proceedings shall be effective on and after April 1, 1989;

IT IS FURTHER ORDERED that the clerk of the court is hereby authorized and directed to give notice of the amendment of the Rules Governing the Recording of Judicial Proceedings by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 8th day of February, 1989.

/s/ DAN SOSA, JR.

Chief Justice

/s/ HARRY E. STOWERS, JR.

Justice

/s/ TONY SCARBOROUGH

Justice

/s/ RICHARD E. RANSOM

Justice

/s/ JOSEPH F. BACA

Justice

SCRA 22-003 (1992 Repl.)

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO

IN THE MATTER OF THE AMENDMENT :
OF THE RULES GOVERNING

THE : Misc. 8000
RECORDING OF JUDICIAL PROCEEDINGS :

This matter coming on for consideration by the court and the court being sufficiently advised, Chief Justice Ransom, Justice

Baca, Justice Montgomery, Justice Franchini, and Justice Frost concurring:

NOW, THEREFORE, IT IS ORDERED that Rules 22-101, 22-103, 22-201, 22-202, 22-203, 22-204, 22-205, 22-206, 22-207, 22-208, 22-301, 22-302, 22-303, 22-401, 22-403, 22-501, 22-502 and 22-504 be and the same are hereby amended;

IT IS FURTHER ORDERED that the amendment of Rules Governing the Recording of Judicial Proceedings shall be effective on and after December 1, 1993;

IT IS FURTHER ORDERED that the clerk of the Court is hereby authorized and directed to give notice of the amendment of the Rules Governing the Recording of Judicial Proceedings by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico, this 27th day of August, 1993.

/s/ RICHARD E. RANSOM
Chief Justice

/s/ JOSEPH F. BACA
Justice

/s/ SETH D. MONTGOMERY
Justice

/s/ GENE E. FRANCHINI
Justice

/s/ STANLEY F. FROST
Justice

SCRA 22-004 (1993 Supp.)

IN THE SUPREME COURT OF THE
STATE OF NEW MEXICO
NO. 95-8300
IN THE MATTER OF THE AMENDMENT
OF SCRA 1986, 22-201, 22-207,
22-401, 22-501, 22-504, 22-603
AND 22-604 OF THE RULES GOVERNING THE
RECORDING OF JUDICIAL PROCEEDINGS

ORDER

This matter coming on for consideration by the Court and the Court being sufficiently advised, Chief Justice Joseph F. Baca, Justice Richard E. Ransom, Justice Gene E. Franchini, Justice Stanley F. Frost and Justice Pamela B. Minzner concurring;

NOW, THEREFORE, IT IS ORDERED that the amendments of Rules 22-201, 22-207, 22-401, 22-501, 22-504, 22-603 and 22-604 of the Rules Governing the Recording of Judicial Proceedings be

and the same hereby are approved;

IT IS FURTHER ORDERED that the amendment of the above-referenced amendments to the Rules Governing the Recording of Judicial Proceedings shall be effective March 15, 1995.

IT IS FURTHER ORDERED that the Clerk of the Court hereby is authorized and directed to give notice of the amendment of the above-referenced rules by publishing the same in the Bar Bulletin and in the SCRA 1986.

DONE at Santa Fe, New Mexico this 18th day of January, 1995.

/s/ JOSEPH F. BACA

Chief Justice

/s/ RICHARD E. RANSOM

Justice

/s/ GENE E. FRANCHINI

Justice

/s/ STANLEY F. FROST

Justice

/s/ PAMELA B. MINZNER

Justice

ARTICLE 1 GENERAL PROVISIONS

Rule

22-101. Scope; definitions; title.

A. Scope.

(1) The examination, certification, supervision, conduct and proficiency of court reporters and court monitors with regard to the practice of reporting and recording of judicial proceedings are matters which are integrally related to the effective, impartial and prompt operation of the judicial branch of the State of New Mexico and are hereby made subject to regulation by rule of the Supreme Court.

(2) These rules also govern transcripts and the recording of judicial proceedings by any means whatsoever.

(3) These rules shall be reviewed on a periodic basis not to exceed three (3) years.

B. Definitions. As used in these rules:

(1) "board" means the Board Governing the Recording of Judicial Proceedings;

(2) "court reporter" means a person who engages in verbatim shorthand reporting using pen or machine shorthand;

(3) "tape monitor" means a person who records judicial proceedings by audio recording or stenomask;

(4) "judicial proceedings" includes court proceedings, depositions and sworn statements.

C. **Title.** These rules may be cited as the "Rules Governing the Recording of Judicial Proceedings".

[As amended, effective December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "definitions" for "and" and made related changes in the rule heading; rewrote Subparagraph A(1); substituted "transcripts" for "records" and added "by any means whatsoever" in Subparagraph A(2); added Subparagraph A(3); and added Paragraph B and redesignated former Paragraph B as Paragraph C.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 20 Am. Jur. 2d Courts § 4; 63A Am. Jur. 2d Public Officers § 14; 75 Am. Jur. 2d Trial §§ 236 to 239.

Court reporter's death or disability prior to transcribing notes as grounds for reversal or new trial, 57 A.L.R.4th 1049.

23A C.J.S. Criminal Law § 1153; 77 C.J.S. Reports § 1 et seq.; 82 C.J.S. Stenographers § 1 et seq.; 88 C.J.S. Trial § 41.

22-102. Penalties for violation of rules.

Any violation of these rules or any violation of rules and regulations promulgated by the supreme court or by the board shall be cause for refusal of the board to issue or renew the certification of any applicant and for the discipline, fine, censure, suspension or revocation of certification as a New Mexico certified court reporter or tape monitor. In addition to any discipline, fine, censure, suspension, revocation, denial or withholding renewal of certification, if the reporter or tape monitor is a state employee, the reporter or tape monitor may be disciplined as a judicial employee under the judicial personnel rules.

[As amended, effective February 15, 1986 and September 1, 1988.]

ANNOTATIONS

Cross-references. - As to creation of board governing the recording of judicial proceedings, see Rule 22-401.

For Rules of Disciplinary Proceedings Before the Board Governing the Recording of Judicial Proceedings, see Rule 22-601 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 82 C.J.S. Stenographers § 9.

22-103. Waiver of rules.

Upon a showing of good cause, the board, in its discretion, may waive any provision of these rules to meet unusual circumstances or to avoid injustice. Appeal from denial of a waiver shall be made in conformance with procedures outlined in Rule 22-403.

[As amended, effective January 15, 1986; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "Upon a showing of good cause, the board, in its discretion, may waive any provision of these rules" for "Any board rule may be waived by the board upon a showing that a waiver is necessary" at the beginning of the rule.

ARTICLE 2 CERTIFICATION

Rule

22-201. Certification of court reporters and tape monitors.

A. **Court reporters.** Except as provided in Paragraph D of this rule, no person shall engage in the verbatim reporting or recording of judicial proceedings unless such person is licensed as a New Mexico certified court reporter issued either by the New Mexico Supreme Court or by the Board Governing the Recording of Judicial Proceedings. A certified court reporter may administer oaths to witnesses anywhere in the state.

B. **Certification.** All transcripts of any judicial proceeding shall be signed and certified by a New Mexico certified court reporter. The New Mexico certified court reporter who physically reports the judicial proceedings shall designate their certification number and affix their signature on all transcripts. The form of certification required is established by the Board Governing the Recording of Judicial Proceedings.

C. **Waiver of examination.** Any applicant who:

(1) has been engaged in the full-time practice of court reporting for three (3) years immediately prior to applying for a license; and

(2) is a holder of a valid National Court Reporters Association proficiency certification may be granted a license by the board or the Supreme Court without a certification examination.

D. Monitors. Whenever judicial proceedings, or other proceedings specifically ordered by the court, are recorded by some audio recording device approved by the administrative office of the courts, such proceedings shall be recorded by a monitor who is certified as qualified by the Board Governing the Recording of Judicial Proceedings. In such cases, that recording shall serve as the transcript unless otherwise ordered by the court.

[As amended, effective December 1, 1993; March 15, 1995.]

ANNOTATIONS

Cross-references. - For creation of Board Governing the Recording of Judicial Proceedings, see Rule 22-401.

The 1993 amendment, effective December 1, 1993, in Paragraph A, rewrote the first sentence and added the last sentence; in Paragraph B, rewrote the first sentence, added the second sentence, and deleted the former last sentence which read "This rule shall not apply to depositions taken and transcribed outside of New Mexico"; in Paragraph C, made stylistic changes, deleted "out of the last four (4)" preceding "years" near the middle and inserted "New Mexico Supreme" near the end of Subparagraph C(1), substituted "is a holder of a valid registered professional reporter certificate obtained through testing" for "received a certificate of proficiency", inserted "valid", substituted "Court" for "Shorthand", deleted "out of the last four (4)" preceding "years", and substituted "may" for "shall", all in Subparagraph C(2); and in Paragraph D, inserted "judicial", "or other proceedings specifically ordered by the court" and "audio" near the beginning, substituted "such proceedings shall be recorded" for "such recordings shall be the transcript or deposition" near the middle, and added the last sentence.

The 1995 amendment, effective March 15, 1995, deleted "or recordings" following "transcripts" and "or certified court monitor" following "reporter" in the first sentence in Paragraph B, substituted "is" for "shall be" in the last sentence in Paragraph B, and rewrote Paragraphs C(1) and C(2).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 82 C.J.S. Stenographers § 9.

22-202. Certification of business engaged in court reporting or tape monitoring.

A. Registration. No business entity, including a partnership, corporation or association of more than one person, or other organization or combination thereof, any of whose owners, partners or shareholders is not a court reporter or tape monitor certified and licensed by the board, engaging in the business of court reporting, and holding itself out as a single business entity, which business entity shall be subject to all Rules Governing the Recording of Judicial Proceedings, may perform services regulated by these rules unless it is registered in accordance with these rules with the New Mexico Board Governing the Recording of Judicial Proceedings. An applicant, to qualify for such a business license, must:

(1) have in its employ at all times a person who is a court reporter, if the business tape records proceedings, certified by the New Mexico Board Governing the Recording of Judicial Proceedings. This court reporter shall be a regular full-time employee, owner or officer of the firm with active and direct supervision and control of the firm's operations to the extent necessary to insure full compliance with the provisions of these rules and any regulations promulgated by the board;

(2) pay an initial and annual registration fee prescribed by the board; and

(3) list all persons who are members or employees of the firm who are certified court reporters in this state. Any person who performs court reporting or recording services for the firm shall be a certified court reporter. This rule shall not be construed to allow uncertified persons to perform services regulated by these rules.

B. Corporations. If the firm is a corporation, it must comply with the laws of this state requiring qualification to do business in New Mexico, and shall have a registered agent and a registered office in New Mexico for at least ninety (90) days preceding the making of an application for a license.

C. Notice of changes. Any certificate or license issued by the board is nontransferable. A business entity shall notify the board in writing of any changes of name, address, business structure and qualifying agent within thirty (30) days.

D. Compliance required. Failure to comply with the provisions of this rule shall be grounds for a fine, suspension, revocation, refusal to renew any business entity's registration or a combination of any of the aforementioned penalties.

E. Tape as record. In the event that the business employs tape monitors, the tape recording shall be the record of the proceeding and the tape shall not be transcribed.

[As amended, effective February 15, 1986; June 1, 1986; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "the board" for "this board" and deleted "whether by shorthand method or tape recording" following

"reporting" near the middle of Paragraph A; in Subparagraph A(1), deleted "or tape monitor" following "reporter" and made a stylistic change in the first sentence, and substituted "court reporter" for "employee" and deleted "court reporter" following "firm's" in the last sentence; added the last sentence of Subparagraph A(3); and in Paragraph C, deleted "promptly" following "shall", inserted "in writing" and added "within thirty (30) days" in the last sentence.

22-203. Application; qualifications; renewal of certification.

A. **Application.** An applicant seeking certification as a certified court reporter or tape monitor shall apply on forms approved by the board and obtainable from the board.

B. **Qualifications.** Prior to the issuance of a certificate as a New Mexico certified court reporter or tape monitor, an applicant must meet the following minimum qualifications:

(1) be of good moral character;

(2) possess a certificate or diploma evidencing graduation from high school;

(3) if the applicant is a court reporter, the applicant must demonstrate reasonable proficiency in making verbatim records of judicial or related proceedings by means of pen or machine shorthand. The reporter shall be certified for the method by which the reporter was tested. Should the reporter desire to change the method of reporting, the reporter shall immediately, prior to reporting or recording any judicial proceeding in the State of New Mexico, become certified for that alternative method. If the applicant is a tape monitor, the applicant must demonstrate reasonable proficiency in the operation of audio recording devices approved by the board. For the purpose of this rule, the applicant's demonstration of "reasonable proficiency" shall be determined by the applicant's ability to pass an examination for certification given by the board, any member of the board or any person or entity designated by the board with the authority to give such examination;

(4) be in compliance with the Rules Governing the Recording of Judicial Proceedings and any rules and regulations adopted by the Supreme Court; and

(5) pay the appropriate annual certification fee.

Once the applicant has met and satisfied the above qualifications, the board shall issue the applicant a certificate as a New Mexico certified court reporter or tape monitor. The reporter certificate shall be valid until December 31 of the year of its issuance. The monitor certificate shall be valid until July 31 of the year following the year of issuance.

C. **Renewals.** All persons holding a certificate as a New Mexico certified court reporter or tape monitor shall be responsible for applying for a renewal of that certificate, and shall submit the application on forms approved by the board prior to the expiration date of the certificate. Upon receipt of the appropriate application, together with the

appropriate annual certification fee, the board shall issue the applicant a new certificate or other appropriate document evidencing that the applicant is licensed as a New Mexico certified court reporter or tape monitor for an additional term of one (1) year (unless the applicant is found by the board to be, or to have been, in violation of these rules, or in violation of any rules or regulations of the board or unless the applicant, who has not been actively practicing for three (3) years cannot demonstrate reasonable proficiency if required to do so). Failure to comply with any of the renewal provisions of this paragraph shall result in denial of the certificate.

[As amended, effective February 15, 1986; April 1, 1989; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, in Subparagraph B(3), deleted "stenomask" from the end and made related changes, added the second sentence, and inserted "audio" and substituted "board" for "administrative office of the courts" in the third sentence; inserted "annual" in Subparagraph B(5); inserted "following the year" near the end of the last paragraph in Paragraph B; deleted "to the administrative office of the courts" following "board" in the first sentence and deleted "out of four (4)" preceding "years" in the second sentence of Paragraph C; and deleted former Paragraph D relating to inactive status.

22-204. Temporary certification for tape monitors.

A. Requirements. Temporary certification to engage in the verbatim recording of in-court proceedings or other proceedings specifically ordered by the court in any of the courts of New Mexico, may be granted by the board, upon application on forms approved by the board, under the following circumstances:

- (1) the applicant be of good moral character;
- (2) the applicant possess a certificate or diploma evidencing graduation from high school;
- (3) the applicant demonstrates reasonable proficiency in the recording of an audible proceeding and the operation of audio recording devices approved by the administrative office of the courts. For the purpose of this rule, "reasonable proficiency" shall be determined at the discretion of the board; and
- (4) the applicant is in compliance with these rules and any rules and regulations adopted by the board or the Supreme Court and has paid the appropriate certification fee.

B. Expiration. The temporary certificate shall be valid for six (6) months following the date upon which the temporary certificate is issued, provided the holder of the

temporary certificate shall progress towards final certification by the chief trainer. A maximum of one temporary certificate may be issued to an individual under this rule.

[As amended, effective January 15, 1986; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, added "for tape monitors" in the rule heading and rewrote the rule to such an extent that a detailed analysis would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 82 C.J.S. Stenographers § 5.

22-205. Examination and certification fees.

A. **Exam fee.** Prior to the taking of any examination administered by the board, the applicant shall pay the appropriate examination fee fixed by the board and approved by the Supreme Court.

B. **Annual fee.** Every New Mexico certified court reporter or tape monitor shall pay an annual certification fee in an amount to be fixed by the board and approved by the Supreme Court.

C. **Fines.** Every New Mexico certified court reporter or certified tape monitor shall pay any fines assessed by the board before certification or renewal shall be granted. The board may suspend the license of any court reporter or tape monitor who fails to pay a fine within the time ordered by the board.

D. **Annual fee; business license.** Every New Mexico business entity engaging in the business of court reporting as described in Rule 22-202 shall pay an annual registration fee in an amount to be fixed by the board and approved by the Supreme Court.

E. **Time of payment.** All examination and certification fees shall be paid within the times and at the place designated by the board.

F. **Deposit of funds.** All funds of the board shall be deposited in an interest-bearing account in the name of the board. All financial obligations of the board over five hundred dollars (\$500.00) will be approved, prior to payment, by the signature of the chairperson of the board on the request for payment form.

G. **Budget.** The board shall submit on or before November 1 of each year to the Supreme Court of New Mexico a proposed budget for the ensuing fiscal year. The budget shall be for a fiscal year beginning January 1 and ending December 31 of the same year.

H. **Audit.** The board shall submit on or before April 1 of each year to the Supreme Court of New Mexico an audit of all funds received and disbursed during the prior fiscal year.

[As amended, effective February 15, 1986; October 1, 1986; April 1, 1989; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, in Paragraph C, inserted "certified" and "or certified tape monitor" and deleted "in the amount fixed" following "assessed" in the first sentence, and rewrote the second sentence which read "Any reporter fined shall lose his license unless the fine be paid by the time ordered by the board"; deleted former Paragraph D relating to inactive status and redesignated the remaining paragraphs accordingly; rewrote the second sentence of Paragraph F which read "All financial obligations of the board shall be paid with warrants signed by the executive secretary of the board and a second signatory designated by the director of the administrative office of the courts"; in Paragraph G, substituted "November" for "May", "January" for "July", "December 31" for "June 30" and "same" for "following"; and in Paragraph H, substituted "April" for "September" and deleted the former last sentence, which read "Such audit shall be performed by a licensed certified public accountant to be selected by the director of the administrative office of the courts."

22-206. Official court reporters.

A. **Definition.** As used in these rules, an "official court reporter" is a certified court reporter who is employed by New Mexico under the judicial personnel plan, and entitled to certain benefits as a state employee pursuant to the provisions of Section 34-6-20 NMSA 1978, or performs services for the judicial branch under standardized contract approved by the Supreme Court. A contract reporter shall not serve as a managing reporter.

B. **Appointment.** Each district judge may appoint official court reporters or tape monitors. The Supreme Court may, by order, approve pooling by reporters and monitors within a judicial district under the supervision of a managing reporter approved by the Supreme Court.

C. **Tape monitor duties.** Official court reporters shall serve also as tape monitors and record judicial proceedings in those cases in which a tape recording is required and shall comply with all court rules and directions in preparing the tape logs.

D. **Office.** The official court reporter or tape monitor shall be provided with the office space, equipment and supplies necessary for the recording of judicial proceedings as well as the necessary equipment for transcription of the judicial proceedings. The use of state-owned equipment and supplies and state-employed personnel for free-lance reporting or recording is prohibited.

The provision of necessary office space, equipment and supplies shall be subject to standardized contract approved by the Supreme Court with official court reporters who perform services under contract.

E. Records. All stenographic notes, tapes, records, disks converted to American Standard Code of Information Interchange ("ASCII"), the original disks containing all judicial proceedings and evidence taken by an official court reporter or tape monitor shall be deposited with the district court clerk of the county in which the proceeding is docketed. The maintenance, storage, distribution and reproduction of such notes, tapes, records, disks, ASCII disks, ASCII copies of documents such as exhibits and evidence shall be handled in the manner prescribed by district court rule.

F. Stenographic notes. Official reporters leaving employment with the district court are to have all stenographic notes numerically logged by date and deposited with the court clerk prior to leaving. All district court cases stenographically taken are to be stored on disk, where applicable, and filed with the district court clerk before departure. All disks and stenographic notes of district court cases are the property of the district court.

Upon termination from district court employment, the reporter shall leave a current telephone number and address with the district court clerk and the court administrator. It is the reporter's responsibility to inform the district court clerk of changes of address and telephone number. Arrangements for transcript production by reporters no longer employed with district court shall be made through the district court clerk.

Where the reporter is unavailable, the court administrator shall make arrangements for production of the transcripts pursuant to the Rules of Appellate Procedure.

Transcripts produced after termination of employment shall be produced at the prevailing compensatory rate set by these rules.

G. Other duties. Any time that an official court reporter or tape monitor is not required to take proceedings, or prepare transcripts of official judicial proceedings in indigent cases or for court use, or other specific duties assigned by the chief judge, court administrator or managing reporter, the court reporter or tape monitor may be assigned other court duties as required by Section 34-6-20 NMSA 1978, unless the reporter or tape monitor has been granted approved leave. The chief judge, court administrator or managing reporter of the district court shall have the authority to reassign temporarily the official court reporter or tape monitor within the judicial district to act as reporter or monitor for another judge or to perform duties required by Section 34-6-20(B) NMSA 1978.

H. Outside reporting. An official court reporter or tape monitor may engage in outside reporting duties if the following criteria are met:

(1) the district judge, court administrator or managing reporter has given express authorization;

(2) the reporter's or monitor's official work is caught up and no transcripts are being prepared in which an extension of time has been granted by any court; and

(3) the reporter or monitor has been authorized to take annual leave during the time the outside work is scheduled unless:

(a) the outside work is scheduled during hours that the court is not open for business; or

(b) the reporter or monitor has been granted time off in compensation for overtime previously worked.

[As amended, effective December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, added the language beginning "or performs" at the end of Paragraph A; rewrote Paragraph B which read "Each district judge may appoint one official reporter or tape monitor"; deleted former Paragraphs C and D relating to substitute reporters or monitors and designations; redesignated former Paragraphs E and F as Paragraphs C and D and made stylistic changes; added the second paragraph of Paragraph D; redesignated former Paragraph G as paragraph E and inserted "stenographic", "disks converted to American Standard Code of Information Interchange ('ASCII'), the original disks containing all judicial proceedings", "disks, ASCII disks, ASCII copies of documents such as exhibits" and "district court"; added Paragraph F; redesignated former Paragraph H as Paragraph G and substituted "official court reporter" in two places, substituted "chief judge, court administrator or managing reporter" for "district judge" and "presiding judge" and made stylistic changes; and redesignated former Paragraph I as Paragraph H and substituted "An official" for "No official" at the beginning, "if the following criteria are met" for "unless" at the end of the introductory language, inserted "court administrator or managing reporter" in Subparagraph H(1), and deleted former Subparagraph H(2) relating to reassignment and redesignated the remaining subparagraphs accordingly.

22-207. Compensation.

Except as may otherwise be provided by Supreme Court rule or order:

A. **Rate.** Official court reporters shall be entitled to receive no more than:

(1) three dollars and twenty-five cents (\$3.25) per 25-line page for transcribing proceedings in cases other than free process non-appeal cases for the original and one copy;

(2) two dollars and fifty cents (\$2.50) per 25-line page for transcribing proceedings in free process appeals for the original and two copies;

(3) three dollars and fifty cents (\$3.50) per 25-line page less any amount paid pursuant to Paragraph A, Subparagraph 1 of this rule for the same pages for transcribing proceedings in non-free process appeals for the original and two copies; and

(4) thirty dollars (\$30.00) per volume of compressed transcript, when requested. A compressed transcript is to be in compliance with the forms manual as mandated in Rule 22-302. All disks provided shall be double sided, double density (low density formatted disks).

B. Additional compensation prohibited. When the court reporter is required by the district judge to transcribe portions of the record of proceedings for court use only, such transcription shall be performed during the salaried hours for which the court reporter is compensated, and no additional compensation shall be charged the state for such services.

C. Other court personnel. It shall be a violation of these rules for an official court reporter to compensate any court employee to perform services for the court reporter if such services are to be performed during salaried working hours.

D. Use of duplicating machine. In cases where free process has not been granted, the certified court reporter may make the required number of copies of a transcript on the district court's duplicating machine. The district court clerk shall charge the court reporter no more than ten cents (\$.10) for each copy made pursuant to this paragraph. Certified court reporters shall be billed by the district court clerk upon completion of the preparation of the transcript.

E. Special expedited transcript charges.

(1) expedited copy: delivery in four (4) days;

(2) overnight copy: delivery by 9:00 a.m. of the day following the proceedings;

(3) daily copy: delivery by 7:00 p.m. of the day of the proceedings;

(4) split-rush copy: delivery of the morning session by 5:30 p.m. and the afternoon session by 9:00 a.m. of the day of the proceedings;

(5) hourly copy: delivery of the transcript produced each hour;

(6) real-time copy: immediate computer-screen visualization and instantaneous transcription of testimony. Real-time transcripts are to be used as attorney work-product and not for impeachment purposes.

Arrangements for expedited services shall be made in writing between the managing court reporter and the requesting parties on a case-by-case basis. In judicial districts

that do not employ a managing reporter, arrangements shall be between the individual reporters and the requesting parties.

Charges for the above expedited services shall be determined in accordance with the following formula:

Number day of pages	1-day Ordinary delivery	2-day delivery	3-day delivery	4- delivery	delivery
1-25	+10%	-	-	-	-
26-50	+25%	10%	-	-	-
51-75	+50%	25%	10%	-	-
76-100	+75%	50%	25%	10%	-
100-up	+100%	75%	50%	25%	-

F. Transcript required. Unless the parties agree otherwise, the testimony at any deposition recorded by stenographic means shall be transcribed.

[As amended, effective April 1, 1989; December 1, 1993; March 15, 1995.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, rewrote the rule to such an extent that a detailed comparison would be impracticable.

The 1995 amendment, effective March 15, 1995, added Paragraph F.

22-208. Surety bond.

A. Official court reporters and tape monitors. Pursuant to the provisions of the Surety Bond Act, the clerk of the district court shall assure that the applicable premium is paid to the Risk Management Division of the General Services Department for official court reporters and tape monitors employed by the district.

B. Named insured. The State of New Mexico shall be named in the bond as the insured.

C. Independent contractors. Official court reporters who are independent contractors shall be bonded as provided in their contracts.

[As amended, effective December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, deleted "district judges of the" preceding "district" at the end of Paragraph A and added Paragraph C.

ARTICLE 3

RECORDING OF JUDICIAL PROCEEDINGS

Rule

22-301. Recording of judicial proceedings; transcripts.

A. **Transcripts.** Official court reporters shall stenographically report and transcribe the record of all judicial proceedings unless:

(1) the district court has insufficient funds in its budget to pay for the transcripts in indigent cases as determined by the chief judge; or

(2) unavailability of a certified court reporter.

If the district court does not have sufficient funds to pay for transcripts in indigent cases, such cases shall be recorded by a recording device approved by the administrative office of the courts. In non-indigent criminal cases, the court reporter may stenographically report the proceedings at the request of counsel and district court approval. All other taped judicial proceedings may be stenographically reported at the request of counsel and approval of the district court judge. If the district judge has appointed a tape monitor, the record of all judicial proceedings before that judge shall be recorded by a recording device approved by the administrative office of the courts.

B. **Record proper.** Except depositions, as provided in this paragraph, the record proper (court file), including the cover page and indices thereto, shall be prepared and reproduced by the clerk of the district court. Depositions shall be forwarded to the appellate court in their original form if they have been filed in the record proper or read into open court. If they are read in open court, the court reporter or tape monitor shall mark the entire deposition or excerpts as court exhibits and ensure the exhibits are filed with the appellate court regardless of request therefore.

All videotaped judicial proceedings shall be on VHS format, date-time generated and shall be recorded simultaneously with a stenographically produced record by a New Mexico certified court reporter. The certified court reporter shall maintain custody of the unedited video tape to ensure the integrity of the original record until the sealed original transcript is delivered to the appropriate party.

The record proper shall be paginated in numerical sequence beginning with the number "1" which shall be preceded by the letters "RP" if the transcript of a nontaped proceeding also begins with the page number "1". An index shall be prepared for the record proper. The clerk may designate the court reporter to prepare the record,

exhibits, cover page and indices. The preparer of such documents shall be entitled to receive the amount the clerk of the district court is authorized by law to receive for preparation of such documents.

C. Taping depositions. When a certified court reporter is retained to stenographically record a deposition, audio or video recording devices by any party are prohibited without prior approval of the court.

D. Indigent cases. In indigent cases, the administrative office of the courts shall not pay for copies of the record proper, exhibits or depositions copied and included in the transcript.

[As amended, effective January 1, 1987; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "Transcripts" for "Tapes required" in the paragraph heading in Paragraph A and rewrote the paragraph; in Paragraph B, deleted "exhibits which are in document form and can be reproduced by photographic process, and" following "including" in the first sentence, substituted the language beginning "in their original form" for "as exhibits to the transcript" at the end of the second sentence and added the third sentence and the second paragraph; and added Paragraph C and redesignated former Paragraph C as Paragraph D.

22-302. Transcript; format.

A. Transcript; format. All transcripts of judicial proceedings shall be prepared in compliance with the certified court reporters manual.

B. Forms manual. The forms manual prepared and modified by the board is mandated as the model to be followed by all certified court reporters.

[As amended, effective December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "Transcript" for "Nontaped proceedings" in the rule heading; inserted "Transcript" in the paragraph heading of Paragraph A and rewrote the paragraph; and substituted present Paragraph B for former Paragraph B which related to the index.

22-303. Tapes of judicial proceedings.

A. Official record. When a tape recording is authorized to be used for the creation of the official record of any judicial proceeding, the following rules shall be followed by the

certified tape monitors in recording the proceedings, storing the tapes and making copies of the tapes:

(1) A separate master tape may be used for each case. The tape shall at all times be kept secure in the case file in the district court clerk's file. If more than one case is to be included on a master tape, a cross-reference system shall be developed by the judicial district which will assure that all proceedings in a case are easily located and available for purposes of an appeal or other judicial proceedings.

(2) On appeal, the master (original) tape and two (2) copies of the master tape and log shall be transmitted to the appropriate appellate court in accordance with the rules of appellate procedure. One (1) copy shall be retained in the court file until final disposition of the case. The log shall be typewritten in accordance with the court monitor's manual upon the filing of the notice of appeal and shall be filed with the district court clerk within ten (10) days after the filing of the notice of appeal.

(3) Upon final disposition of the appeal, the appellate court clerk shall return the duplicates to the clerk of the district court for erasure and reuse.

B. Cases not appealed. If the case is not appealed, the clerk of the district court shall retain the master copy of the tape in a place and manner approved by the Supreme Court.

C. Minimum standards for audio cassette tapes. When a tape recording is authorized to be used for the creation of the official record of any judicial proceeding, the audio cassette tapes used in recording the proceeding shall meet the minimum standards approved by the administrative office of the courts.

[As amended, effective December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, deleted "or required" following "authorized" near the beginning of Paragraphs A and C; substituted "certified tape monitors" for "courts" in Paragraph A; deleted "either" following "secure in" and "or in a locked file cabinet in the judge's office or chambers" following "file" in the first sentence of Subparagraph A(1); added the last sentence of Subparagraph A(2); and deleted former Subparagraph A(3)(a) which read "retain the master copy of the tape for storage in a place that will assure maximum life of the tape for historical purposes; and" and made related changes.

ARTICLE 4 BOARD GOVERNING RECORDING

Rule

22-401. Board Governing the Recording of Judicial Proceedings.

A. **Creation.** In order to supervise the examination, certification and conduct of court reporters and tape monitors engaged in reporting judicial proceedings of this state, the Board Governing the Recording of Judicial Proceedings is hereby created.

B. **Members.** The Board Governing the Recording of Judicial Proceedings shall be composed of seven persons, appointed as follows:

(1) two licensed attorneys in good standing in this state appointed by the Supreme Court;

(2) two members appointed by the Supreme Court who are judges of either the Supreme Court, Court of Appeals or district court;

(3) three members appointed by the New Mexico Supreme Court who are licensed New Mexico certified court reporters, one of whom is an official reporter employed by the courts and one of whom may be appointed upon recommendation of the New Mexico Court Reporters Association; and

(4) one member who is a certified tape monitor employed by the courts appointed by the Supreme Court.

All candidates for appointment shall have demonstrated an interest in the board and shall have conducted themselves in a manner consistent with the ethical standards established by their profession.

C. **Terms; appointments.** The members of the board shall hold office for staggered terms of three (3) years to expire on December 31 of the calendar year for a maximum of two consecutive terms. Vacancies occurring on the board shall be filled in the same manner as other appointments to the board. An appointee to fill a vacancy shall serve during the unexpired portion of the term of the member replaced and such appointment shall constitute an appointment to the subsequent three (3) year term.

D. **Officers.** At the first meeting of the calendar year, the board may elect one of its members as president and one member as secretary-treasurer. A majority of the board shall constitute a quorum.

E. **Compensation.** The board members shall receive no compensation other than per diem and mileage at the rate set forth in the Per Diem and Mileage Act.

F. **Records of the board.** The executive-secretary for the board shall keep a record of its meetings and all official action taken by the board. In addition, the board shall maintain a register of all applicants for certification.

G. **Staff.** The board shall provide for necessary staff and legal counsel.

[As amended, effective April 1, 1989; December 1, 1993; March 15, 1995.]

ANNOTATIONS

Cross-references. - For Board of Bar Commissioners, see Rule 24-101.

The 1993 amendment, effective December 1, 1993, substituted "reporting judicial proceedings of this state" for "reporting matters before the courts of this state or for use therein" in Paragraph A; inserted "one of whom is an official reporter employed by the courts and" and substituted "upon" for "on" and "Court" for "Certified Shorthand" in Subparagraph B(3); added the final paragraph in Paragraph B; added the language beginning "to expire" at the end of the first sentence and beginning "and such" at the end of the last sentence in Paragraph C; added "At the first meeting of the calendar year" and substituted "may" for "shall" in Paragraph D; substituted "for the board" for "of the board" in Paragraph F; and deleted "and shall be responsible for payment of such expense" from the end of Paragraph G.

The 1995 amendment, effective March 15, 1995, rewrote Paragraph B(1) which read "two members appointed by the New Mexico Board of Bar Commissioners who are licensed attorneys in good standing in this state", and added Paragraph B(4) and made related stylistic changes.

22-402. Powers and duties of the board.

A. **Procedural rules.** The Board Governing the Recording of Judicial Proceedings shall have the authority, under the supervision of the New Mexico Supreme Court, to make and promulgate reasonable rules and regulations governing the practice of court reporting within New Mexico.

B. **Powers.** The board shall arrange to:

(1) prepare and administer appropriate examinations for all applicants for certification as a New Mexico certified court reporter or tape monitor to insure that the applicants have reasonable proficiency in making verbatim records of judicial or related proceedings and in operating audio equipment;

(2) promulgate reasonable rules and regulations for the testing and licensing of New Mexico certified court reporters and tape monitors;

(3) make recommendations to the supreme court relating to the adoption of any additional standards or ethics governing the conduct of New Mexico certified court reporters and tape monitors other than those specified within these rules;

(4) recommend to the supreme court necessary rules and regulations with respect to the discipline, fine, censure, suspension, revocation, denial or withholding renewal of certification of New Mexico certified court reporters and tape monitors;

(5) take appropriate action, subject to review by the New Mexico Supreme Court, for the discipline, fine, censure, suspension, revocation, denial or withholding renewal of certification of New Mexico certified court reporters and tape monitors. Board hearings shall be held in accordance with rules and regulations approved by the New Mexico Supreme Court; and

(6) have the power to subpoena witnesses. Witnesses may be summoned by subpoena issued by the president of the board upon request of the board or the court reporter or tape monitor who is the subject of a proposed disciplinary proceeding. Witnesses appearing before the board must be examined under oath or affirmation. Testimony may be taken by deposition. A record must be made of the proceedings.

[As amended, effective February 15, 1986, September 1, 1988 and April 1, 1989.]

ANNOTATIONS

Cross-references. - For rules of disciplinary proceedings before the Board Governing the Recording of Judicial Proceedings, see Rule 22-601 et seq.

22-403. Decisions of the board.

A. **Denial of application.** All decisions of the board denying any application for certification, or denial of waiver under Rule 22-103, for any cause other than failure to pass an examination, shall be made in writing, and the reasons for denying the application for certification shall be included in the decision of the board. The decision shall be attested by an officer of the board. A copy of the board's decision, together with the reasons for its decision, shall be mailed to the applicant at his last known address by certified or registered mail by the board. Any decision of the board with respect to the denial of certification for any cause other than failure to pass an examination may be reviewed by the New Mexico Supreme Court by filing a notice of appeal with the Supreme Court within thirty (30) days after the date of mailing of the decision of the board by certified or registered mail to the applicant's last known address. The notice of appeal shall be accompanied by a statement setting forth the reasons why the decision of the board should be reversed. Within twenty (20) days after the filing of the notice of appeal and the appellant's statement setting forth reasons for reversal, the board shall respond to each of the reasons given for reversal. The decision of the board shall automatically be affirmed if the Supreme Court has not reversed the board's decision within sixty (60) days after the filing of the notice of appeal. No other briefs or oral argument shall be allowed.

B. **Notice.** All decisions of the board imposing discipline, fine, censure, suspension, revocation or denial of certification shall be made in writing, and the reasons for such discipline, fine, censure, suspension, revocation or denial of certification shall be included in the decision. The decision shall be attested by an officer of the board. A copy of the board's decision, together with the reasons for its decision, shall be mailed to the reporter or tape monitor at his last known address by certified or registered mail

by the board. Any decision of the board with respect to discipline, fine, censure, suspension, revocation or denial of certification may be reviewed by the New Mexico Supreme Court by filing a notice of appeal with the Supreme Court within thirty (30) days after the date of mailing of the decision of the board by certified or registered mail to the reporter's or tape monitor's last known address.

C. Informal hearings. The board may conduct informal hearings with respect to any imposition of discipline, fine, censure, suspension, revocation or denial of certification, and shall state to the Supreme Court, in making its decision, all reasons in support of its recommendation.

D. Judicial personnel rules. Nothing in these rules shall be construed to in any way restrict the Supreme Court from taking any action to enforce any order, rules or regulations approved by the Supreme Court or any regulations of the board. Any violation of an order of the Supreme Court or any rule or regulation approved by the Supreme Court may also be deemed to be cause for appropriate disciplinary proceedings under the judicial personnel rules.

[As amended, effective February 15, 1986; June 1, 1986; September 1, 1988; April 1, 1989; December 1, 1993.]

ANNOTATIONS

Cross-references. - For rules of disciplinary proceedings before the Board Governing the Recording of Judicial Proceedings, see Rule 22-601 et seq.

The 1993 amendment, effective December 1, 1993, substituted "revocation or denial of certification" for "revocation, denial or withholding of renewal of certification" in three places in Paragraph B and once in Paragraph C.

ARTICLE 5 REGULATIONS OF THE BOARD

Rule

22-501. Examination standards.

A. Exam frequency. The Board Governing the Recording of Judicial Proceedings may administer as many examinations per year as necessary, but shall administer at least one examination per year. The scope of the examination, the speed, the percentage of accuracy and the methods of procedure shall be prescribed by the board. The following passing grade standards for the examination of court reporters shall be used by the board:

Section 1

Written Knowledge Tests

Accuracy Rating: 80%

Section 2

Literary: One Voice
180 Words per minute
for five (5) minutes

Accuracy Rating: 95%

Section 3

Expert: Two Voices
200 Words per minute
for five (5) minutes

Accuracy Rating: 95%

Section 4

Testimony: Question and Answer
Rating: 95%
Four Voices
225 Words per minute
for five (5) minutes

Accuracy

B. Destruction of examination papers. The examination papers of all examinees may be destroyed ninety (90) days following the date written notice of the results of the examination is mailed to all examinees.

[As amended, effective December 1, 1987; December 1, 1993; March 15, 1995.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "court" for "shorthand" in two places in the introductory language, substituted "Literary" for "Expert" and "One Voice" for "Two Voices" in Section 2, and substituted "Expert" for "Literary" and "Two Voices" for "One Voice" in Section 3.

The 1995 amendment, effective March 15, 1995, designated the existing provisions as paragraph A, rewrote the introductory language of Paragraph A which read "In accordance with its power under Rule 22-402 to promulgate reasonable rules and regulations for the testing and licensing of certified court reporters, the Board Governing the Recording of Judicial Proceedings adopts the following passing grade standards for the examination of court reporters", and added Paragraph B.

22-502. Fees.

A. Businesses. Any business, whose owners, partners or shareholders are not certified court reporters, shall pay an initial and an annual fee to be set by the board; otherwise, no fee is necessary. All other court reporting business fees are included in the annual individual certification renewals.

B. Court reporters. With respect to licensing provisions of Rule 22-203, the initial and annual registration fee for certification as a court reporter shall be set by the board.

C. Tape monitors. The training fee and annual certification fee as a tape monitor shall be set by the board.

D. Test fees. The following test fees shall be set by the board:

- (1) application fee;
- (2) oral exam only;
- (3) written exam only; and
- (4) both oral and written.

[As amended, effective April 1, 1989; December 1, 1993.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, substituted "Fees" for "Registration fees" in the rule heading; rewrote Paragraph A; substituted "set by the board" for "seventy dollars (\$70.00)" in Paragraph B; rewrote Paragraph C which read "The registration fee and annual license fee for certification as a tape monitor shall be fifty dollars (\$50.00)"; and added Paragraph D.

22-503. Furnishing depositions without consent.

A certified reporter or tape monitor shall be subject to disciplinary action for unprofessional conduct under Rule 22-605 if the reporter or monitor furnishes, for pay or otherwise, a copy of any deposition or portion thereof to any person or his counsel who is neither a party nor an attorney in the matter in which the deposition was taken, without the written consent of the parties in the case in which the deposition was taken or is to be filed, or without a written order of the court.

22-504. Retention of notes.

All certified court reporters, other than official reporters who are governed by the Supreme Court approved records retention schedule, shall retain untranscribed shorthand or tape recorded notes of depositions, or other proceedings other than trial proceedings, for not less than three (3) years; notes of transcribed depositions, or other proceedings described hereinabove, shall be retained for not less than one (1) year by the certified court reporter who reported the judicial proceedings. Preservation of original shorthand notes shall be appropriately identified and dated by the court reporter. Storage shall be through the original paper notes or an electronic copy of either the shorthand notes or the English transcript of the notes on computer disks,

cassettes, backup tape systems or optical or laser disc systems. All such notes shall be safely stored and appropriately identified and dated by the court reporter. Notes of all trial or other courtroom proceedings, whether transcribed or not, shall be delivered to the clerk of the court or court administrator as provided under the Supreme Court's record retention schedule.

[As amended, effective December 1, 1993; March 15, 1995.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, inserted "other than official reporters who are governed by the Supreme Court approved records retention schedule" near the beginning and substituted "one (1) year by the certified court reporter who reported the judicial proceeding" for "six (6) months" near the end of the first sentence.

The 1995 amendment, effective March 15, 1995, added the second and third sentences.

ARTICLE 6 RULES OF PROCEDURE

Rule

22-601. Scope.

These rules govern all informal adjudicatory proceedings to be conducted by the Board Governing the Recording of Judicial Proceedings concerning the discipline, fine, censure, suspension, revocation, denial or withholding renewal of a certificate of a certified court reporter or a tape monitor and adjudicatory proceedings conducted by the Board Governing the Recording of Judicial Proceedings on denial of an application for certification as a temporary or permanent certified court reporter or as a temporary or permanent tape monitor.

[As amended, effective September 1, 1988.]

22-602. Authority.

These rules of procedure are promulgated pursuant to Rule 22-402.

22-603. Definitions.

As used in these rules:

A. "board" means the Board Governing the Recording of Judicial Proceedings;

B. "censure" means to reprimand publicly, with or without conditions reasonably related to the grounds for censure, a certified court reporter or tape monitor for conduct found to be in violation of Rule 22-605;

C. "certification" means authorization by the board to engage in those activities regulated by the board pursuant to the Rules Governing the Recording of Judicial Proceedings;

D. "certified court reporter" means a person holding a temporary or permanent certificate issued by the board permitting the person to engage in the activities regulated by the board. This includes any business entity licensed pursuant to Rule 22-202 having in its employ a certified court reporter;

E. "certified tape monitor" or "tape monitor" means a person holding a temporary or permanent certificate issued by the board permitting the person to engage in activities regulated by the board. This includes any business entity licensed pursuant to Rule 22-202 having in its employ a certified tape monitor or tape monitor;

F. "person" means, but is not limited to, any individual, firm, partnership, corporation, association, other organization, courts, the state or the United States;

G. "record" means:

(1) stenographic notes which must be transcribed when a record is required to be made;

(2) a statement of facts stipulated to by the parties for purpose of review; or

(3) any audio recording device approved by the administrative office of the courts;

H. "revoke a certificate" means to prohibit the conduct authorized by the certificate or license; and

I. "suspend a certificate" means to prohibit, whether absolutely or subject to conditions which are reasonably related to the grounds for suspension, for a defined period of time, the conduct authorized by the certificate or license.

[As amended, effective March 15, 1995.]

ANNOTATIONS

Cross-references. - For creation of Board Governing the Recording of Judicial Proceedings, see Rule 22-401.

The 1995 amendment, effective March 15, 1995, added the last sentence in Paragraph D and Paragraph E, and inserted "or license" at the end of Paragraphs H and I.

22-604. Denial of a certificate.

A. Notice.

(1) If an application for a temporary or permanent certificate as a certified court reporter or tape monitor or an application for a business entity licensed under Rule 22-202 is to be denied for reasons other than failure to pass an exam, the board shall give written notice to the applicant of its intent to deny the application for certification.

(2) The notice of denial of a certificate shall set forth a short and plain statement of the reasons for the denial and the applicable law so that the applicant has sufficient notice of the reasons for the denial.

(3) The notice of denial shall advise the applicant that the applicant may appear before the board to object to the denial of the application for a certificate. Within twenty (20) days after mailing of the notice, the applicant may request a hearing on the proposed denial of the application for temporary or permanent certification. Upon request the board shall hold a hearing on the denial not less than ten (10) days nor more than thirty (30) days after written notice of hearing is mailed to the applicant.

B. Final decision. Within thirty (30) days after a hearing on the proposed denial of a certificate, or if a hearing is not requested by the applicant, within thirty (30) days after the mailing of the notice of intent to deny a certificate, the board shall issue a final decision in accordance with Rule 22-403.

C. Appeal. If the applicant has requested a hearing under Subparagraph (3) of Paragraph A of this rule, within thirty (30) days after the mailing of a notice of denial of an application for a temporary or permanent certificate, the applicant may appeal to the Supreme Court in accordance with Rule 22-403.

[As amended, effective March 15, 1995.]

ANNOTATIONS

The 1995 amendment, effective March 15, 1995, inserted "or an application for a business entity license under Rule 22-202" in Paragraph A(1).

22-605. Grounds for disciplinary action.

The following shall be considered by the board as grounds for disciplinary action against a certified court reporter or tape monitor pursuant to Rule 22-403:

A. unprofessional conduct;

B. willful violation of duty;

C. gross negligence, or incompetence, in the performance of activities authorized by the certificate;

D. fraud, dishonesty or corruption;

E. if the person is a certified court reporter, having become unable to perform the duties of a court reporter at a level of skill required by the board for applicants for permanent certification as a certified court reporter;

F. if the person is a tape monitor, having become unable to perform the duties of a tape monitor at a level of skill required by the board for certification as a tape monitor;

G. fraud or misrepresentation in obtaining a certificate;

H. if the person is a certified court reporter, aiding or assisting any person to engage in the verbatim reporting of judicial proceedings, when such person is not a certified reporter in New Mexico;

I. conviction in any court of competent jurisdiction of a felony or of any other offense which offense involves moral turpitude and is reasonably related to the activities authorized by the certificate;

J. adjudication of insanity or incompetency; or

K. violation of any rule or order promulgated or issued by the supreme court governing the obligations or duties of court reporters or tape monitors.

22-606. Opportunity for hearing.

A. Notice and opportunity to be heard. Every court reporter or tape monitor shall be afforded notice and an opportunity to be heard before the board prior to the board taking action to:

(1) suspend a certificate;

(2) revoke a certificate;

(3) fine a certified court reporter or certified tape monitor;

(4) censure a certified court reporter or tape monitor; or

(5) deny or withhold the renewal of a license.

B. Nonsubmittal of required documents or fees. The provisions of Paragraph A shall not apply if the board's action is based upon failure of the certified court reporter or tape

monitor to submit to the board, within the time provided by these rules, evidence, documents or fees required for renewal of certification.

C. Examination in lieu of hearing. In adjudicatory proceedings brought pursuant to Paragraph E of Rule 22-605, in lieu of a hearing, a certified court reporter or tape monitor may, with the consent of the board, take the examination given to applicants for permanent certification as a certified court reporter or tape monitor. The examination given shall be identical to the most recent examination given applicants for certification as permanent certified court reporters or tape monitors. Passing the examination shall be deemed by the board to be sufficient proof of competency and shall preclude the board from conducting a hearing to determine whether the certified court reporter or tape monitor has the skill required to perform the duties required for the position. Failure to pass the examination shall be deemed to be sufficient proof without additional evidence that the certified court reporter or tape monitor does not have the skill to perform the duties required for the position. Upon failure of the examination, the board may revoke or suspend the certificate or deny the renewal of the certificate.

[As amended, effective September 1, 1988.]

22-607. Notice of hearings.

A. Notice. If the board believes that the certificate of a certified court reporter or tape monitor should be revoked or suspended or that a certified court reporter or tape monitor should be censured or that a renewal of certification should be denied, the board shall give the certified court reporter or tape monitor notice of the right to a hearing. Within twenty (20) days after the mailing of a notice, the certified court reporter or tape monitor may request in writing a hearing by the board on the action proposed to be taken.

B. Contents. The notice required by Paragraph A of this rule shall:

(1) set forth a short and plain statement of the asserted facts and applicable law so that the certified court reporter or tape monitor has sufficient notice of the issues involved;

(2) a statement of the proposed action to be taken by the board;

(3) a statement that if the reporter or monitor objects to the action to be taken and desires an opportunity to be heard, he is required to request a hearing in writing within twenty (20) days after the date of mailing of the notice by the board; and

(4) a statement of the rights set forth in Rule 22-613.

C. Failure to request hearing. If the reporter or monitor does not request a hearing within the time and in the manner required by this rule, the board may take the action contemplated in the notice and such action shall be final and not subject to review by the supreme court.

22-608. Disciplinary proceedings; designation and notice of hearing.

A. **Notice of hearing.** If a timely request for a hearing is made pursuant to Rule 22-607, an adjudicatory hearing shall be held by the board after notice to the certified court reporter. The notice shall include a statement of the time, place and nature of the hearing.

B. **Time for hearing.** No hearing conducted pursuant to this rule shall be held less than fifteen (15) days from the date of service of such notice, nor more than sixty (60) days from that date unless the hearing is continued by the board for good cause.

C. **Notice to complainants.** A copy of the notice of hearing shall be mailed to any person who has submitted a complaint to the board which alleges grounds for disciplinary action by the board.

22-609. Decision and appeal.

A. **Time for decision.** A final written decision based on a hearing shall be made by a quorum of the board within thirty (30) days after the conclusion of the hearing. The board may, for good cause, delay the issuance of a final written decision for a period which is reasonable under the circumstances, which period shall not exceed sixty (60) days. Should a delay of a final written decision be necessary, the board shall forthwith notify the reporter or monitor of the delay, the reason for the delay, and when a decision is expected to be issued.

B. **Mailing of decision.** A final written decision shall be mailed to the certified court reporter or tape monitor by certified mail, return receipt requested, within ten (10) days after it is executed by the board.

C. **Time for appeal.** If the final written decision is for disciplinary action against the certified court reporter or tape monitor, the reporter or monitor may, within thirty (30) days after the date of mailing of the decision of the board, file a notice of appeal with the supreme court pursuant to Rule 22-403 and shall serve a copy of the notice of appeal on the board. If the notice of appeal is not filed within the time prescribed, the decision of the board shall be deemed to be approved by the supreme court.

D. **Supreme court review.** Upon service of a copy of a notice of appeal on the board, the board shall, within thirty (30) days after receipt of the notice of appeal, transmit a copy of the decision to the supreme court for its review. The decision of the board shall become effective within sixty (60) days after the filing of the transcript with the court unless the supreme court reverses the board's decision within such period.

22-610. Rehearing.

The board may grant a rehearing, either upon written application by the reporter or tape monitor showing good cause before an appeal is filed, or at any time on its own motion before an appeal is filed. Any application for rehearing must be received by the board within ten (10) days of the service of its decision. The board need not reconvene and may be polled by telephone about whether to grant or deny a rehearing, but the application and the board's written determination shall be made part of the record. The decision to grant or deny a rehearing must be made and served upon the reporter within ten (10) days of the date the board receives the application.

22-611. Venue.

Board hearings pursuant to these rules shall be conducted in the county in which the board directs.

22-612. Service of notices of hearings.

Any notice of hearing required by these rules, any request for hearing and any decision of the board provided for by these rules may be served either personally by any person over the age of eighteen (18) years, or by certified mail, return receipt requested. Notices mailed to the court reporter or tape monitor shall be sent to his last known address as shown by the records of the board. Service by certified mail is deemed complete upon mailing.

22-613. Rights of parties to hearing.

A. Rights specified. A certified court reporter or tape monitor shall have the right to be represented by an attorney at any hearing or conference conducted by the board. Any party shall have the right to present evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and where necessary, to timely request subpoenas and subpoenas duces tecum be issued by the president of the board to compel the attendance of witnesses and the production of relevant books, papers, documents and other evidence, upon making written request therefor to the board. All notices of hearings issued pursuant to these rules shall contain a statement of these rights. The party requesting a subpoena shall pay all costs of the issuance and service of the subpoena.

B. Discovery; witnesses and documents. Upon written request to another party, any party is entitled to:

(1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and

(2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

C. **Time for compliance.** The party to whom a request is made pursuant to Paragraph B of this rule shall comply with it within fifteen (15) days after receipt of the request. All such requests must be complied with at least ten (10) days before the hearing. For good cause shown, the time for compliance may be shortened.

22-614. Admissibility of evidence.

In proceedings held pursuant to these rules:

A. **Exclusion of evidence.** Strict adherence to the Rules of Evidence is not required; however, irrelevant, immaterial, unduly repetitious and unduly prejudicial evidence shall be excluded;

B. **Judicial notice.** Official notice may be taken of all facts of which judicial notice may be taken, pursuant to the Rules of Evidence;

C. **Rulings.** Rulings on evidence shall be made by the presiding officer;

D. **Exclusion of witnesses.** The board or hearing officer may exclude witnesses from the hearing at the request of either party.

ANNOTATIONS

Cross-references. - For Rules of Evidence, see Rule 11-101 et seq.

As to judicial notice of adjudicative facts, see Rule 11-201.

22-615. Record of hearings.

Except for the record consisting of stipulations, the record of the hearings conducted pursuant to these rules shall be preserved by any method in use in the district courts of this state. If a party requests that a stenographic record be made of the proceedings, the party shall pay or make satisfactory arrangements to pay the cost of such record prior to commencement of the hearing.

22-616. Conduct of hearings.

A. **Presiding official.** Unless a hearing officer is designated by the board, the president of the board shall preside at the hearings of the board conducted pursuant to these rules. If the president is unable to preside at the hearing, he shall appoint another member of the board to preside.

B. **Oath or affirmation.** Witnesses at the hearing must be examined under oath or affirmation.

C. **Order of hearing.** Evidence supporting the grounds for denial of an application for certification or for disciplinary action against a certified court reporter or tape monitor who is the subject of the hearing shall be presented first. The reporter or monitor may then introduce any evidence he desires the board to hear.

D. **Closing argument.** The board may, in its discretion, permit the parties to make closing argument and summations.

E. **Findings and conclusions.** The board, in its discretion, may request and consider proposed findings of fact and conclusions of law submitted by the parties to be submitted within a time allowed by the board.

F. **Conduct of hearings.** Subject to these rules, the conduct of the hearing shall be at the discretion of the board.

22-617. Hearings; public.

A. **Conduct of hearings.** All hearings shall be conducted either by a quorum of the board or by a hearing officer designated by the board.

B. **Findings.** If the board finds that it has not been proven that there are grounds for disciplinary action, it may explain in writing its reasons for the finding.

C. **Open hearings.** All hearings shall be open to the public. However, the court reporter or tape monitor may with the approval of the board, and for good cause shown, require the board to hold a closed meeting.

22-618. Failure to appear for hearing.

If a certified court reporter or tape monitor who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the evidence of such witnesses as may have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it. Where because of accident, sickness or other good cause a certified court reporter or tape monitor fails to appear for a hearing which he has requested, the court reporter or tape monitor may within a reasonable time apply to the board to reopen the proceedings, and the board upon finding good cause shall immediately set a time and place for a hearing and give the court reporter or tape monitor notice thereof as required by these rules. At that time and place, a hearing shall be held in the same manner as the hearing set by the original notice.

22-619. Hearings; powers of board.

A. **Powers specified.** In connection with any hearing held pursuant to these rules the board may be advised by counsel and require the certified court reporter or tape monitor to produce relevant books, papers, documents, tapes, logs and other evidence; issue

oaths or affirmations to witnesses; examine witnesses; and shall have the authority to direct a continuance of any case. The board may also order and hold conferences before or during the hearing for the settlement or simplification of the issues.

B. **Subpoena.** At the request of any party, the president of the board may issue a subpoena for the appearance of any witness at any hearing.

ANNOTATIONS

Cross-references. - For general powers and duties of the board, see Rule 22-402.