

RULES GOVERNING THE RECORDING OF JUDICIAL PROCEEDINGS

1986 Recompilation

Article

ARTICLE 1 GENERAL PROVISIONS

Rule

22-101. Scope and title.

A. Scope.

(1) The examination, certification and regulation of the practice of reporting and recording judicial proceedings are matters which are integrally related to the effective, impartial and prompt operation of the judicial department of the State of New Mexico. The regulation of examination, certification and supervision of their conduct and proficiency is hereby made subject to regulation by rule of the supreme court.

(2) These rules also govern records and the recording of judicial proceedings.

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

ANNOTATIONS

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 § 9 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.

Any board rule may be waived by the board upon a showing that a waiver is necessary 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.]

ARTICLE 2 CERTIFICATION

Rule

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

A. **Court reporters.** Except as provided in Paragraph B, C or D of this rule, no person shall engage in the verbatim reporting of judicial proceedings in any of the courts of New Mexico, nor shall any person engage in the taking of depositions for use in the courts of this state, unless such person shall possess a certificate or a temporary certificate 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.

B. **Certification.** No written transcripts of any judicial proceeding in any of the courts of New Mexico, nor any transcripts of any depositions taken in New Mexico for use in the courts of this state, shall be accepted for filing unless signed and certified by a New Mexico certified court reporter. The form of certification required shall be established by

the Board Governing the Recording of Judicial Proceedings. This rule shall not apply to depositions taken and transcribed outside of New Mexico.

C. Waiver of examination. Any applicant who has:

(1) passed an examination that is equivalent to that given in New Mexico, and has been engaged in the full-time practice of court reporting for three (3) out of the last four (4) years immediately prior to applying for a license, may be granted a license by the board or court without taking the examination; or

(2) received a certificate of proficiency or a certificate of merit from the National Shorthand Reporters Association, and has been engaged in the full-time practice of court reporting for three (3) out of the last four (4) years immediately prior to applying for a license, shall be granted a license without taking an examination.

D. Monitors. Whenever proceedings are recorded by some recording device approved by the administrative office of the courts, such recordings shall be the transcript or deposition recorded by a monitor who is certified as qualified by the Board Governing the Recording of Judicial Proceedings.

ANNOTATIONS

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

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 this board, engaging in the business of court reporting, whether by shorthand method or tape recording 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 or tape monitor, if the business tape records proceedings, certified by the New Mexico Board Governing the Recording of Judicial Proceedings. This employee shall be a regular full-time employee, owner or officer of the firm with active and direct supervision and control of the firm's court reporter 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.

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 promptly notify the board of any changes of name, address, business structure and qualifying agent.

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; as amended effective June 1, 1986.]

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, machine shorthand or stenomask. If the applicant is a tape monitor, the applicant must demonstrate reasonable proficiency in the operation of recording devices approved by the administrative office of the courts. 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 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 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, to the administrative office of the courts, 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) out of the last four (4) 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.

D. Inactive status. Any person who holds a certificate may elect to go on inactive status. Persons who are on inactive status will continue to receive regular mailings and notices from the board. Persons who are on inactive status may, in the discretion of the board, be required to demonstrate reasonable proficiency before returning to active status by filing an application for renewal.

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

22-204. Temporary certification.

A. Requirements. Temporary certification to engage in the verbatim reporting or recording of judicial proceedings in any of the courts of New Mexico, or for the taking of depositions for use in the courts of this state, may be granted by the board, upon application on forms approved by the board and obtainable from the administrative office of the courts, under the following circumstances:

(1) the applicant be of good moral character;

(2) the applicant possesses 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. If the applicant is a tape monitor, the applicant must demonstrate reasonable proficiency in the recording of an audible proceeding and the operation of recording devices approved by the administrative office of the courts. For the purpose of this rule, "reasonable proficiency" shall be determined in the discretion of the board. Further, the board may waive the examination requirement under this rule upon the applicant providing to the board sufficient proof that the applicant demonstrates equivalent evidence of proficiency which would otherwise be tested by the examination for temporary certification; and

(4) the applicant is in compliance with these rules and any rules and regulations adopted by the board or the supreme court and payment of the appropriate certification fee.

B. Expiration. The temporary certificate shall be valid up through and including the thirtieth day following the date upon which the board gives its examination for certification as a certified court reporter or tape monitor following the date the temporary certificate is issued; provided, the holder of the temporary certificate shall appear and take the examination next following the date of temporary certification. Otherwise, it shall expire on the date of said next examination. A maximum of one temporary certificate may be issued to an individual under this rule.

[As amended, effective January 15, 1986.]

ANNOTATIONS

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 court reporter shall pay any fines assessed in the amount fixed by the board before certification or renewal shall be granted. Any reporter fined shall lose his license unless the fine be paid by the time ordered by the board.

D. Inactive status. Every New Mexico court reporter shall pay an annual fee in order to maintain inactive status with the board in an annual amount fixed by the board and approved by the supreme court.

E. Annual fee; business license. Every New Mexico court 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.

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

G. 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 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.

H. Budget. The board shall submit on or before May 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 July 1 and ending June 30 of the following year.

I. Audit. The board shall submit on or before September 1 of each year to the Supreme Court of New Mexico an audit of all funds received and disbursed during the prior fiscal year. Such audit shall be performed by a licensed certified public accountant to be selected by the director of the administrative office of the courts.

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

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.

B. Appointment. Each district judge may appoint one official court reporter or tape monitor.

C. Substitute reporters or monitors. When the official court reporter or tape monitor is absent on approved leave, and no other official court reporter or tape monitor is available, the district court is authorized to hire a replacement reporter or monitor. The rate of payment for services of the replacement reporter or monitor shall be approved by the administrative office of the courts.

D. Designations. When a district judge is designated to hear a case in a district other than the district from which the judge was elected, it shall be the duty of the official court reporter or tape monitor to accompany the judge to the other district. If the designated judge is not accompanied by his official court reporter or tape monitor, the district in which the designated judge holds office shall pay for the services of a substitute court reporter or monitor.

E. Tape monitor duties. Official court reporters shall serve also as tape monitors and take the tape recorded transcript in those cases in which a taped transcript is required and shall comply with all court rules and directions in preparing the taped transcript.

F. Office. The official court reporter or tape monitor shall be provided with the necessary office space, equipment and supplies necessary for the recording of judicial proceedings as well as the necessary equipment for transcription of records for which no additional compensation is paid to the court reporter or tape monitor. The use of state-owned equipment and supplies and state-employed personnel for freelance reporting or recording is prohibited.

G. Records. All notes, tapes, records 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 and evidence shall be handled in the manner prescribed by rule.

H. Other duties. Any time that a court reporter or tape monitor is not required to take transcripts, or prepare transcripts of official judicial proceedings in indigent cases or for court use, or other specific duties assigned by the district judge, 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 presiding judge of the district court shall have the authority to temporarily reassign the 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.

I. Outside reporting. No official court reporter or tape monitor may engage in outside reporting duties unless:

(1) the district judge has given express authorization;

(2) they have not been reassigned to other duties under another judge or duties required by Section 34-6-20 NMSA 1978;

(3) 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

(4) 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.

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) two dollars and fifty cents (\$2.50) per page for each page or ten cents (\$.10) per line, whichever is less, for transcribing proceedings in civil cases or criminal cases which are not on tape; and

(2) two dollars (\$2.00) per page or eight cents (\$.08) per line, whichever is less, when transcribing free process cases and proceedings for counsel use and the original copy is all that is requested.

B. **Page defined.** Except for transcripts prepared for court use only, for purposes of Paragraph A of this rule, "page" means the original or ribbon copy and, for appeals in civil cases, three (3) additional copies. Copies shall be prepared in the manner provided by Rule 22-302.

C. **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.

D. **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.

E. **Copies of transcripts.** Additional copies of transcripts shall be made available to private and public litigants at the prevailing statutory rate for copies other than the original.

F. **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 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 in the civil case. Upon filing of the record proper, the district court clerk will note on the clerk's certificate that the duplicating costs were billed to the certified court reporter and paid.

G. **Free process cases.** In free process cases which are not recorded on an audio recording device, the court reporter shall deliver to the clerk of the district court an original copy of the part of the transcript ordered to be prepared by the appellate court for the appeal. The clerk of the district court shall photocopy the required number of copies and shall file the original copy and the photocopies in the appellate court with the record proper. The court reporter shall be paid the amount prescribed in Subparagraph

(2) of Paragraph A of this rule for transcribing the record of proceedings in free process cases.

[As amended, effective April 1, 1989.]

22-208. Surety bond.

A. **Official court reporters and tape monitors.** Pursuant to the provisions of the Surety Bond Act [10-2-13 to 10-2-16 NMSA 1978], 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 judges of the district.

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

ARTICLE 3 RECORDING OF JUDICIAL PROCEEDINGS

Rule

22-301. Recording of judicial proceedings; transcripts.

A. **Tapes required.** The record of criminal, children's court, domestic relations matters and worker's compensation cases including all pre-trial, trial and post-trial proceedings shall be taken on audio recording devices approved by the administrative office of the courts. Depositions in criminal, children's court and termination of parental rights cases shall be taken on an audio recording device approved by the administrative office of the courts. The tape recording shall serve as the record on appeal and shall not be typed. The audio recording equipment shall be operated by certified court reporters, or a tape monitor who is employed by a district judge. The record in all other judicial proceedings may be taken by certified court reporters or on audio recording devices approved by the administrative office of the courts.

B. **Record proper.** Except depositions, as provided in this paragraph, the record proper (court file), including exhibits which are in document form and can be reproduced by photographic process, and 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 as exhibits to the transcript. 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. **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.]

22-302. Nontaped proceedings; format.

A. **Format.** All transcribed copies of judicial records of nontaped trials shall be typed or printed on white paper of good quality which is 8 1/2 x 11 inches in size. The left margin shall be no more than 1 1/2 inches and the right margin shall be no more than 1/2 inch. The margins at the top of each page shall be no more than 1 1/2 inches; the margin at the bottom, not including the page number, shall be no more than 1 inch. The contents shall be double spaced.

B. **Index.** The index of court proceedings shall provide a page number for each step of the proceeding, e.g.,

Jury selection:

Court voir dire

Voir dire by plaintiff

Voir dire by defendant

Opening instructions by the court

Witness sworn

Witnesses for plaintiff:

John Doe, direct

John Doe, cross

John Doe, redirect

Defendant objection, foundation

Motion for directed verdict

Witnesses for defendant.

Each page of index and transcript shall be numbered consecutively at the bottom of the page. If the numerical sequence of the transcript begins with the number "1", each page number shall be preceded by the letters "TR".

22-303. Tapes of judicial proceedings.

A. **Official record.** When a tape recording is authorized or required to be used for the creation of the official record of any judicial proceeding, the following rules shall be followed by the courts 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 either the case file in the district court clerk's file or in a locked file cabinet in the judge's office or chambers. 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.

(3) Upon final disposition of the appeal, the appellate court clerk shall:

(a) retain the master copy of the tape for storage in a place that will assure maximum life of the tape for historical purposes; and

(b) 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 or required 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.

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 matters before the courts of this state or for use therein, 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 members appointed by the New Mexico Board of Bar Commissioners who are licensed attorneys in good standing in this state;

(2) two members appointed by the New Mexico Supreme Court who are judges of either the supreme court, court of appeals or district court; and

(3) three members appointed by the New Mexico Supreme Court who are licensed New Mexico certified court reporters, one of whom may be appointed on recommendation of the New Mexico Certified Shorthand Reporters Association.

C. **Terms; appointments.** The members of the board shall hold office for staggered terms of three (3) years. 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.

D. **Officers.** The board shall 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 [10-8-1 to 10-8-8 NMSA 1978].

F. **Records of the board.** The executive-secretary of 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 and shall be responsible for payment of such expense.

[As amended, effective April 1, 1989.]

ANNOTATIONS

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

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, denial or withholding of renewal of certification shall be made in writing, and the reasons for such discipline, fine, censure, suspension, revocation, denial or withholding of renewal 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, denial or withholding of renewal 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, denial or withholding of renewal 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, 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.

ARTICLE 5 REGULATIONS OF THE BOARD

Rule

22-501. Examination standards.

In accordance with its power under Rule 22-402 to promulgate reasonable rules and regulations for the testing and licensing of certified shorthand reporters, the Board Governing the Recording of Judicial Proceedings adopts the following passing grade standards for the examination of shorthand reporters:

Section 1

Written Knowledge

Tests Accuracy Rating: 80 %

Section 2

Expert: Two

Voices Accuracy Rating: 95 %
180 Words per minute
for five (5) minutes

Section 3

Literary: One

Voice Accuracy Rating: 95 %
200 Words per minute
for five (5) minutes

Section 4

Testimony: Question and

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

[As amended, effective December 1, 1987.]

22-502. Registration fees.

A. Businesses. With respect to business entity licensing as provided in Rule 22-202, any person who is an owner, partner or shareholder of a court reporting business who is not also certified and licensed by this board as a certified court reporter or tape monitor shall pay an initial and annual registration fee of seventy dollars (\$70.00).

If there are no such unlicensed and uncertified court reporter or tape monitor owners, partners, or shareholders, no initial or annual registration fee shall be assessed against such business entity, but the board shall be notified immediately by the entity of any change in business ownership.

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 seventy dollars (\$70.00).

C. Tape monitors. The registration and annual license fee for certification as a tape monitor shall be fifty dollars (\$50.00).

[As amended, effective April 1, 1989.]

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 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 six (6) months. 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.

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;
- 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;
- 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; 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.

ANNOTATIONS

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

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 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.

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. - As to general powers and duties of the board, see Rule 22-402.