

Rules Governing the Recording of Judicial Proceedings

ARTICLE 1 General Provisions

22-101. Scope; definitions; title.

A. Scope.

(1) The examination, certification, supervision, conduct and proficiency of court reporters and court monitors engaging in court reporting or monitoring services 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) Except as provided by the Rules of Appellate Procedure, Rules of Civil Procedure for the District Courts, Rules of Criminal Procedure for the District Courts, Children's Court Rules, the Rules of Civil Procedure for the Metropolitan Court or the Rules of Criminal Procedure for the Metropolitan Court, these rules govern transcripts and the recording of judicial proceedings by any and all means whatsoever. If a deposition taken pursuant to the rules of procedure for a court listed in this subparagraph is to be taken by stenographic or realtime voice-to-print means, the person taking the deposition shall be a certified court reporter as provided in these rules.

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

(3) "certified court monitor" or "court monitor" means a person holding a certificate issued by the board to engage in the recording of judicial proceedings in this state;

(4) "certified court reporter" means a person holding a certificate issued by the board to engage in the reporting of judicial proceedings in this state and includes any firm licensed pursuant to Rule 22-202 NMRA;

(5) "certification" means licensing by the board for a court reporter, court monitor or firm to engage in the reporting or recording of judicial proceedings in this state pursuant to the Rules Governing the Recording of Judicial Proceedings;

(6) "court monitor" means a person who records judicial proceedings by audio recording;

(7) "court reporter" means a person who engages in verbatim shorthand reporting using pen or machine shorthand or realtime voice-to-print technology;

(8) "court reporting services" means providing verbatim shorthand recording in judicial proceedings using a pen, machine shorthand or realtime voice-to-print technology. "Court reporting services" shall not include services performed in the taking of depositions or statements by audio or audio-visual recording;

(9) "firm" means, but is not limited to, a limited liability company, corporation, association or other organization engaged in the practice of court reporting services in this state;

(10) "judicial proceedings" includes court proceedings, depositions and sworn statements, but does not include appellate court, Judicial Standards Commission, Disciplinary Board, magistrate court, municipal court or probate court proceedings;

(11) "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;

(12) "person" means, but is not limited to, any individual, firm, partnership, limited liability company, corporation, association or other organization; and

(13) "record" means:

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

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

(c) any recording made by an audio recording device.

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

[Adopted, effective January 1, 1983; as amended, effective December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, in Paragraph A substituted "engaging in court reporting or monitoring services" for "with regard to the practice of reporting and recording of judicial proceedings" in Subparagraph (1) and "except as provided by the Rules of Appellate Procedure, Rules of Civil Procedure for the District Courts, Rules of Criminal Procedure for the District Courts, Children's Court Rules, the Rules of Civil Procedure for the Metropolitan Court or the Rules of Criminal Procedure for the Metropolitan Court, these rules" for "these rules also" in the first sentence of Subparagraph (2), and inserted "and all" in that sentence and added the last sentence in that subparagraph, and in Paragraph B inserted Subparagraphs (2), (3), (4), (5), (8), (9), (11), (12), and (13), redesignated former Subparagraphs (2), (3), and (4) as present Subparagraphs (7), (6), and (10) respectively, substituted "court" for "tape" preceding "monitor" and deleted "or stenomask" at the end of Subparagraph (6), and added "or realtime voice-to-print technology" in Subparagraph (7) and "but does not include appellate court, Judicial Standards Commission, disciplinary board, magistrate court, municipal court or probate court proceedings" in Subparagraph (10).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 20 Am. Jur. 2d Courts § 1; 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 court monitor. In addition to any discipline, fine, censure, suspension, revocation, denial or withholding

renewal of certification, if the reporter or court monitor is a state employee, the reporter or court monitor may be disciplined as a judicial employee under the judicial personnel rules.

[Adopted, effective January 1, 1977; as renumbered and amended, effective January 1, 1983; as amended, effective February 15, 1986 and September 1, 1988; February 16, 2004.]

ANNOTATIONS

Cross references. — For creation of board governing the recording of judicial proceedings, see Rule 22-401 NMRA.

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

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” once in the first sentence and twice in the last sentence.

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 Rules 22-604 to 22-619 NMRA.

[As amended, effective January 15, 1986; December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, substituted “Rules 22-604 to 22-619” for “Rule 22-403” in the last sentence.

ARTICLE 2

Certification

22-201. Licensing of court reporters and monitors; power to administer oaths.

A. **Court reporters.** Except as provided in Paragraph C of this rule, no person shall engage in court reporting services in this state 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.

B. **Waiver of examination.** Any applicant for a license as a certified court reporter may be granted a license by the board without an examination upon a showing that the court reporter is a holder of a valid National Court Reporters Association registered professional reporter certification.

C. **Court monitors.** If a trial or hearing is recorded by an audio recording device, such proceedings shall be recorded by a court 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.

D. **Oath.** Certified court reporters may administer oaths to witnesses in judicial proceedings anywhere in this state.

[As amended, effective December 1, 1993; March 15, 1995; February 16, 2004; as amended by Supreme Court Order No. 08-8300-50, effective December 31, 2008.]

ANNOTATIONS

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

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

The 2003 amendment, effective February 16, 2004, substituted “licensing” for “certification” and “monitors; power to administer oaths” for “tape monitors” in the heading of the rule, in Paragraph A substituted “Paragraph C” for “Paragraph B” and “court reporting services in this state” for “the verbatim reporting or recording of judicial proceedings” and deleted the former last sentence concerning the administration of oaths presently set forth in Paragraph D, deleted former Paragraph B concerning certification of judicial proceedings, redesignated former Paragraphs C and D as present Paragraphs B and C, substituted “for a license as a certified court reporter may be granted a license by the board without an examination upon a showing that the court reporter” for “who” in the introductory paragraph and “registered professional reporter certification” for “proficiency certification may be granted a license by the board or the Supreme Court without a certification examination” in Subparagraph (2) of Paragraph B, inserted “court” in the introductory language and substituted “if a trial or hearing is recorded by an audio recording device” for “whenever judicial proceedings, or other proceedings specifically ordered by the court, are recorded by some audio recording device” in the first sentence of Paragraph C, and added Paragraph D.

The 2008 amendment, approved by Supreme Court Order No. 08-8300-50, effective December 31, 2008, deleted former Subparagraph (1) of Paragraph B which required an applicant to show that the court reporter has been engaged in the full time practice of court reporting for 3 years prior to applying for a license.

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

22-202. Licensing of firms engaged in court reporting or tape monitoring.

A. **Registration.** All firms providing court reporting or court monitoring services in this state must be licensed by the board.

B. **Application for firm license.** An applicant for a firm court reporting or court monitoring license shall:

- (1) pay an initial and annual registration fee prescribed by the board;
- (2) establish annually that the applicant is partially owned by a New Mexico certified court reporter or a New Mexico certified court monitor;
- (3) establish annually that persons employed by the applicant who are not licensed by the Board Governing the Recording of Judicial Proceedings do not have the right to control the professional judgment of any certified court reporter or certified court monitor; and
- (4) provide information requested by the board on the board's approved application form, including, but not limited to, firm structure, address of the firm, telephone number of the firm, names of the owners, certification numbers of the owners,

names and certification numbers of employees, copies of current firm licenses and federal, New Mexico, and all other state tax identification numbers.

C. Notice of changes. If a licensed firm has a change of ownership or there is any other change in the information provided on the form for registration, the firm shall file an amended form of registration with the board administrator within thirty (30) days after the change occurs.

D. Compliance required. Firms shall comply with the regulations that apply to court reporters and court monitors. Failure to comply with the provisions of this rule shall be grounds for a fine, suspension, revocation, refusal to renew any firm's registration or a combination of any of the these penalties.

E. Audio/digital recording as record. In the event the firm employs court monitors, the audio/digital audio recording shall be the record of proceeding.

[Adopted, effective January 1, 1983; as amended, effective February 15, 1986; June 1, 1986; December 1, 1993; February 16, 2004; as amended by Supreme Court Order No. 09-8300-025, effective September 10, 2009.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted "firms" for "business" in the heading of the rule, deleted former Paragraphs A, B, C, and D and added present Paragraphs A, B, C, and D in lieu thereof and substituted "audio recording" for "tape" in the introductory language and "the firm employs court monitors, the audio recording shall be the record of proceeding" for "that the business employs tape monitors, the tape recording shall be the record of the proceeding and the tape shall not be transcribed" in Paragraph E.

The 2009 amendment, approved by Supreme Court Order No. 09-8300-025, effective September 10, 2009, in Paragraph A, after "court reporting", added "or court monitoring" and after "this state must be", deleted "registered and"; in Paragraph B, in the initial sentence, after "court reporting", added "or court monitoring"; added Subparagraph (2) and Subparagraph (3) of Paragraph B; in Subparagraph (4) of Paragraph B, after "current firm licenses and federal", added "New Mexico" and "all other"; and in Paragraph E, in two instances, added "digital audio".

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

A. Application. An applicant seeking certification as a certified court reporter or certified court 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 court 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 or real time voice-to-print technology. 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 court monitor, the applicant must demonstrate reasonable proficiency in the operation of audio recording devices. "Reasonable proficiency" must also be demonstrated in the creation of tape or other audio logs. 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 approved by the board pursuant to these rules;
- (4) be in compliance with the Rules Governing the Recording of Judicial Proceedings and any rules and regulations adopted by the Supreme Court;
- (5) be in compliance with all support obligations as provided in the Parental Responsibility Act, Sections 40-5A-1 through 40-5A-13 NMSA 1978; and
- (6) 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 court monitor. The reporter certificate shall be valid until December 31 of the year of its issuance. The court monitor certificate shall be valid until July 31 of the year following the year of issuance.

C. Renewals. A person holding a certificate as a New Mexico certified court reporter or court monitor shall be responsible for applying for an annual renewal of that certificate, on forms approved by the board. Upon receipt of the appropriate renewal application, continuing education activities reporting form, the annual certification fee and the continuing education reporting fee, the board shall issue the applicant a one-year renewal certificate or other appropriate document evidencing that the applicant is licensed as a New Mexico certified court reporter or court monitor unless the applicant:

- (1) is found by the board to be, or to have been in violation of these rules or any rules or regulations of the board;

- (2) has not been actively practicing for three (3) years;
- (3) cannot demonstrate reasonable proficiency, if required to do so;
- (4) has not complied with the Parental Responsibility Act [40-5A-1 to 40-5A-13 NMSA 1978], if applicable; or
- (5) has failed to comply with continuing education requirements, if applicable.

The board shall revoke the license of a court reporter or court monitor who has failed to comply with the annual renewal requirements.

[Adopted, effective August 1, 1977; as renumbered and amended effective January 1, 1983; as amended, effective February 15, 1986; April 1, 1989; December 1, 1993; January 1, 1996; June 8, 1998; February 16, 2004.]

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.

The 1996 amendment, effective January 1, 1996, in Paragraph C, rewrote the first sentence and the beginning clause of the second sentence.

The 1998 amendment, effective June 8, 1998, renumbered Subparagraph B(5) as B(6) and added a new Subparagraph B(5); and added "which shall include demonstrating compliance with the Parental Responsibility Act, if applicable," near the end of the first sentence in Paragraph C.

The 2003 amendment, effective February 16, 2004, substituted "certified court" for "tape" preceding "monitor" in both Paragraph A and the first sentence of Paragraph C and, in Paragraph B, "tape" for "court" in the introductory language, the fourth sentence of Subparagraph (3), and the first sentence of the last paragraph, in Subparagraph (3) of that Paragraph B inserted "or real time voice-to-print technology" in the first sentence, deleted "approved by the board" at the end of the fourth sentence, inserted the fifth sentence, and substituted "approved by the board pursuant to these rules" for "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" in the last sentence, and inserted "court" in the last sentence of that paragraph, and in Paragraph C substituted "an annual renewal of that certificate" for "a renewal of that certificate, including demonstrating compliance

with continuing education requirements where applicable, and shall submit the application in” and deleted “which shall include demonstrating compliance with the Parental Responsibility Act, if applicable, prior to the expiration date of the certificate” at the end of the first sentence, and substituted “continuing education activities reporting form, the” for “ and continuing education activities reporting form, together with, the appropriate” and “one-year renewal” for “new,” inserted “the” following “and,” and deleted “for an additional term of one (1) year” following “monitor” in the last sentence of the introductory paragraph, designated formerly undesignated text as Subparagraphs (1), (2), and (3), substituted “any rules or regulations of the board” for “in violation of any rules or regulations of the board; or unless the applicant, who” in Subparagraph (1), inserted Subparagraphs (4) and (5), and rewrote the last paragraph.

22-204. Temporary certification for court 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 is of good moral character;
- (2) the applicant possesses 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 used by the courts. Reasonable proficiency must also be demonstrated in the creation of tape or other audio logs; 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. A temporary certificate may be extended once for not more than ninety (90) days.

[Adopted, effective December 29, 1975 and February 28, 1977; as renumbered and amended effective August 1, 1977; as amended, effective January 1, 1979; January 1, 1983; February 15, 1986; December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, substituted "court" for "tape" in the heading of the rule and "used by" for "approved by the administrative office of" in the first sentence of Paragraph A, added the last sentence in Subparagraph (3) of that paragraph, and deleted "under this rule" at the end of the second sentence and added the last sentence in Paragraph B.

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 court monitor shall pay an annual renewal 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 court 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 court monitor who fails to pay a fine within the time ordered by the board.

D. **Annual fee; firm license.** Every New Mexico firm engaging in the business of court reporting as described in Rule 22-202 NMRA shall pay an annual renewal 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 and registration 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) will be approved, prior to payment, by the signature of the chairperson or the vice 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 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 August 1 of each year to the Supreme Court 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; February 16, 2004.]

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."

The 2003 amendment, effective February 16, 2004, substituted "court monitor shall pay an annual renewal" for "tape monitor shall pay an annual" in Paragraph B, "court" for "tape" in both sentences of Paragraph C, and "firm" for "business" in the introductory language and "firm" for "business entity" in Paragraph D, inserted "renewal" in that paragraph, "and registration" in Paragraph E, and "or the vice chairperson" in Paragraph F, deleted "of New Mexico" following "court" in the first sentence of Paragraph G and in Paragraph H, and substituted "August" for "April" in that paragraph.

22-206. Official court reporters and court monitors; appointment; duties; records; termination of contract.

A. **Appointment.** Subject to Rule 22-301 NMRA, each district court may appoint official court reporters or court monitors. The Supreme Court or the district court may, by order, approve pooling by reporters and monitors within a judicial district under the supervision of a managing reporter who shall be responsible for supervision of the court reporters and court monitors within the district. A contract reporter shall not serve as a managing reporter.

B. **Court monitor duties.** Official court reporters may also serve as court monitors and record judicial proceedings in those cases in which an audio recording is permitted and shall comply with all court rules and directions and all board-approved manuals in preparing the tape or audio logs.

C. **Office.** The official court reporter or court monitor shall be provided with the office space, equipment and supplies necessary for the reporting or 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.

D. Records. If stenographic notes, computer or audio tapes or other audio recordings containing the record of judicial proceedings and evidence taken by an official court reporter or court monitor are to be transcribed, a copy of the record, in American Standard Code of Information Interchange ("ASCII") format, shall be filed with the court clerk of the court in which the proceeding is docketed. The record shall be stored on a compact disc capable of being read or accessed on a CD-ROM which meets ISO 9660 standards or on other data storage media used by the courts. Video tapes filed with the court shall be in a format used by the courts. The maintenance, storage, distribution and reproduction of such notes, tapes, records, disks, discs and documents, including all exhibits and other evidence, shall be handled in the manner prescribed by the Administrative Office of the Courts. Disposition of such records shall be in accordance with the disposition schedules approved by the records retention and disposition schedule approved by the Supreme Court.

E. Termination of employment. Official reporters leaving employment with the district court are to have all stenographic or electronic notes numerically logged by date and deposited with the court clerk prior to leaving. Court monitors leaving employment with the district court are to have all audio recordings and logs bound by date and deposited with the court clerk prior to leaving. All district court cases stenographically taken are to be stored on disks or on other data storage media used by the courts and filed with the district court clerk before departure. An ASCII backup of the reporter's dictionary shall be stored with the district court clerk.

All disks, stenographic notes and tapes or other recordings of district court cases are the property of the district court.

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

When 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.

F. Other duties. Any time that an official court reporter or court 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, presiding judge, court administrator or managing reporter, the court reporter or court monitor may be assigned other court duties as required by Section 34-6-20 NMSA 1978, unless the reporter or court monitor has been granted approved leave. The chief judge, presiding judge, court administrator or managing reporter of the district court shall have the authority to reassign temporarily the official court reporter or court monitor within the judicial district to act as reporter or monitor for another judge or to perform duties required by Subsection B of Section 34-6-20 NMSA 1978.

G. Outside reporting. Subject to the licensing requirements of these rules, an official court reporter or court monitor may engage in outside reporting or recording duties if the following criteria are met:

(1) the chief judge, presiding 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.

[Adopted, effective January 1, 1983; as amended, effective December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, added "and court monitors; appointment; duties; records; termination of contract" in the heading of the rule, deleted former Paragraph A defining "official court reporter," redesignated former Paragraphs B through H as present Paragraphs A through G, in Paragraph A substituted "subject to Rule 22-301 NMRA, each district court" for "each district judge" and "who shall be responsible for supervision of the court reporters and court monitors within the district" for "approved by the Supreme Court" and added the last sentence, in Paragraph B substituted "court" for "tape" in the introductory language and "may also serve as court" for "shall serve also as tape," "an audio recording is permitted" for "a tape recording is required," and "and all board approved manuals in preparing the tape or audio" for "in preparing the tape," substituted "court" for "tape" and inserted "reporting or" in the first sentence of Paragraph C, rewrote Paragraph D, in Paragraph E substituted "termination of employment" for "stenographic notes" in the introductory language, inserted "or electronic" in the first sentence, inserted the second sentence, substituted "disks or on other data storage" for "disk where applicable" in the third sentence, and added the fourth sentence of the first paragraph, inserted "or other recordings" in the second paragraph, inserted "or monitor" in the first sentence and "or monitor's" in the second sentence, substituted "or" for "and" preceding "telephone" in that sentence of the third paragraph and "when" for "where" in the next to last paragraph, substituted "court" for "tape" three times in the first sentence and inserted "presiding judge" in both sentences of Paragraph F, and in Paragraph G added "subject to the licensing requirements of these rules, substituted "court" for "tape," and inserted "or recording" in the introductory paragraph, and substituted "chief judge, presiding" for "district" in Subparagraph (1).

22-207. Compensation.

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

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

(1) in civil cases:

(a) if there is an appeal, three dollars fifty cents (\$3.50) per 25-line page for transcribing proceedings for the original and two (2) copies to be filed with the appellate court; and

(b) if there is no appeal, three dollars twenty-five cents (\$3.25) per 25-line page for the original and one (1) copy;

(2) in criminal cases:

(a) if there is an appeal, two dollars fifty cents (\$2.50) per 25-line page for transcribing proceedings in free process appeals for the original and two (2) copies to be filed with the appellate court; and

(b) if there is no appeal, two dollars (\$2.00) per 25-line page; and

(3) for a copy of a previously transcribed proceeding, one dollar twenty-five cents (\$1.25) per 25-line page.

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 1:30 p.m. and the afternoon session by 7:00 p.m. of the day of the proceedings;

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

(6) rough real-time copy: immediate computer-screen visualization and instantaneous transcription of testimony. Rough real-time transcripts are to be used as attorney work-product only and may not be quoted in court for impeachment purposes. Certified realtime transcripts may be used in court proceedings.

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.

[Adopted, effective January 1, 1983; as amended effective May 1, 1983; April 1, 1989; December 1, 1993; March 15, 1995; February 16, 2004.]

ANNOTATIONS

The 1993 amendment, effective December 1, 1993, rewrote the rule.

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

The 2003 amendment, effective February 16, 2004, in Paragraph A substituted “rates” for “rate” in the introductory language and “in civil cases” for “three dollars and twenty-five cents (\$3.24)” in the introductory paragraph of Subparagraph (1), designated formerly undesignated text as Subparagraph (1)(a), added “if there is an appeal, three dollars fifty cents (\$3.50)” and substituted “for the original and two (2) copies to be filed with the appellate court” for “in cases other than free process non-appeal cases for the original and one copy” in that subparagraph, inserted Subparagraph (1)(b) and the introductory language of Subparagraph (2), designated formerly undesignated text as Subparagraph (2)(a), added “if there is an appeal” and “to be filed with the appellate court; and” in that subparagraph, added Subparagraph (2)(b), deleted former Subparagraphs (3) and (4) concerning non-free process appeals and compressed transcripts, and added present Subparagraph (3) in lieu thereof, in Paragraph E substituted “1:30 p.m.” for “5:30 p.m.” and “7:00 p.m.” for “9:00 a.m.” in Subparagraph (4), added “rough” in the first and second sentences, substituted “only and may not be quoted in court” for “and not” in the second sentence, and added the last sentence in Subparagraph (6), and deleted the former last sentence and its accompanying table, both of which concerned a formula for charges for expedited services, and deleted former Subparagraph F concerning the transcription of deposition testimony.

22-208. Surety bond.

A. Official court reporters and court 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 court 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.

[Adopted, effective January 1, 1983; as amended, effective March 1, 1983; December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” in the introductory language and near the end of Paragraph A.

22-209. Continuing education requirements for certified court reporters.

A. **Hours required.** Each certified court reporter shall complete five hours of continuing education credits during each calendar year. For court reporters initially certified during a calendar year, the initial compliance year shall be the first full compliance year following the date of first certification.

B. **Earning continuing education credits.** The following categories of activities are acceptable for the earning of continuing education credits:

(1) attending an annual National Court Reporters Association or New Mexico Court Reporters Association seminar as a registrant, instructor or panelist or attending a continuing legal education seminar that is approved for continuing legal education credits by the Minimum Continuing Legal Education Board. Continuing education credits awarded are based on review and prior approval of seminar speakers by the National Court Reporters Association or, in the case of continuing legal education, are the number of continuing legal education credits approved for the program;

(2) attending a National Court Reporters Association approved seminar as a registrant, instructor or panelist. Continuing education credits based on prior approval of seminar by the National Court Reporters Association;

(3) attending a National Court Reporters Association approved videotape workshop as a registrant, instructor or panelist. Continuing education credits based on prior approval of seminar by National Court Reporters Association;

(4) proof from the National Court Reporters Association of qualifying on any one section of the certificate of merit test for the first time - five continuing education credits;

(5) proof from the National Court Reporters Association of qualifying on any one section of the National Court Reporters Association speed contests for the first time - five continuing education credits;

(6) successfully completing an adult education course in an academic subject at an accredited school; one continuing education credit for every four class hours. A transcript from the accredited school must be provided in addition to the continuing education activities reporting form. The board may, at its discretion, decline to award points for the class taken, based on content;

(7) the viewing of a videotape or listening to an audiotape of a National Court Reporters Association or New Mexico Court Reporters Association approved continuing education activity and successful completion of a questionnaire regarding content of the videotape or audiotape;

(8) proof from the National Court Reporters Association of having earned continuing education points during the applicable one (1) year period through the performance of a continuing education activity not enumerated above;

(9) speaking for an accredited continuing education course shall enable the speaker to apply these credits toward the speaker's continuing education requirements;

(10) other comparable educational activities, with the prior permission of the board or its delegate, the points for which shall be determined by the board or its delegate.

C. Excess credits. Court reporters may carry forward a maximum of five hours of continuing education credits from one year to the next.

[Adopted, effective January 1, 1997; as amended, effective February 16, 2004; as amended by Supreme Court Order 07-8300-06, effective March 9, 2007.]

ANNOTATIONS

Cross references. — For course approval by the Minimum Continuing Legal Education Board, see Rule 18-203 NMRA .

See Rule 18-203 NMRA for course approval by the Minimum Continuing Legal Education Board.

The 2003 amendment, effective February 16, 2004, rewrote Paragraph A, in Paragraph B deleted former Subparagraph (7) concerning continuing education credits for academic courses at college level, redesignated former Subparagraphs (8), (9), (10), (11), and (12) as present Subparagraphs (7), (8), (9), (10), and (11), substituted “or listening to an audiotape of a National Court Reporters Association or New Mexico Court Reporters Association” for “of a National Court Reporters Association,” added “or audiotape,” and deleted the former last sentence concerning official reporting requirements after questionnaire grading in Subparagraph (7), substituted “or listening to an audiotape contained in the Board Governing the Recording of Judicial Proceeding's continuing education library” for “of a New Mexico Court Reporters

Association seminar” in the first sentence, deleted the former second, third, and fourth sentences concerning access to and fees for seminar videotapes, and inserted the present second sentence of Subparagraph (8), and substituted “five hours of continuing education” for “ten” in Subparagraph C.

The 2007 amendment, approved by Supreme Court Order 07-8300-06, effective March 9, 2007, deleted former Subparagraph (8) of Paragraph B relating to education hour credits for viewing and listening to video and audio tapes in the board's library and re-lettered former Subparagraphs (9) to (11) as Subparagraphs (8) to (10).

ARTICLE 3

Recording of Judicial Proceedings

22-301. Recording of judicial proceedings; transcripts.

A. **Certification.** Transcripts of all judicial proceedings shall be signed and certified by a New Mexico certified court reporter or court monitor. The certified court reporter or court monitor who physically reports a judicial proceeding shall sign and include the court reporter's or court monitor's certification number on the original transcript of the judicial proceeding. The form of certification required is established by the Board Governing the Recording of Judicial Proceedings.

B. **Transcripts.** Except as provided in these rules, certified court reporters shall stenographically report the record of judicial proceedings. If a transcript is requested or designated, a certified court reporter licensed by the board under Rule 22-202 NMRA shall transcribe, process, bill for, certify and deliver the record of all judicial proceedings, unless:

- (1) the district court has insufficient funds in its budget to pay for stenographic transcripts in indigent cases as determined by the chief judge; or
- (2) a certified court reporter is not available.

If the district court does not have sufficient funds to pay for transcripts in indigent cases, such cases may be recorded by a recording device used by 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 or audio recorded 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 court monitor, the record of all judicial proceedings before that judge shall be recorded by a recording device used by the courts.

Upon appointment of a district judge or upon filling the vacancy of a district judge's court monitor, the judge shall hire a certified court reporter if one is available.

C. 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 court 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.

[Adopted, effective November 29, 1978; as amended, effective July 1, 1979; as renumbered and amended effective January 1, 1983; as amended, effective May 1, 1983; January 1, 1987; December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, added Paragraph A, redesignated former Paragraphs A and B as present Paragraphs B and C, in Paragraph B substituted "except as provided in these rules, certified" for "official" and "the record of judicial proceedings" for "and transcribe" in the first sentence and inserted "if a transcript is requested or designated, a certified court reporter licensed by the board under Rule 22-202 NMRA shall transcribe, process, bill for, certify and deliver" in the second sentence of the introductory paragraph, thereby separating the former single sentence into two sentences, substituted "stenographic" for "the" in Subparagraph (1), "a certified court reporter is not available" for "unavailability of a certified court reporter" in Subparagraph (2), and "may be recorded by a recording device used by" for "shall be recorded by a recording device approved by the administrative office of" in the first sentence and "court" for "tape" and "used by" for "approved by the administrative office of" in the last sentence of the next to last paragraph, inserted "or audio recorded" in the third sentence of that paragraph, and added the last paragraph, in Paragraph C substituted "court" for "tape" in the last sentence and deleted the former last paragraph concerning the formatting, custody, and storage of videotapes, and deleted former Paragraphs C and D concerning taping depositions and indigent cases.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Failure or refusal of state court judge to have record made of bench conference with counsel in criminal proceeding, 31 A.L.R.5th 704.

22-302. Transcript; format.

A. **Transcript; format.** All transcripts, including compressed 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; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, inserted "including compressed transcripts" in Paragraph A.

22-303. Audio recording of judicial proceedings.

A. **Official record.** When an audio recording is authorized to be used for the creation of the official record of any judicial proceeding, the following procedures shall be followed by the certified court monitors in recording the proceedings, storing the recording and making copies of the recording.

(1) A separate master tape or other recording may be used for each case. The tape or other recording shall at all times be kept secure in the court clerk's office. If more than one case is to be included on a master tape or other recording, 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) recording and two (2) copies of the master recording 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 monitors 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 may 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 recordings. When an audio recording is authorized to be used for the creation of the official record of any judicial proceeding, the audio cassette tapes, discs or other media used to store the recording, shall be compatible with equipment used by the courts.

[Adopted, effective January 1, 1983; as amended, effective December 1, 1993; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, substituted "audio recording" for "tapes" in the heading of the rule, and in Paragraph A substituted "an audio" for "a tape," "procedures" for "rules," "court" for "tape," and "recording" for "tapes" twice in the introductory paragraph, inserted "or other recording" in all three sentences and substituted "court clerk's office" for "case file in the district court clerk's file" in the second sentence of Subparagraph (1), substituted "recording" for "tape" twice in the first sentence of Subparagraph (2) and "may" for "shall" in Subparagraph (3), and in Paragraph C substituted "recordings" for "cassette tapes" in the introductory language and "an audio" for "a tape" and "discs or other media used to store the recording, shall be compatible with equipment used by" for "used in recording the proceeding shall meet the minimum standards approved by the administrative office of."

22-304. Transcript authorized.

The court reporter shall be deemed to be authorized to transcribe the testimony at any deposition recorded by stenographic means, unless instructed otherwise. Upon payment of reasonable charges, the court reporter shall furnish the transcript of any deposition to any party or the deponent.

[Approved, effective February 16, 2004.]

ARTICLE 4

Board Governing Recording

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

A. **Creation.** In order to supervise the examination, certification and conduct of court reporters and court 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 eight 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 the Court of Appeals or district court, a staff attorney of the Court of Appeals or a managing court reporter of the district court; provided at least one member of the board shall be a Court of Appeals or district court judge;

(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 court monitor employed by the courts appointed by the Supreme Court; and

(5) one or more former chairpersons of the board appointed by the Supreme Court who shall be non-voting members.

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.

If any board member does not participate in three consecutive meetings, that member may be deemed to have resigned from the board. The resignation shall be reported to the Supreme Court by the board.

D. **Officers.** At the first meeting of the calendar year, the board may elect one of its members as chair and one member as vice chair. 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 administrator 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; January 1, 1996; February 16, 2004.]

ANNOTATIONS

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

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", added Paragraph B(4) and made related stylistic changes.

The 1996 amendment, effective January 1, 1996, substituted "eight persons" for "seven persons" in Paragraph B.

The 2003 amendment, effective February 16, 2004, substituted "court" for "tape" preceding "monitors" in Paragraph A and "the Court of Appeals or district court, a staff attorney of the Court of Appeals or a managing court reporter of the district court; provided at least one member of the board shall be a Court of Appeals or district court judge" for "either the Supreme Court, Court of Appeals or district court" in Subparagraph (2) and "court" for "tape" in Subparagraph (4) of Paragraph B, added Subparagraph (5) in that paragraph and the last paragraph of Paragraph C, and substituted "chair" for "president" and "vice-chair" for "secretary-treasurer" in the first sentence of Paragraph D and "administrator" for "executive secretary" in Paragraph F.

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 and court monitoring within New Mexico.

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

(1) coordinate appropriate examinations for all applicants for certification as a New Mexico certified court reporter or court monitor to ensure 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 court monitors;

(3) issue advisory opinions to clarify the rights and obligations of court reporters and court monitors under these rules, and any additional standards adopted by the Supreme Court;

(4) 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 court monitors other than those specified within these rules;

(5) 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 court monitors;

(6) issue standards and procedures for investigating complaints;

(7) administer a continuing education program for certified court reporters;

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

(9) have the power to subpoena witnesses. Witnesses may be summoned by subpoena issued by the board chair upon request of the board, the court reporter or the court 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; April 1, 1989; January 1, 1996; February 16, 2004.]

ANNOTATIONS

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

The 1996 amendment, effective January 1, 1996, added Paragraph B(5) and redesignated former Paragraphs B(5) and B(6) as Paragraphs B(6) and B(7).

The 2003 amendment, effective February 16, 2004, inserted “and court monitoring” in Paragraph A, and in Paragraph B substituted “coordinate” for “prepare and administer” and “court” for “tape” preceding “monitor” in Subparagraph (1) and “court monitors” for “tape” in Subparagraph (2), inserted Subparagraphs (3) and (6), redesignated former Subparagraphs (3) and (4) as present Subparagraphs (4) and (5) and former Subparagraphs (5), (6), and (7) as present Subparagraphs (7), (8), and (9), substituted “court” for “tape” preceding “monitors” both in Subparagraph (4) and at the end of Subparagraph (5), deleted “New Mexico” preceding both “Supreme Court” and “certified” in the first sentence of Subparagraph (8) and substituted “court” for “tape” preceding “monitors” in that sentence, and “board chair” for “president of the board” and “the court reporter or the court” for “or the court reporter or tape” in the first sentence of Subparagraph (9).

22-403. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated November 12, 2003, this rule, providing for decisions of the board, is withdrawn effective February 16, 2004.

ARTICLE 5 Regulations of the Board

22-501. Examination standards.

A. **Exam frequency.** The Board Governing the Recording of Judicial Proceedings may coordinate or administer as many examinations per year as necessary, but shall administer at least one examination per year.

B. **Examinations.** The scope of the examination, the speed, the percentage of accuracy and the methods of procedure shall be prescribed by the board.

(1) The board may use entry level tests conducted by the National Court Reporters Association, and candidates must pass all three skills parts of the examination as well as the written examination.

(2) The board may use such other examinations administered or conducted by such other organizations as approved by the board for real-time voice-to-print reporting examinations.

[As amended, effective December 1, 1987; December 1, 1993; March 15, 1995; February 16, 2004; as amended by Supreme Court Order 07-8300-37, effective December 12, 2007.]

ANNOTATIONS

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.

The 2003 amendment, effective February 16, 2004, inserted "coordinate or" in Paragraph A, designated the former second sentence of that paragraph as the present introductory paragraph of Paragraph B, added Subparagraphs (1) and (2) of that paragraph, and deleted the former last sentence of Paragraph A and its accompanying table concerning court reporter examination grading standards and former Paragraph B concerning the destruction of examination papers.

The 2007 amendment, approved by Supreme Court Order 07-8300-37, effective December 12, 2007, revised Subparagraph (1) of Paragraph B to delete the requirement that all three skills parts be passed at one sitting and the provision permitting the written examination to be passed separately.

22-502. Fees.

A. **Firms.** All firms shall pay an initial and an annual fee to be set by the board; provided no fee is required to be paid by a firm that is owned by one or more court reporters who have paid initial and annual registration fees. Any firm which fails to return an annual application for renewal of certification as a court reporter or court monitor and fees, according to the provisions of Rule 22-202 NMRA, by February 1, must reapply for certification and pay the initial application fee.

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

C. **Court monitors.** The training fee and annual certification fee as a court 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; January 1, 1996; February 16, 2004.]

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.

The 1996 amendment, effective January 1, 1996, added the last two sentences in Paragraph A.

The 2003 amendment, effective February 16, 2004, in Paragraph A, substituted "firms" for "businesses" in the introductory language and "all firms" for "any business, whose owners, partners or shareholders are not certified court reporters" and "provided no fee is required to be paid by a firm that is owned by one or more court reporters who have paid initial and annual registration fees" for "otherwise, no fee is necessary" in the first sentence, deleted the former second sentence concerning fees contained in annual individual certification renewals, substituted "any firm which fails to return an annual application for renewal of certification as a court reporter or court monitor and fees, according to the provisions of Rule 22-202 NMRA" for "businesses which fail to return their applications and fees to the board" and inserted "initial application" in the last sentence, and deleted the former last sentence concerning consequences for failure to pay renewal fee, and substituted "court" for "tape" twice in Paragraph C.

22-503. Furnishing depositions without consent.

A certified reporter or court monitor shall be subject to disciplinary action for unprofessional conduct under Rule 22-605 NMRA if the reporter or monitor furnishes, for pay or otherwise, a copy of any deposition or portion thereof to any person other than the deponent, a party or an attorney in the matter in which the deposition was taken, without the 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.

[As amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” preceding “monitor” and “other than the deponent, a party or” for “or his counsel who is neither a party nor” and deleted “written” preceding “consent”.

22-504. Retention of notes.

A. **Retention periods.** Official court reporters shall retain their notes in accordance with the Supreme Court approved records retention schedule. All other certified court reporters shall retain:

(1) untranscribed shorthand or tape or other recorded notes of depositions or other proceedings, other than trial proceedings, for not less than three (3) years;

(2) notes of transcribed depositions or other proceedings described in Subparagraph (1) of this paragraph, shall be retained for not less than one (1) year by the certified court reporter who reported the judicial proceedings.

B. **Storage of notes.** The original paper notes shall be retained or an electronic copy of either the shorthand notes or the English transcript of the notes shall be stored on computer disks, cassettes, backup tape systems or optical or laser disk 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; February 16, 2004.]

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.

The 2003 amendment, effective February 16, 2004, designated the former undesignated first sentence of the section as present Paragraph A and parts of that former sentence as present Subparagraphs (1) and (2) of that paragraph, deleted the former second sentence concerning the preservation of original shorthand notes, and designated the remaining former sentences as present Paragraph B, and in Paragraph A added the present introductory language and present first sentence, substituted “other

certified court reporters” for “certified court reporters other than official reporters who are governed by the Supreme Court approved records retention schedule” in th introductory language, inserted “or other” in Subparagraph (1), and substituted “in Subparagraph (1) of this paragraph” for “hereinabove” in Subparagraph (2), and in the first sentence of Paragraph B added the introductory language, substituted “the original paper notes shall be retained” for “storage shall be through the original paper notes” and “disk” for “disc,” and inserted “shall be stored”.

22-505. New Mexico certified court reporter's code of professional ethics.

A New Mexico certified court reporter shall:

1. be fair and impartial toward each participant in all aspects of reported proceedings;
2. be alert to situations that are conflicts of interest or that may give the appearance of a conflict of interest. If a conflict or a potential conflict arises, the certified court reporter shall disclose that conflict or potential conflict;
3. guard against not only the fact but the appearance of impropriety;
4. preserve the confidentiality and ensure the security of information, oral or written, entrusted to the certified court reporter by any of the parties in a proceeding;
5. be truthful and accurate when making public statements or when advertising the certified court reporter's qualifications or the services provided;
6. refrain, as an official reporter, from freelance reporting activities that interfere with official duties and obligations;
7. determine fees independently, except when established by statute or court order, entering into no unlawful agreements with other reporters on the fees to any user;
8. refrain from giving, directly or indirectly, any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed twenty-five dollars (\$25.00) per transaction and fifty dollars (\$50.00) in the aggregate per recipient each year;
9. maintain the integrity of the court reporting profession;
10. abide by the rules governing the recording of judicial proceedings.

[Approved, effective April 21, 1998.]

ARTICLE 6

Rules of Procedure

22-601. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated November 12, 2003, this rule, providing for scope of these rules, is withdrawn effective February 16, 2004.

22-602. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated November 12, 2003, this rule, providing for authority of these rules, is withdrawn effective February 16, 2004.

22-603. Withdrawn.

ANNOTATIONS

Withdrawals. — Pursuant to a court order dated November 12, 2003, this rule, providing for definitions, is withdrawn effective February 16, 2004.

22-604. Denial of a certificate.

A. **Denial of application.** All decisions of the board denying any application for certification, or denial of waiver under Rule 22-103 NMRA, 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.

B. Notice.

(1) If an application for a temporary or permanent certificate as a certified court reporter or court monitor or an application for a firm licensed under Rule 22-202 NMRA 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 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.

C. 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 Paragraph A of this rule.

D. 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 Paragraph E of this rule.

E. Appeal. 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.

[As amended, effective March 15, 1995; February 16, 2004.]

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).

The 2003 amendment, effective February 16, 2004, inserted Paragraph A, redesignated former Paragraphs A, B, and C as present Paragraphs B, C, and D, substituted "court" for "tape" preceding "monitor" and "firm" for "business entity" in Subparagraph (1) and deleted "sufficient" following "has" in Subparagraph (2) of Paragraph B, substituted "Paragraph A of this rule" for "Rule 22-403 NMRA" in Paragraph C and "Paragraph E of this rule" for "Rule 22-403 NMRA" in Paragraph D, and added Paragraph E.

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 court monitor pursuant to these rules:

- 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 court monitor, having become unable to perform the duties of a court monitor at a level of skill required by the board for certification as a court 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;
- K. entering into any contractual arrangement whether oral or written, with any person or entity which prohibits or restricts an attorney from using a court reporter of the attorney's choice; contracting or agreeing with any person or entity not acting as a party to litigation, other than a government entity, to provide reporting or incidental services in any action not yet pending; failing to provide comparable services, in both quality and price, to all parties in any given action; or entering into any agreement or arrangement with any court reporting agency not licensed by the board, any insurance company, any attorney representing an insurance company or other group, or any attorneys affiliated with such other companies, groups or associations which may be viewed as allowing the agency, company or attorney to assume the right to control or direct the time, manner or method of executing deposition services, including staffing, marketing, billing, fees, record retention, billing invoice formats or any other practice that has the appearance of impropriety or appears to allow someone else to control or direct the certified court reporter's or firm's work. This rule does not prohibit agreeing to provide

incidental services prior to the institution of litigation. It also does not prohibit an agreement to provide reporting services for non-litigation matters. It shall be the responsibility of the individual court reporter and the court reporting firm to know whether a contractual relationship exists requiring disclosure. The purpose of this rule is to protect the integrity of the record and to avoid the appearance of partiality;

L. presence of the court reporter's or court monitor's name on the certified list compiled by the Human Services Department pursuant to the Parental Responsibility Act [40-5A-1 to 40-5A-13 NMSA 1978] showing the certified court reporter or court monitor is not in compliance with a judgment and order of support entered by a district court or a tribal court; or

M. violation of any rule or order promulgated or issued by the Supreme Court governing the obligations or duties of court reporters or court monitors.

[Adopted, effective January 1, 1983; as amended, effective January 1, 1996; June 8, 1998; July 15, 2002; February 16, 2004.]

ANNOTATIONS

The 1996 amendment, effective January 1, 1996, added Paragraph K and redesignated former Paragraph K as Paragraph L.

The 1998 amendment, effective June 8, 1998, renumbered Paragraph L as Paragraph M and added a new Paragraph L.

The 2002 amendment, effective July 15, 2002, in Paragraph K, substituted "entering into any contractual arrangement, whether oral or written, with any person or entity which prohibits or restricts an attorney from using a court reporter of the attorney's choice or" for "to protect the integrity of the record and to avoid the appearance of partiality" and inserted "not acting as a party to litigation" in the first sentence; rewrote the second sentence which formerly read: "This rule does not prohibit agreeing to provide reporting or incidental services on a matter-by-matter basis prior to the institution of litigation; it also does not prohibit agreeing to provide reporting services for non-litigation matters"; and added the last three sentences.

The 2003 amendment, effective February 16, 2004, substituted "court" for "tape" preceding "monitor" and "these rules" for "Rule 22-403 NMRA" in the introductory paragraph, "court" for "tape" three times in Paragraph F, deleted "or" preceding both "contracting" and "failing" and added "or entering into any agreement or arrangement with any court reporting agency not licensed by the board, any insurance company, any attorney representing an insurance company or other group, or any attorneys affiliated with such other companies, groups or associations which may be viewed as allowing the agency, company or attorney to assume the right to control or direct the time, manner or method of executing deposition services, including staffing, marketing, billing, fees, record retention, billing invoice formats or any other practice that has the

appearance of impropriety or appears to allow someone else to control or direct the certified court reporter's or firm's work" in the first sentence of Paragraph K, and substituted "court" for "tape" preceding both "monitor's" and "monitor" in Paragraph L and preceding "monitors" in Paragraph M.

Compiler's notes. — Section 40-5A-10 NMSA 1978 of the Parental Responsibility Act provides that the Supreme Court shall adopt rules for the denial of a license or renewal of a license and for the suspension or revocation of a license of lawyers and other persons licensed by the Supreme Court for the failure of an applicant or licensee to comply with a court order requiring payment of child support.

22-605.1. Prehearing procedures and confidentiality.

A. **Prehearing procedures.** Prior to determining if a hearing is warranted, the board may adopt investigative procedures to gather information needed to assist in making such a determination.

B. **Confidentiality.** All complaints and any investigation made by the board prior to serving a notice of hearing shall be confidential. After a notice of a hearing is served pursuant to Rules 22-606 and 22-607 NMRA, the complaints and results of the investigation need not remain confidential.

[Approved, effective November 1, 2001.]

22-606. Opportunity for hearing.

A. **Notice and opportunity to be heard.** Every court reporter or court 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 court monitor;
- (4) censure a certified court reporter or certified court 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 court 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 Subparagraph (5) of Paragraph A of Rule 22-605 NMRA, in lieu of a hearing, a certified court reporter or court monitor may, with the consent of the board, take the examination given to applicants for permanent certification as a certified court reporter or court monitor. The examination given shall be identical to the most recent examination given applicants for certification as permanent certified court reporters or court 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 court 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 court 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.

D. Parental Responsibility Act suspensions. If the proposed disciplinary action is being taken pursuant to Subparagraph (12) of Paragraph A of Rule 22-605 NMRA of these rules, the license shall be suspended until the court reporter or court monitor files with the board a certified statement from the Human Services Department that the court reporter or court monitor is in compliance with the court reporter's or court monitor's child support obligation.

E. Definitions. As used in this rule:

(1) "revoke a certificate" means to prohibit the conduct authorized by the certificate or license; and

(2) "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 September 1, 1983; June 8, 1998; February 16, 2004.]

ANNOTATIONS

The 1998 amendment, effective June 8, 1998, added Paragraph D.

The 2003 amendment, effective February 16, 2004, substituted "court" for "tape" preceding "monitor" three times in Paragraph A, once in Paragraph B, five times in Paragraph C, and two times in Paragraph D, substituted "Subparagraph (5) of Paragraph A" for "Paragraph E" in Paragraph C, "Subparagraph (12) of Paragraph A of Rule 22-603 NMRA" for "Rule 22-605(L)" and "court" for "tape" preceding "monitor's" in Paragraph D, and added Paragraph E.

22-607. Notice of hearings.

A. **Notice.** If the board believes that the certificate of a certified court reporter or court monitor should be revoked or suspended or that a certified court reporter or court monitor should be censured or that a renewal of certification should be denied, the board shall give the certified court reporter or court monitor notice of the right to a hearing as provided in Rule 22-612 NMRA of these rules. Within twenty (20) days after the mailing of a notice, the certified court reporter or court 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 court 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, the reporter or monitor 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 NMRA.

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.

[Adopted, effective January 1, 1983; as amended, effective, February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” preceding “monitor” three times and added “as provided in Rule 22-612 NMRA of these rules” in the first sentence of Paragraph A, substituted “court” for “tape” preceding “monitor” in the second sentence of that paragraph and in Subparagraph (1) of Paragraph B, and “the reporter or monitor” for “he” in Subparagraph (3) of that paragraph.

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 NMRA, an adjudicatory hearing shall be held by the board after notice to the certified court reporter or certified court monitor. 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.

[Adopted, effective January 1, 1983; as amended, February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, added “or certified court monitor” at the end of the first sentence of Paragraph A.

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. 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.

C. Mailing of decision. A final written decision shall be served on the certified court reporter or court monitor in the manner provided by Rule 22-612 of these rules within ten (10) days after it is executed by the board.

D. Time for appeal. If the final written decision is for disciplinary action against the certified court reporter or court 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 Paragraph E of this rule 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.

E. 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.

F. Judicial personnel rules. Nothing in these rules shall be construed to 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.

[Adopted, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, inserted Paragraph B, redesignated former Paragraphs B, C, and D as present Paragraphs C, D, and E, substituted “served on the certified court reporter or court monitor in the manner provided by Rule 22-612 of these rules” for “mailed to the certified court reporter or tape monitor by certified mail, return receipt requested” in Paragraph C, and “court” for “tape” following “court reporter or” and “Paragraph E of this rule” for “Rule 22-403 NMRA” following “pursuant to” in the first sentence of Paragraph D, and added Paragraph F.

22-610. Rehearing.

The board may grant a rehearing, either upon written application by the reporter or court 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 or court monitor within ten (10) days of the date the board receives the application.

[Adopted, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” preceding “monitor” in the first sentence and inserted “or court monitor” in the last sentence.

22-611. Venue.

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

[Adopted, effective January 1, 1983.]

22-612. Service of notices and decisions.

Any notice 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 court monitor shall be sent to the court reporter's or court monitor's last known address as shown by the records of the board. Service by certified mail is deemed complete upon mailing.

[Adopted, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “and decisions” for “of hearings” in the heading of the rule, deleted “of hearing” preceding “required” in the first sentence, and substituted “court” for “tape” preceding “monitor” and “the court reporter’s or court monitor’s” for “his” in the second sentence.

22-613. Rights of parties to hearing.

A. **Rights specified.** A certified court reporter or court 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 board chair 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 service of the subpoena, including witness fees.

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

(1) obtain the names, addresses and a summary of anticipated testimony 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.

[Adopted, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, in Paragraph A substituted “court” for “tape” preceding “monitor” in the first sentence, “board chair” for “president of the board” in the second sentence, and “service of the subpoena, including witness fees” for “the issuance and, service of the subpoena” in the last sentence, and substituted “addresses and a summary of anticipated testimony” for “and addresses” in Subparagraph (1) of Paragraph B.

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.

[Adopted, effective January 1, 1983.]

ANNOTATIONS

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

For judicial notice of adjudicative facts, see Rule 11-201 NMRA.

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.

[Approved, effective January 1, 1983.]

22-616. Conduct of hearings.

A. **Presiding official.** Unless a hearing officer is designated by the board, the board chairperson shall preside at the hearings of the board conducted pursuant to these

rules. If the chairperson is unable to preside at the hearing, the chairperson 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 court monitor who is the subject of the hearing shall be presented first. The reporter or monitor may then introduce any evidence the reporter or monitor 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.

[Approved, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “board chairperson” for “president of the board” in the first sentence and “chairperson” for “president” and “the chairperson” for “he” in the last sentence of Paragraph A, and “court” for “tape” preceding “monitor” in the first sentence and “the reporter or monitor” for “he” in the last sentence of Paragraph C.

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 court monitor may with the approval of the board, and for good cause shown, require the board to hold a closed meeting.

[Approved, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “court” for “tape” preceding “monitor” in Paragraph C.

22-618. Failure to appear for hearing.

If a certified court reporter or certified court monitor who has requested a hearing does not appear, and no continuance has been granted, the board or hearing officer may hear the testimony of witnesses who have appeared, and the board may proceed to consider the matter and dispose of it on the basis of the evidence before it. If because of accident, sickness or other good cause a certified court reporter or certified court monitor fails to appear for a hearing requested by the reporter or monitor, the court reporter or court 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 court 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.

[Approved, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted “certified court” for “tape” preceding “monitor” and “testimony of witnesses who” for “evidence of such witnesses as may” in the first sentence and “if” for “where,” “certified court” preceding “monitor,” “requested by the reporter or monitor” for “which he has requested,” and “court” for “tape” preceding “monitor” twice in the second sentence.

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 certified court 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 board chairperson may issue a subpoena for the appearance of any witness at any hearing.

C. **Enforcement.** If any person fails to comply with a subpoena issued by the board chairperson in accordance with the provisions of this rule or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, at the request of the officer issuing the subpoena, the board may apply to the Supreme Court for an order directing that person to take the requisite action. The Supreme Court may issue such order or may quash the subpoena. Should any person willfully fail to comply with an

order of the Supreme Court, the Court may punish such person for contempt of court. Any person who has been served with a subpoena pursuant to this rule may apply to the Supreme Court for an order to quash such subpoena.

[Approved, effective January 1, 1983; as amended, effective February 16, 2004.]

ANNOTATIONS

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

The 2003 amendment, effective February 16, 2004, substituted “certified court” for “tape” in Paragraph A, “board chairperson” for “president of the board” in Paragraph B, and added Paragraph C.

ARTICLE 7

Procedural Checklist

22-701. Informal adjudicative proceedings; checklist.

CERTIFIED COURT REPORTER AND COURT MONITOR COMPLAINT PROCEDURE CHECKLIST

Rules 22-601 through 22-619 NMRA of the Rules Governing the Recording of Judicial Proceedings provide for all informal adjudicative proceedings to be conducted by the board. These include proceedings concerning discipline, fine, censure, suspension, revocation, denial or withholding renewal of a certificate of a certified court reporter or court monitor. (See Rule 22-605 NMRA, "Grounds for disciplinary action".)¹

The following checklist applies when a complaint is filed against a certified court reporter.

- A. Formal complaint received.
- B. Board secretary or administrator acknowledges receipt of complaint to complainant and respondent in writing. Respondent is given fifteen (15) days from the receipt of the acknowledgment letter to respond.
- C. Complaint and response are reviewed in executive session at the next meeting of the Board Governing the Recording of Judicial Proceedings.
- D. If further action warranted, the board may submit written questions to the complainant or the respondent, or the board may appoint a subcommittee to investigate.
- E. Investigative evidence is thereafter presented to the board.

F. If the board believes the complaint has merit, the complaint may be referred to the attorney general for action, and notice is given to respondent of the right of the respondent to a hearing before the board. Rule 22-607 NMRA, "Notice of hearings", sets out the necessary contents of any notices. See also, Rule 22-613 NMRA, "Rights of parties to hearing".

G. The respondent must respond in writing within twenty (20) days after the mailing of the notice in order to request a hearing by the board on the board's proposed action, if respondent desires such a hearing.

H. The board sets a date and time for hearing if respondent requests a hearing. The board prepares a notice of hearing. The notice of hearing is mailed by certified mail or personally served on the respondent. (See Rule 22-612 NMRA, "Service of notices of hearings" for method of service.) A copy of the notice must also be sent to the complainant.

No hearing conducted pursuant to Rule 22-613 NMRA shall be held less than fifteen (15) days from date of service of said notice, nor more than sixty (60) days from date of service, unless the hearing is continued by the board for good cause.

I. The board establishes whether any party desires a record of the hearing; if so, satisfactory arrangements must be made to pay the cost of such record prior to the commencement of the hearing.

J. The board establishes whether any of the parties desire a closed hearing. (See Rule 22-617 NMRA, "Hearings; public".)

K. A quorum of the board holds the evidentiary hearing in accordance with the notice. (Consult Rule 22-616 NMRA, "Conduct of hearings".) In the alternative, the board may designate a hearing officer. (See Rule 22-617 NMRA, "Hearings; public".)

L. The board must render its written decision within thirty (30) days after the conclusion of the hearing. A written decision may be delayed for good cause shown for a period not to exceed sixty (60) days. (See Rule 22-609 NMRA, "Decision and appeal".)

M. If delay is necessary, the board notifies respondent of the delay, the reason therefor and when a decision can be expected.

N. The decision must be mailed via certified mail within ten (10) days after it is executed by the board.

O. If discipline is indicated in the decision, the reporter or monitor may file a notice of appeal with the Supreme Court pursuant to Rule 22-609 NMRA within thirty (30) days after the date of mailing the decision and must serve copy of notice of appeal on the board.

P. After receipt of respondent's notice of appeal, the board must within thirty (30) days 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.

USE NOTE

1. If the matter concerns denial of a certificate, see Rule 22-604 NMRA, "Denial of certificate", for time limitations and the appeal process.

[Approved, effective November 1, 2001; as amended, effective February 16, 2004.]

ANNOTATIONS

The 2003 amendment, effective February 16, 2004, substituted "adjudicative" for "adjudicator" in the heading of the rule and in the first sentence of the introductory paragraph, "court" for "tape" preceding "monitor" at the end of the second sentence and "Rule" for "Section" in the last sentence of that paragraph, and "22-609" for "22-403" in Paragraph O.

Table Of Corresponding Rules

The first table below reflects the disposition of the Former Rules Governing the Recording of Judicial Proceedings, Rules of Disciplinary Proceedings Before the Board Governing the Recording of Judicial Proceedings (Bd.) and Regulations of the Board (Reg.). The left-hand column contains the former rule or regulation number, and the right-hand column contains the corresponding present Rule Governing the Recording of Judicial Proceedings.

The second table below reflects the antecedent provisions in the Former Rules Governing the Recording of Judicial Proceedings, Rules of Disciplinary Proceedings Before the Board Governing the Recording of Judicial Proceedings (Bd.) and Regulations of the Board (Reg.) (right-hand column) of the present Rules Governing the Recording of Judicial Proceedings (left-hand columns).

| Former Rule | NMRA | Former Rule | NMRA |
|-------------|--------|-------------|--------|
| 1 | 22-101 | Bd. 1 | 22-601 |
| 2 | 22-201 | Bd. 2 | 22-602 |
| 3 | 22-202 | Bd. 3 | 22-603 |
| 4-8 | 22-401 | Bd. 4 | 22-604 |
| 9 | 22-402 | Bd. 5 | 22-605 |
| 10 | 22-403 | Bd. 6 | 22-606 |

| | | | |
|-------------------|--------|--------|--------|
| 11 | 22-203 | Bd. 7 | 22-607 |
| 12 | 22-204 | Bd. 8 | 22-608 |
| 13 | 22-205 | Bd. 9 | 22-609 |
| 14 | 22-102 | Bd. 10 | 22-610 |
| 15 | 22-103 | Bd. 11 | 22-611 |
| 16 | 22-301 | Bd. 12 | 22-612 |
| 17 | 22-206 | Bd. 13 | 22-613 |
| 18 | 22-207 | Bd. 14 | 22-614 |
| 19 | 22-302 | Bd. 15 | 22-615 |
| 20 | 22-303 | Bd. 16 | 22-616 |
| 21 | 22-208 | Bd. 17 | 22-617 |
| Reg. 1 | 22-501 | Bd. 18 | 22-618 |
| Reg. 2, Reg. 3 | 22-502 | Bd. 19 | 22-619 |
| Reg. 4 | 22-503 | | |
| Reg. 5 | 22-504 | | |

| NMRA | Former Rule | NMRA | Former Rule |
|--------|----------------|--------|-------------|
| 22-101 | 1 | 22-601 | Bd. 1 |
| 22-102 | 14 | 22-602 | Bd. 2 |
| 22-103 | 15 | 22-603 | Bd. 3 |
| 22-201 | 2 | 22-604 | Bd. 4 |
| 22-202 | 3 | 22-605 | Bd. 5 |
| 22-203 | 11 | 22-606 | Bd. 6 |
| 22-204 | 12 | 22-607 | Bd. 7 |
| 22-205 | 13 | 22-608 | Bd. 8 |
| 22-206 | 17 | 22-609 | Bd. 9 |
| 22-207 | 18 | 22-610 | Bd. 10 |
| 22-208 | 21 | 22-611 | Bd. 11 |
| 22-301 | 16 | 22-612 | Bd. 12 |
| 22-302 | 19 | 22-613 | Bd. 13 |
| 22-303 | 20 | 22-614 | Bd. 14 |
| 22-401 | 4-8 | 22-615 | Bd. 15 |
| 22-402 | 9 | 22-616 | Bd. 16 |
| 22-403 | 10 | 22-617 | Bd. 17 |
| 22-501 | Reg. 1 | 22-618 | Bd. 18 |
| 22-502 | Reg. 2, Reg. 3 | 22-619 | Bd. 19 |
| 22-503 | Reg. 4 | | |
| 22-504 | Reg. 5 | | |

