



BOARD OF COURT REPORTING
500 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243
615-741-1831

**Board Meeting Minutes for March 22, 2019
First Floor Conference Room 1-B
Davy Crockett Tower**

The Tennessee Board of Court Reporting met on March 22, 2019 in the first floor conference room 1-B of Davy Crockett Tower in Nashville, Tennessee. The following business was transacted:

BOARD MEMBERS PRESENT: Earl Houston, John Rambo (teleconference), Ken Gibson (teleconference), Ken Mansfield, Marilyn Morgan

STAFF MEMBERS PRESENT: Glenn Kopchak, Ashley Thomas, Carol McGlynn

ROLL CALL/NOTICE OF MEETING

Director Kopchak called the meeting to order at 9:00 am and elected to move forward with the meeting without the call-in from Judge Rambo since quorum was established during the roll call. Director Kopchak then read the "Notice of Meeting" into the record.

Statement of Necessity

Director Kopchak read the Statement of Necessity. Mr. Mansfield made a motion to accept the Statement of Necessity, which was second by Mr. Houston. The motion passed by unanimous roll call vote.

AGENDA

Ms. Morgan motioned to adopt the day's agenda as written. This was seconded by Mr. Mansfield. The motion carried by unanimous roll call vote.

Judge Rambo entered the meeting via teleconference at 9:04 a.m.

MINUTES

The Board reviewed the minutes from its September meeting. Mr. Gibson noted that his attendance was not recorded in the September minutes. Ms. Morgan made a motion to amend the minutes with the correction added and adopt the rest as written, which was seconded by Mr. Mansfield. The motion passed by unanimous roll call vote.

DIRECTOR'S REPORT

Budget

Director Kopchak reviewed the overall expenditures for FY18 and current trending noting that there were some spikes in expenses for several individual months due to payments to system vendors for enhancements and for bringing the Board onto the online licensing platform also known as the

Comprehensive Online Regulatory and Enforcement System (CORE). Director Kopchak noted that there was a spike in revenue for June and July generated from the two (2) year renewal cycle. He noted that the Board will more than likely run an operations deficit for the next two (2) years until next renewal cycle, which is not historically uncommon. Past indications lead him to believe that this renewal cycle revenue spike will counterbalance the operational deficit so far as everything else remains constant.

Robert's Rules

Judge Rambo made a motion to agree and adhere to Robert's Rule of Order, which was seconded by Mr. Mansfield. The motion passed by unanimous roll call vote.

Election of Officers

Per TCA 20-9-604 (f), "At its first meeting each calendar year, the board shall elect a chair, vice chair and secretary from its membership. No member shall be elected to serve more than two (2) consecutive years in the same office." Mr. Mansfield made a motion to elect Ken Gibson as Chair, Marilyn Morgan as Vice Chair, and Judge John Rambo as Secretary, which was seconded by Mr. Houston. The motion passed by unanimous roll call vote.

Renewals & CE Audit

Director Kopchak informed the board members that the 10% CE Audit was successfully conducted in November and out of those selected for audit, only one (1) did not have proof of CE on file and did not respond to requests for such proof. As a result, an administrative complaint was opened on that Licensed Court Reporter.

LEGAL REPORT

The legal report was presented by Ashley Thomas.

NEW CASES

1. 2019000961

Respondent:

License Status: - ACTIVE

First Licensed: 7/1/2010

License Expiration: 6/30/2020

Disciplinary History: None

Summary:

This complaint arises from a deposition taken as part of a divorce. The Complainant is one of the spouses involved. The Complainant alleges the Respondent (court reporter) made material changes to a deposition transcript. Specifically, when the other spouse was asked from whom they purchased marijuana, the spouse's attorney objected on the basis of self-incrimination under the 5th amendment. The Complainant seems to be alleging that the spouse gave an answer before the objection was made, but the transcript only indicates where the spouse's attorney raises the objection based on the 5th. Whatever the spouse said (that was potentially incriminating) was omitted. The Complainant alleges that her attorney was "concerned" about the omission. The attorney, however, did not join in this complaint.

The Respondent says that "[w]hen a witness is asked a question and his lawyer interjects with an objection before the witness answers, that is not the court reporter omitting testimony; it's an objection in place of a response."

The Complainant claims her attorney asked for the audio; however, the Respondent told him at the time that it was not available as it had been deleted. After the complaint was filed, the Respondent went into the laptop used at the deposition and found a sub-file with the audio on it. The Respondent says that it did not occur to her, at the time of the attorney's request, to check the sub-files. The Respondent admits to deleting audio from time to time due to limited space on the laptop. It is unknown whether or not the audio ever made it to the attorney. In all likelihood it did not as the parties settled the divorce, making the audio moot.

Arguably, the Respondent should have had an accessible back-up file to the audio or some other back-up method.

Recommendation: Letter of Warning to remind the Respondent of the guidelines contained in 0455-01-04-.01 Standards of Professional Conduct(g) (*Preservation of shorthand notes and any backups for a period of time no less than five years or any period of time that complies with the rules or guidelines of the court*).

BOARD DECISION: The Board elected to send a Letter of Instruction to Respondent that states that although no violations were found, the Board would like to address the issue of replacing a statement with an objection and want to inform Respondent that all statements by all parties should be included, where possible.

2. 2019013511

Respondent:

License Status: License #129 - ACTIVE

First Licensed: 7/1/2010

License Expiration: 6/30/2020

Disciplinary History: None

Summary:

This is a complaint regarding billing for transcription services. The Respondent (court reporter) was hired by the Complainant's attorney for what appears to be a domestic matter. The Respondent is a self-employed, freelance court reporter. There were three hearings-all in 2018. The Complainant says that after the final hearing, the Respondent walked up to her and requested a verbatim transcript for all three hearings. The Respondent informed the Complainant that she would, but would need an email to that effect as well. The last part was likely to resolve any confusion as to what the Respondent requested. The Respondent says it was odd that a client requests a copy of the transcripts and not the attorney. In any event, the Respondent transcribed all three hearings.

The Respondent emailed the Complainant that the work was finished and that the cost was \$1,091.83. Initially, the Complainant seemed accepting of the cost, but then later disputed the amount, saying that she had never paid more than "\$400" for any transcript of any length. The Complainant said she could pay "per hearing" if the Complainant was amenable to that. The Complainant, apparently, was not. The Complainant also alleges the Respondent refused to provide invoices or breakdown of charges. There is no evidence of this from either party.

The Complainant says that it is her regular practice to charge "\$6.50 per page" to transcribe a hearing. The Complainant says she informed the Respondent of the cost per page. The Respondent cites the "Tennessee Official Court Reporter Manual" where it discusses a "\$3.50 per page" limit. This appears to apply to the administrative office of the courts paying for transcripts ordered by the state as part of an appellate record involving an indigent defendant. It would not apply here.

Finally, the Respondent filed suit in general sessions to attempt to collect on the unpaid invoice. In response to this, the Complainant says the court reporter was “angry” and “sarcastic” in her emails to the Complainant. As to this point, the relationship between the Complainant and Respondent had clearly soured by the time the lawsuit was filed. There were likely heated emails going both ways.

There appear to be no violations of the standards of professional conduct.

Recommendation: **Close.**

BOARD DECISION: **CONCUR**

Legislative Updates

There were no new legislative updates to report.

NEW BUSINESS

Digital/Electronic Licensing Discussion

Sheila Wilson, presented two (2) items that may require a rule change. The first item pertains to the part of the rules that governs the “Standards of Professional Conduct”. When preserving notes and backups, some members of the Board felt a distinction between those and the transcription should be made. The second item pertains to the part of the rules that governs “Licensure”. Some members of the Board expressed concern that the American Association of Electronic Reporters and Transcribers (AAERT) (CER- certified electronic court reporter) designation/certification does not have an equivalent skills test to the other accepted certifications and therefore should be written to be excluded from what could be accepted towards licensure. Director Kopchak requested that the Board send their recommendations for changes in these rules so that a redline working draft may be presented for further discussion at the next board meeting.

ADJOURNMENT

Mr. Mansfield made a motion to adjourn the meeting, which was seconded by Ms. Morgan. The motion passed by unanimous roll call vote, and the meeting was adjourned at 10:35 a.m.