

TENNESSEE BOARD OF COURT REPORTING

Administrative Office of the Courts
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Official Meeting Minutes

Friday, June 25, 2010

I. Call to order

The meeting of the Tennessee Board of Court reporting was called to order by Chairperson Jimmie Jane McConnell at 8:10 a.m. CST on the 25th day of June, 2010 at the Administrative Office of the Courts, Suite 600, Nashville City Center, 511 Union Street, Nashville, Tennessee.

II. Roll call

Roll call was taken and the following Board members were present: Jimmie Jane McConnell, Ken Mansfield, Ginger Truesdel, Judge Jim Martin and Earl Houston, constituting a quorum. Aaron Conklin and Debbie Hayes were also present. Chairperson McConnell conducted a roll call.

There were several visitors present also.

III. Approval of minutes from last meeting

A motion was made by Judge Martin to approve the Minutes from the April 30th, 2010 meeting. The motion was seconded by Ken Mansfield and passed unanimously.

IV. Reports

Chairperson McConnell gave a report on the TNCRA annual convention held in Memphis.

Chairperson McConnell made a statement regarding written scenarios presented to the board, and due to several board members not having read the scenarios, the board would not be able to discuss them at this meeting.

Aaron Conklin advised the board of the vacancy on the board due to the resignation of Bill Killian and when a new appointment might be expected.

V. Old business

Public and written comments from the April 30th public meeting.
Aaron Conklin provided the following changes:
0455-01-03-01:

This changes the date for “any person who is engaged in the practice of court reporting on January 1, 2009” to read January 1, 2010, “may apply for licensure by grandfathering.”

It adds a new paragraph (c) which provides: “Affidavits of two (2) licensed attorneys and one (1) court reporting firm owner, unrelated by blood or marriage to the person, and who have utilized the services of the court reporter or the affidavit of the court reporting firm owner may state that the applicant has engaged in the practice of court reporting, which attest to the court reporter’s proficiency in court reporting.”

0455-01-03-.02 is a new rule: Licensure by Grandfathering – Prior Examination Passage

“Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of passage of the National Court Reporters Association Registered Professional Reporter (RPR) examination, the National Verbatim Reporters Association Certified Verbatim Reporter (CVR) examination, or the American Association of Electronic Reporters and Transcribers Certified Electronic Court Reporter (CECR) examination shall be granted a license pursuant to this part.”

0455-01-03-.03 is a new rule: Licensure by Grandfathering – Foreign State Licensure.

“Any person who is engaged in the practice of court reporting on January 1, 2010, upon payment of the licensure fee in an amount determined by the Board, and provides proof of a court reporter license issued by any state; provided, that the state has the same or more stringent requirements of this chapter, shall be granted a license pursuant to this part.”

0455-01-03, it was 02 and now becomes 04, Licensure by Grandfathering, was titled Credential but now is titled Tennessee Court Reporters Association Credential.

Former Rule 03 is renumbered 05.

Former Rule 04 is renumbered 06.

Former Rule 05 is renumbered 07.

0455-01-05.01, the word “fine” was changed to “civil penalty.”

The amendment will change the amount to \$500 instead of \$1,000, and instead of “per day” it is now “per violation.”

The civil penalty may only be where any person undertakes or attempts to undertake the practice of court reporting for remuneration without first having secured a license or knowingly presents or files false information with the Board for the purpose of obtaining a license.

0455-01-05-.03: Grounds for Discipline of a Licensee or Denial of Renewal or Reinstatement.

The word “fine” was removed from “the Board may suspend, revoke or otherwise discipline any court reporter upon proof that the person,” that list included the things for which a civil penalty can be imposed, so the word “fine” was removed.

0455-01-05-.09, Decisions of the Board.

The language is changed to: “The Board may levy a civil penalty not to exceed,” and the number was changed to \$500.

The language now reads: “The Board may levy a civil penalty not to exceed five hundred dollars (\$500) per violation where any person undertakes or attempts to undertake the practice of court reporting for remuneration without first having procured a license, or knowingly presents or files false information with the Board for the purpose of obtaining a license. Each day of a violation after notice is considered a separate violation.”

0455-01-03-.07 Renewal of License

Old language reads licenses are valid for two years from date of issuance.

New language will read: “All licenses shall expire June 30 in the year of the expiration and all renewals be effective July 1 provided, however, an additional license not issued on July 1 shall be valid from the date of issuance until June 30 of the second year from the June 30 preceding the date of issuance. The Board shall impose a prorated fee for any license for any period that is less than 24 months.”

A motion was made by Ken Mansfield to adopt the amendments as written and/or explained. The motion was seconded by Judge Martin and the motion passed unanimously.

Discussion on questions from the public meeting was held:

0455-01-04-.01 Standards of Professional Conduct, No. 3.

Ken Mansfield wanted to remove the words “if requested.”

Discussion was had on having full disclosure.

A motion was made by Ken Mansfield to delete the words “if requested” from No. 3. The motion was seconded by Ginger Truesdel.

Chairperson McConnell asked if there was further discussion, which there was.

A discussion was had by Judge Martin on changing the wording to “shall provide information regarding services and fees, services to be rendered and fees to be charged.”

A motion was made by Judge Martin to offer this amendment, “shall provide in writing information regarding the services to be rendered and fees to be charged regarding,” and then the rest of it reads as it is.

Further discussion was had on this.

There was no second and motion fails.

Chairperson McConnell said “the original motion was “shall provide information regarding services and fees to be rendered regarding administration of professional services.”

Chairperson McConnell said the motion was seconded and asked if there was further discussion.

Discussion was had that fees would be offered freely over the telephone when asked, but not putting it in writing every time.

Further discussion was had.

Aaron Conklin said the motion on the floor would be to remove the words “if requested.” If the words “and fees to be charged” is to be added, a motion needs to be made.

A motion was made by Earl Houston to add the words “and fees to be charged.”

The motion was seconded by Judge Martin.

Aaron Conklin clarified “this will be to amend,” and Judge Martin said “striking the words ‘if requested’ and adding the words after ‘rendered’ ‘and fees to be charged.’”

Chairperson McConnell called for a vote.

Judge Martin and Earl Houston voted aye.

Ginger Truesdel, Ken Mansfield and Chairperson McConnell vote nay.

Aaron Conklin said “that puts us back on the original motion, which would be to removed the words “if requested.”

Chairperson McConnell said Ken makes the motion, Virginia seconded it.

Chairperson McConnell called for a vote and the motion passed.

Judge Martin wanted to note for the record “that my belief is the word ‘services’ should also require fees and disclosure would require both.”

Ken Mansfield indicated it could be interpreted that way, but doesn’t want to over regulate.

Judge Martin wanted the minutes to reflect “that when you make disclosure on the services, that inherently discloses the fees.”

Chairperson McConnell moved to next comments on No. 8: “Shall affix his/her signature, license number and expiration date to a transcript to certify to its correctness.”

Discussion was held on removal of “expiration date.”

Discussion was held on the wording “certify to its correctness.”

A motion was made by Judge Martin to have Section 8 be modified to strike the words “his/her stenographic notes,” and end the sentence after the word “correctness.”

Discussion was brought up by Ken Mansfield about removing the word “its.”

Chairperson McConnell called for a vote and the motion passed.

Chairperson McConnell moved to next comments on No. 9: “Shall not authorize the use of his/her license number on any transcript not produced through his/her personal effort or supervision, or both.”

Discussion was had on comments falling into three categories: leave language as it is, delete it in its entirety, or add clarifying words such as supervision or control.

Judge Martin made a motion for a new Paragraph 9 to read: "Shall not authorize the use of his/her license number on any transcript not produced through his/her personal effort or supervision, or both."

Motion was seconded by Earl Houston.

Chairperson McConnell called for a vote.

Judge Martin, Earl Houston and Ginger Truesdel voted aye.

Ken Mansfield and Chairperson McConnell passed.

The motion passed.

Recess from 9:00 a.m. to 9:15 a.m.

Chairperson McConnell moved to next comments on No. 11, there being no comments on No. 10: "Shall determine fees independently except where such fees are established by statute, court order, or applicable fee schedule entering into no unlawful agreements on the fees to any user."

Judge Martin brought up discussion on whether the Board has authority to get into this area regarding fees.

Judge Martin made a motion to delete Section 11 in its entirety.

The motion was seconded by Ginger Truesdel

Chairperson McConnell called a vote and motion passed.

Chairperson McConnell moved to next comments on No. 16: "Shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys, clients, witnesses, insurance companies or any other persons or entities associated with the litigation, or to the representatives or agents of any of the foregoing, except for items that do not exceed \$25 in the aggregate per recipient each year."

Discussion was had on the wording and discussion was had on the amount and what is reasonable. Then discussion was had on whether to put a cap on the amount.

A motion was made by Judge Martin to leave the language "shall refrain from giving, directly or indirectly, any gift, incentive, reward or anything of value to attorneys or any other persons or entities associated with the litigation, (i.e. clients, witnesses, insurance companies) or to the representatives or agents of any of the foregoing, except for items that do not exceed \$25 in the aggregate per individual each year."

The motion was seconded by Ken Mansfield.

Chairperson McConnell called a vote and the motion passed.

Chairperson McConnell moved to the change made to remove "fine" and add "civil penalty," and change the amount from \$1,000 to \$500.

Aaron Conklin indicated it was done by legislative action.

Chairperson McConnell moved to next comments on 1-05-.03 No. 3 (c):
Grounds for Disciplinary Procedures: “Use of drugs or alcohol to the extent that medical or psychiatric treatment, rehabilitation or counseling is medically determined or otherwise recommended by a legal and authorized practitioner.”
Discussion was had pertaining to HIPAA.
Discussion was had on (a), (b) and (c) being redundant.
A motion was made by Judge Martin to have it read: “Is impaired due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the court reporter unsafe and unreliable, period” and removed all further sections below that.
Motion was seconded by Ken Mansfield.
Discussion was had on who determines they are impaired.
Chairperson McConnell called a vote and motion passed.

Chairperson McConnell moved to No. 9 in same section: “Authorized Court Reporter License number to be used on any transcript not produced through his or her personal effort or supervision, or both, or otherwise a prohibited act described in Rule 0455-01-01-.04(9).”
Discussion was had on the language tracking the statute.
Aaron Conklin asked if it was necessary at all because of No. 6.
Judge Martin asked if Mr. Conklin was suggesting we add subsection (e) from 6, but delete 9.
Judge Martin made a motion to delete 9.
Motion was seconded by Ken Mansfield.
Chairperson McConnell called a vote and motion passed.

Chairperson McConnell moved to comments on 1-01-05-.10 (b): “Re-application must be at least twelve (12) months after the denial.”
Discussion was had on shortening the 12 months.
Motion was made by Judge Martin to strike 1 (b) and there won’t be a 1 (a) to read: “Application for a license following denial of licensure shall include evidence of rehabilitation, or elimination, or resolution of the condition for denial.”
Motion was seconded by Ken Mansfield.
Chairperson McConnell called a vote and motion passed.

Chairperson McConnell said 01-05-.11 (a) also mentions 12 months.
Discussion was had on the time period.
Aaron Conklin said the language should read: “No. 1 – Application for reinstatement shall include evidence of rehabilitation or elimination or resolution of a condition for revocation. Such application shall be made according to the forms, “the guidelines should be left out, that’s redundant, “shall be made according to the forms provided by the Board;” they should be utilizing the forms. And then sub (a) would be deleted.
Ken Mansfield made a motion to adopt that language.
Motion was seconded by Judge Martin.

Chairperson McConnell called a vote and motion passed.
Chairperson McConnell indicated that was the end of her list.

Aaron Conklin stated part of the process is to provide comments for the reasons we adopted the rules if we received comment on those rules.
Mr. Conklin indicated he could draft the comments for each one.

Board Member Sheila Staggs present now.

Chairperson McConnell brought up discussion about back-up certificate pages.
Judge Martin said once the court reporter puts their number on there and signs the certification, then they are responsible.
Discussion was had on 47-18-102, No. 1, about falsely passing off goods or services as those of another.
Judge Martin stated that the revisions made today address these concerns.
Chairperson McConnell brought up Rule 30.06 regarding an officer shall deliver the deposition to the party who requested the taking of the deposition.
Judge Martin again stated the court reporter is responsible.

Aaron Conklin brought up again that we need to adopt the rules as amended by roll call.

Motion was made by Ken Mansfield that we adopt the set of rules as amended.

Motion was seconded by Judge Martin.

Chairperson McConnell called for a vote.

Aaron Conklin called for roll call vote:

Chairperson McConnell voted aye

Ken Mansfield voted aye

Ginger Truesdel voted aye

Earl Houston voted aye

Judge Martin voted aye

Sheila Staggs voted aye

Aaron Conklin indicated the vote passes by a vote of six/zero.

Aaron Conklin then explained the process going forward with the rules.
Mr. Conklin indicated these are the final rules that will be adopted. Once we file them with the Secretary of State, they become effective 90 days after their stamp file date.

Recess from 10:25 a.m. to 10:35 a.m.

Chairperson McConnell stated that the LCR designation will be used with our license number.

Chairperson McConnell said she had been asked when the transcript guidelines and the roster of licensed reporters will be listed on the website. Aaron Conklin advised that the website was undergoing a major rework, but stated they knew the target date was July 1, 2010.

Chairperson McConnell provided sample transcript pages for everyone to look at.

Chairperson McConnell asked for clarification on the amendment about the AOC's official reporters not having to be licensed.

Aaron Conklin advised that 20-9-603 is the statute that requires licensure and there have been three sections added. One is new subsection (c), which clarifies that a licensed reporter is not required to be a notary to record any court proceeding, etc., etc. Part (d) says this part shall not apply to court reporter services paid for by a federal agency or any instrumentality of the United States. The other language that was added said this part shall not apply to court reporter services provided pursuant to Title 40.

Mr. Conklin advised that specifically what that refers to is the Title 40 requirement, Title 40, of course, being the criminal procedure code, and that requires there to be a court reporter in proceedings and attorneys in trials in the criminal courts. A court reporter is not required to be licensed to do any of those services under Title 40. So if you are working in a criminal court and have a trial or anything that is in Title 40 in the criminal court, you are not required to have a license.

Mr. Conklin advised where that comes into play is official court reporters do not have to have a license to do their work. Per diem court reporters do not have to have a license to work in criminal court. However, if they do other work outside of the criminal court, they will be required to be licensed.

Mr. Conklin advised that once the Governor signs the law, the provision that makes official court reporters exempt from the license fees goes because there is no requirement that they be licensed anymore.

Mr. Conklin advised there was a long-range issue about some courtrooms already have some electronic equipment and the discussions about that.

Discussion was had about official reporters obtaining a license anyway.

Aaron Conklin called on Debbie Hayes to report what she learned about the Alabama Board of Court Reporting.

Debbie Hayes discussed Alabama doubling their renewal fees in order to pay administrative staff.

Debbie Hayes stated we have had 448 applicants so far with seven more arriving Thursday in the mail.

Discussion was had on the best way to get the word out about court reporters having their license. Judge Martin suggested the best way would be through the Board of Professional Responsibility.

Kathy May, visitor, stated she had been told by Aaron Conklin that she would be afforded an opportunity to ask a question. The question is: “My question, and this may easily answered and may be moot and not something we need to address, but I do have a question: Will this Board take the position that it has the authority and power to oversee the anti-contracting law as it affects court reporters and the general business practice thereof?”

Judge Martin responded with: “My offhand reaction is we are not responsible for it unless a complaint is filed. If a complaint is filed, then we are required to investigate the complaint, make a determination as to whether it should be dismissed or pursued, and then if we pursue it, we’ll have a hearing.”

Discussion was had on this subject.

Other questions were asked by visiting court reporters and discussions were had.

VI. Adjournment

Chairperson McConnell asked for a motion to adjourn.

Ginger Truesdel made the motion to adjourn.

The motion was seconded by Ken Mansfield.

Chairperson McConnell called for a vote and motion passed.

Meeting adjourned at 11:25 a.m.

Minutes submitted by: Ginger Truesdel, Secretary