

TENNESSEE BOARD OF COURT REPORTING
ADMINISTRATIVE OFFICE OF THE COURTS
511 UNION STREET/NASHVILLE
NOVEMBER 21, 2014
MINUTES

Board Chair Jimmie Jane McConnell called the meeting to order at 9:03 CST. Members present were Earl Houston; Jim Martin; Britton Collins; Terri Beckham, and Ken Mansfield.

First on the Agenda is approval of the Minutes.

Board Chair requested a motion that the Minutes from May 16, 2014 be approved.

Terri Beckham moved that the Minutes be approved and Ken Mansfield seconded the Motion.

None opposed, Motion carried.

Ken Mansfield made Motion to approve the June 27, 2014 teleconference Minutes.

Britton seconded the Motion.

None opposed, Motion carried.

Next on the Agenda was the Review of the Rules and Regulations.

There is no change to Section 0455-01-02.03 – Verification of Tennessee License.

Board reviewed Inactive Status Fee; Licensure and Fees. This is designed solely to defray the administrative cost of maintaining the role. Inactive status may be continued for two (2) year periods subject to the same limitations and requirements.

Next Section discussed was Restoration.

This section talks about a five (5) year period for inactive status. Persons seeking restoration of a license after it has been placed on an inactive status shall file an application to the Board with required fees.

Judge Martin – We need to consider why someone would be taking inactive status and if health is a part of it, then it may be they couldn't get all of their CEUs.

Judge Martin – So as I see it, we are making three changes. Under 6(h), I think that needs to be reworded, just to say \$100 and strike the up to two (2) years and put in parenthesis “after the \$100” which will read, “for each two year licensure period or a portion thereof.”

Judge Martin – The second change we are making is to add the sentence that David suggested to .05. The third suggestion is that we strike the words, “for up to five years” out of the first sentence of Section .06(1), and then strike the entire second sentence of that same provision.

Judge Martin: You can maintain your inactive status for up to 4 years period and thereafter, recertification is required.

Board Chair: Under LICENSURE REVIEW PROCESS. We reserved 01, 02, 03 and 04. Late renewals may be received up to sixty (60) days.

Debbie: I think the statute says up to six (6) months.

Board Chair: So this goes back to 180 days.

Debbie: We need to put what the statute says.

Board Chair: Failure to renew a license within **180** days...

Board Chair: Last sentence was added to that...“A person is not authorized to provide court reporting services in TN except to certify transcripts of matters recorded prior to renewal of an expired license.” This sentence shall be added.

David: I think it needs to state: A person, who has not timely renewed their license, is not authorized to provide court reporting services.

Judge Martin: We need to comport to the statute. We are going to say that, “Failure to renew within 180 days shall deem their license revoked.” Then add, “A person whose license has been revoked, is not authorized to provide court reporting services in Tennessee, except”

Board Agreed.

Board Chair: Moving on to “K”, minor change, that originally said, “shall inform the disciplinary counsel of the Board of Court Reporting if he/she has knowledge.” We talked about changing it to the Chair.

David: That’s what the statute says, is that complaints go to the Chair.

Judge Martin: I think it should read, “shall inform the Chair of the Board in writing.”

Board Chair: As long as they understand the Chair is not responsible for making the decision. The Chair is just going to accept it to present it to the Board.

Board Agreed.

Board Chair: Section O, this is about the \$25 aggregate per recipient each year. We have always had \$25. I would like to suggest that we increase it to \$50 because of inflation.

Board Agreed – Section O will increase the aggregate per recipient each year to \$50.

Debbie: Section Q. Why do we have Q, under what circumstance do we need that if - jump down to U and it says, and “we can enter into a contractual agreement on a case-by-case basis.” That may very well restrict an attorney’s choice of reporter so why do have Q, under what circumstance do we need that.

Britton: This code section deals only with depositions. And under T.C.A. 20-9-605(2), we have a duty and responsibility to establish and maintain requirements for ethical behavior, including but not limited to, conflict of interest provisions, inappropriate relationships with a party for a party’s attorney and failure to honor a contract or commitment to furnish transcripts. So we have been delegated the authority to promulgate rules relative to conflicts of interest and the relationships between attorneys, what we perceive to be inappropriate relationships between attorneys and court reporters.

Judge Martin: While you are correct, this statute applies to depositions, the principal of this statute, in my judgment, should guide what we do. If disclosure is made and the parties to the litigation agree for court reporter to provide services after appropriate disclosure is made, it shouldn’t matter whether it is a deposition or a trial, arbitration or any other proceeding where a court reporter is providing services.

Board Chair: I agree with Britton, the Board needs to have some guidelines as to what we can and cannot do. If not, someone is going to be filing a Complaint and going to be saying nobody said I could not do that.

Judge Martin: That’s the point. I think, the idea of this statute is, you can have any contract you want with anybody you want, as long as you disclose that contractual relationship to the parties that are involved in connection with the services you provide and if based upon that disclosure, they agree for you to go ahead and provide the services, then you are free to do so.

Board Chair: I respectfully disagree.

Earl: I don’t think that’s what they are asking. What they are asking is that the court reporters disclose that they have a contractual relationship with one party to the other party, full disclosure and that’s it.

David: And then the parties have to determine whether that’s acceptable or not?

Judge Martin: The only duty on the court reporter is to make full disclosure.

Earl: The argument for doing that is you are not limiting an individual's right to contract.

Britton: The whole purpose of our Board, at its core, is to govern the ethical behavior of court reporters so that parties to litigation are protected and the integrity of the judicial process is best protected.

Ken: You could say something as simple as, the provisions of 24-9-136 shall apply to the provisions of all court reporting services.

Earl: Ken, all he is saying is that at the beginning of a deposition, the reporter just has to disclose, voluntarily disclose that they have a contract with one of the parties and that's it.

Judge Martin: In my mind, it shouldn't just be at the beginning of a deposition. It should be at the commencement of the provision of any services.

Britton: And I think that is what David's suggesting.

Judge Martin: That way, if there is full disclosure made and they elect to use your services, then you cannot get in trouble.

Earl: All right David how do we remedy this situation?

David: It seems to me that you have some limitations on how you can regulate this and the legislature has said in the area of depositions this is the extent of the regulation and I think you would be on very firm ground using that same language to regulate the use of contract reporters in all areas of reporting.

Earl: So is that how we would state it, in all areas of reporting, or would we say court reporting services or would we...?

David: Well any court reporting services would be subject to the same requirements of 24-9-136.

Debbie: Last time we talked about this, I don't believe we finished talking about it.

Board Chair: We did discuss your concern about "Q" as to whether to take it out or not, but it was put in.

Debbie: I didn't even notice until later that Q and U seems to not make sense to have them both.

Earl: Whatever may have taken place at the last meeting, at this meeting, we are at a crossroads on this issue. How do we handle it as it is being presented now?

Board Chair: Unless you want to make changes in here or drop it totally and refer to like David said, 24-9-136.

Board Chair: What do we do with this section?

Earl: I think we revise our exception to mirror the statute on depositions. The only thing we change in our provision is that we broaden the scope to all court reporting services.

Board Chair: Let's take out "Q" and leave the rest of them in as Judge Martin has said with David's introduction.

David: Need to go a little bit further than that because you can end with a situation where a court reporter that has had a sexual relationship with a party would be prohibited from taking a deposition but wouldn't be prohibited from appearing at a hearing. We need consistency. I can write that.

Board Agreed.

Next item on agenda is Disciplinary Procedures.

Board Chair: This was previously titled, "Investigations."

David: I did send this Lynn Peterson, disciplinary counsel, a couple of days ago and she and I talked and she is happy to see this. It's a much clearer and simpler method and she is good with it.

Board Chair: We forgot on Section 03, it's been reserved, but that's also the section that allows for reciprocity. I think that needs to be put back in.

Britton: There is statute that says we are allowed to enter into reciprocity agreements.

David: As long as you have statute 20-9-610. This is actually pretty thorough in terms of its coverage.

Board Chair: That also deals with a foreign state license.

Judge Martin: Should we have a Section just called Reciprocity and just make reference to 20-9-610. That way we know we have something in there, if someone looks at the regulations, they know where to look for what we do.

David: I would suggest to the Board that is a subject that probably ought to be deferred because there are some subtleties to that beyond the review of a draft.

Board Agreed.

David - Disciplinary counsel shall perform a preliminary review to determine if there is merit and sufficient evidence to warrant formal proceedings and if appropriate, provide a copy of the Complaint to the court reporter and request a response within a specific timeframe that way you are allowing disciplinary counsel to just similarly recommend dismissal if it's not timely or if it has no merit. Would that work?

Board Agreed.

Board Chair: On page 18, "how to get CEUs", do we all agree to that. Should we interlineate and state that classes taken should be related to court reporting.

Board Agreed.

Part or section (4) – are we all in agreement for that reporters can get continuing education credits for serving on associations and boards.

Board Agreed.

Waiver Requirements.

Board Chair: Eliminate D, and F.

Board Agreed.

NEXT ON AGENDA – COMPLAINTS AND RECOMMENDATIONS.

Board Chair: We need to get a quicker response to our complaints. Some of the complaints are from 2013.

Need to set up an indigent fund, which is allowed under 20-9-605 according to the law. Second, I received a public notification from NVRA that they are going to have their national conference in Chattanooga in July 2015 and they have requested that we draft an email and send to all licensed reporters. They have given a blanket public notice that we can send out to reporters.

Board Agreed. The Board will decide on amount of funds after website design cost is determined.

Website Design.

Board Chair: Schedule that at our next meeting.

Other Business:

Sheila Wilson spoke regarding the Board's authority over an individual licensee and/or whether or not that power extends to all.

Attorney John Berry from Chattanooga, TN spoke on the issue and cited *Byrd v. TN Chiropractic Examiners*.

Kathy May:

Requested to be heard and said that the Board never responded to her.

Board Chair: We don't have time for you to be heard, Kathy.

The reason we did not have time to hear from Ms. May was the Board's time in the conference space was ending.

Next Meeting:

Next proposed meeting date: March 6th, May 15th, September 18th and November 20th.

Board Agreed.

There being no further business, the meeting was adjourned.