

**PROPOSED REGULATION OF THE CERTIFIED
COURT REPORTERS' BOARD OF NEVADA**

LCB File No. R099-16

September 19, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1, 2 and 11-13, NRS 656.130; §3, NRS 622A.390 and 656.130; §4, NRS 656.130 and 656.160; §5, NRS 656.130 and 656.200; §6, NRS 656.130 and 656.220; §§7-9, NRS 656.130, 656.187 and 656.200; and §10, NRS 656.130 and 656.185.

A REGULATION relating to court reporters; providing for the form of certain payments to the Certified Court Reporters' Board of Nevada; revising provisions relating to examinations for certification as a court reporter; authorizing the waiver of certain fees for hardship caused by injury or illness; revising provisions relating to continuing education requirements for court reporters and designated representatives of court reporting firms; revising provisions relating to disciplinary actions taken against court reporters and court reporting firms; making various other changes to court reporters and court reporting firms; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires court reporters to be certified and court reporting firms to be licensed by the Certified Court Reporters' Board of Nevada. (NRS 656.145, 656.185) This regulation revises regulations adopted by the Board relating to court reporters and court reporting firms.

Section 2 of this regulation requires the Executive Secretary of the Board to inform a person who submitted a payment to the Board if that payment is returned for insufficient funds. **Section 2** also requires that if the person resubmits the payment: (1) such payment must be in the form of a money order, cashier's check or certified check; and (2) the person must also resubmit any application, request or other paperwork that was submitted to the Board with the original payment.

Section 4 of this regulation clarifies the roles of members of the staff of the Board in administering the required examination for certification as a court reporter. **Section 5** of this regulation authorizes a court reporter whose certificate is on inactive status to request that the Board waive his or her inactive fee by reason of hardship caused by injury or illness.

Sections 6 and 10 of this regulation provide that certified court reporters' certificates and licenses as court reporting firms expire on May 15 of each year.

Existing law requires certified court reporters and designated representatives of licensed court reporting firms to satisfy continuing education requirements. (NRS 656.187, 656.200) **Section 7** of this regulation provides that the reporting period for continuing education begins on May 16 of each odd-numbered year and ends on May 15 of the subsequent odd-numbered year. **Section 8** of this regulation requires continuing education compliance forms to be submitted to the Board on or before June 30 of each odd-numbered year. **Section 9** of this bill makes conforming changes to extend the deadlines for notices of noncompliance with requirements for continuing education requirements.

Existing law authorizes the Board to discipline a court reporter or a court reporting firm for committing certain enumerated acts. (NRS 656.240, 656.250) Existing regulations provide procedures through which the Board may investigate complaints against and discipline court reporters and court reporting firms. (NAC 656.420-656.460) **Section 11** of this regulation removes a provision regarding the settling of informal complaints. **Section 12** of this regulation revises provisions relating to the review and investigation by the staff of the Board of an informal complaint that has not been settled. **Section 13** of this regulation changes the standard of proof for determining whether a violation has been committed. **Section 13** also removes provisions relating to an answer filed by a respondent to a complaint and relating to exchanges between a respondent and the Board before any disciplinary hearing. **Section 3** of this regulation provides that the Chair of the Board is authorized to rule on certain motions filed after such a hearing and that oral argument regarding such a motion is not permitted.

Section 1. Chapter 656 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. *If the payment of any fee due to the Board pursuant to NRS 656.220 and is returned for insufficient funds, the Executive Secretary of the Board must inform the person who submitted the payment. If the person resubmits payment:*

1. Such payment must be in the form of a money order, cashier's check or certified check which is payable to the Board; and

2. The person must resubmit to the Board any application, request or other paperwork that was submitted with the original payment.

Sec. 3. *1. If, after the close of a hearing, a party files a motion pursuant to subsection 1 of NRS 622A.390, the Chair of the Board is authorized to rule on the motion.*

2. Oral argument regarding the motion is not permitted.

Sec. 4. NAC 656.120 is hereby amended to read as follows:

656.120 1. The Executive Secretary of the Board shall assign a unique identification number to each application that is approved by the Board. An applicant must register on the day of the examination by presenting the original of the photo identification that accompanied his or her application and by signing the sheet for registration provided by *a member of the staff of the Board*. ~~The~~ *A member of the* Board or a member of the staff of the Board will open the examination room on the day of the examination ~~at 8 a.m.~~ for registration. ~~The~~ *A member of the* Board or a member of the staff of the Board will provide a seat for the applicant in the examination room according to the identification number that is assigned to his or her application.

2. A member of the Board *or a member of the staff of the Board* shall give oral instructions and remarks of introduction ~~at approximately 9 a.m. on the day of~~ *immediately before administering* the examination. Unless special arrangements are made pursuant to subsection 8 or 9, all applicants must register and be present for the oral instructions and remarks of introduction.

3. Each applicant must be on time to take the examination. An applicant who arrives late to take the examination:

- (a) Will be denied admission to the examination;
- (b) Forfeits any fees paid to take the examination; and
- (c) Must reregister before taking a subsequent examination.

4. ~~The~~ *A member of the* Board *or a member of the staff of the Board* will administer two sections of the examination. An applicant who takes the examination for the first time must complete both sections of the examination. The name of the applicant or the applicant's

identification number, or both, must not be written or otherwise appear on the examination provided by the Board.

5. The examination of an applicant and all other material relating to the examination must not be removed from the examination room during the administration of the examination. If an applicant removes the examination or material relating to the examination, the Board will fail the applicant for the purposes of the current application and will, if deemed appropriate by the Board, disqualify the applicant from participation in future examinations. After an applicant completes the examination, the applicant must return the examination and material to the registration desk.

6. An applicant shall not:

(a) Ask questions during the examination except for questions that are necessary for clarification of the examination; or

(b) Leave the room in which the examination is administered without permission from a person who is monitoring the examination or a member of the staff of the Board who is present at the registration desk.

7. An applicant must bring to the examination room a pen or pencil, stenographic or voice writing equipment and any other equipment required by the Board. The Board will not:

(a) Provide stenographic, voice writing or any other equipment.

(b) Replace equipment for an applicant if the applicant's equipment malfunctions during the examination.

8. Upon the written request of an applicant with a disability at least 10 working days before the examination, the Executive Secretary of the Board shall make special arrangements for the administration of the examination to the applicant if those arrangements are:

- (a) Feasible;
- (b) Reasonable; and
- (c) In compliance with the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12101 to 12213, inclusive.

9. Upon the request of an applicant whose religious beliefs prevent the applicant from taking the examination on the date of the examination, the Executive Secretary of the Board shall make special arrangements for the administration of the examination to the applicant if the request is made before the date of the examination.

10. If an applicant cheats on the examination, *a member of the Board or a member of the staff of the Board* will expel the applicant from the examination room and fail the applicant.

11. Questions concerning the administration, procedure or content of the examination must be submitted in writing to the Board.

Sec. 5. NAC 656.170 is hereby amended to read as follows:

656.170 1. A court reporter who is current in the fees required by the Board and the requirements of continuing education may submit an application in a form prescribed by the Board to place his or her certificate on inactive status. ~~{A}~~ *Except as otherwise provided in subsection 2, a* court reporter whose certificate is on inactive status must pay a fee each year in an amount that is one-half of the fee which is required for renewal of a certificate.

2. *If a court reporter wants to request to have the fee for obtaining active status waived by reason of hardship caused by injury or illness of the court reporter or an immediate family relative of the court reporter, the court reporter must appear before the Board to request the waiver. A waiver granted by the Board is valid for 1 year but may be requested again by the*

court reporter. As used in this subsection, “immediate relative” has the meaning ascribed to it in NRS 622.020.

3. Unless otherwise instructed by the Board, a court reporter shall provide a transcript of a proceeding if:

(a) The court reporter’s certificate is placed on inactive status;

(b) The court reporter has not prepared a transcript of a proceeding in which the court reporter provided services as a court reporter before the certificate was placed on inactive status; and

(c) A person has requested a transcript of the proceeding.

~~3.1~~ 4. A court reporter whose certificate has been on inactive status for less than 5 years may reactivate his or her certificate if the court reporter pays the fee for renewal of a certificate and complies with the requirements for continuing education for the year in which the court reporter reactivates his or her certificate.

~~4.1~~ 5. If the certificate of a court reporter has been on inactive status for 5 years or more, the Board may, in addition to requiring the applicant to comply with the provisions of subsection ~~3.1~~ 4, require the applicant to do one or any combination of the following:

(a) Take the written section or the section on transcription of the examination, or both.

(b) If the applicant engaged in the practice of court reporting in another jurisdiction during the time that his or her certificate was on inactive status, submit proof of such practice.

(c) Submit any other proof that is required by the Board to demonstrate that the applicant possesses the skills that are necessary to practice court reporting.

Sec. 6. NAC 656.200 is hereby amended to read as follows:

656.200 **1.** *Every certificate expires on May 15 of each year.*

2. The following fees must be paid:

~~{1.}~~ For the original issuance of a certificate.....\$200

~~{2.}~~ For the annual renewal of a certificate\$200

Sec. 7. NAC 656.210 is hereby amended to read as follows:

656.210 1. Each court reporter and designated representative of a court reporting firm shall, every 2 years, complete at least 15 hours of continuing education relating to the practice of court reporting, at least two of which must include a review of the applicable laws, regulations, and court and procedural rules governing the practice of court reporting in this State.

2. The Board will provide each court reporter and designated representative of a court reporting firm with the means to obtain two credits which include a review of the applicable laws, regulations, and court and procedural rules governing the practice of court reporting in this State other than by personal attendance.

3. Credit for continuing education may not be carried forward for any reporting period.

4. The reporting period for continuing education begins on May 16 of each odd-numbered year and ends on May 15 of the subsequent odd-numbered year.

Sec. 8. NAC 656.220 is hereby amended to read as follows:

656.220 1. ~~{The}~~ *During each odd-numbered year, the* Board will mail to each court reporter and designated representative of a court reporting firm with the annual notice of renewal of certification or licensure a form on which to report his or her compliance with the requirements of continuing education set forth in NAC 656.210.

2. Each court reporter and designated representative of a court reporting firm who receives a form pursuant to subsection 1 shall complete and return the form to the Board on or before ~~{May 15.}~~ *June 30 of that odd-numbered year.*

3. The Board may take such action as the Board determines is necessary to verify that a court reporter or designated representative of a court reporting firm has complied with the requirements of continuing education set forth in NAC 656.210.

Sec. 9. NAC 656.230 is hereby amended to read as follows:

656.230 1. If a court reporter or designated representative of a court reporting firm fails to complete and return the form required pursuant to NAC 656.220, the Board will, on or before ~~June 1,~~ *July 15*, provide written notice of noncompliance, by certified or registered mail, to the last known address of the court reporter or designated representative of a court reporting firm.

2. The notice of noncompliance must contain:

(a) A statement explaining the manner in which the court reporter or designated representative of a court reporting firm failed to comply with the requirements for continuing education;

(b) A notice that the court reporter or designated representative of a court reporting firm shall, on or before ~~June 30,~~ *August 15*, file with the Board a compliance form showing that he or she has cured the failure specified; and

(c) A notice which specifies the consequences provided in subsection 3 for failure to file the form by ~~June 30,~~ *August 15*.

3. The Board may suspend or revoke the certificate of a court reporter or the license of a firm if the court reporter or designated representative of the court reporting firm fails to file a report of compliance by ~~June 30,~~ *August 15*. Reinstatement of a certificate or license may be conditioned upon one or both of the following:

(a) Proof of compliance with the requirements for continuing education.

(b) The passage of the written exam required pursuant to NRS 656.160.

Sec. 10. NAC 656.250 is hereby amended to read as follows:

656.250 1. Each firm that conducts business as a court reporting firm in this State must complete an application for a license provided by the Board and file the application with the Executive Secretary of the Board. The form for application for the license must include:

- (a) The business address of the firm in this State;
- (b) The tax identification number of the firm;
- (c) The residential address of each owner of the firm;
- (d) If applicable, a copy of each certificate filed pursuant to chapter 602 of NRS to do business under an assumed or fictitious name;
- (e) Copies of all business licenses issued to the firm by a local government in this State;
- (f) All other documents, reports and other information required by the Board; and
- (g) The name of the designated representative of the court reporting firm, as well as a copy of his or her certificate as a certified court reporter or a certificate of completion which demonstrates satisfactory completion of the examination required pursuant to subsection 2 of NRS 656.186 and NAC 656.261.

2. Upon receipt of a completed application for a license and the payment of the fees required pursuant to NRS 656.220, the Executive Secretary of the Board shall issue a license to the firm. *A license expires on May 15 of each year.*

3. If a change in the ownership of a firm occurs or other change pursuant to NRS 656.260 occurs, the firm shall file an amended application for a license with the Executive Secretary of the Board not more than 30 days after the change occurs.

Sec. 11. NAC 656.420 is hereby amended to read as follows:

656.420 1. A person may file an informal complaint with the Board or the Board may, on its own initiative, cause an informal complaint to be filed concerning the acts of or services provided by a holder of a certificate.

2. Each informal complaint must be filed with the Board on a form provided by the Board. A complainant shall include in his or her informal complaint information that is sufficiently detailed so as to enable the Board to investigate and verify each accusation set forth in the informal complaint.

3. Upon receipt of an informal complaint, the staff of the Board shall examine the informal complaint to determine whether it:

- (a) Is within the jurisdiction of the Board;
- (b) Has been properly verified; and
- (c) Alleges sufficient facts to warrant further proceedings.

4. If the staff of the Board determines that an informal complaint does not meet the requirements of subsection 3, the Board shall so inform the complainant. ~~by certified mail.~~ If the staff of the Board determines that an informal complaint meets the requirements of subsection 3, the staff shall notify the respondent by certified mail. The notice must include:

- (a) A statement setting forth each violation of this chapter or chapter 656 of NRS alleged in the informal complaint;
- (b) A copy of the informal complaint; and
- (c) A request for a written response for review by the staff of the Board.

5. The transmission of a notice pursuant to subsection 4 will be deemed to be a notice of intended action pursuant to subsection 3 of NRS 233B.127. Upon receipt of a copy of an informal complaint filed against ~~him or her,~~ *a court reporter or a court reporting firm*, the

respondent shall submit to the Board a written response within 30 days after the service of the notice. The written response must:

- (a) Address each allegation set forth in the informal complaint; and
- (b) Be accompanied by all documentation that would be useful to the staff of the Board in its review.

6. Failure by a respondent to cooperate with the Board or the staff of the Board during an investigation of an informal complaint filed against the respondent, including, without limitation, failure by the respondent to respond in a timely manner regarding the informal complaint, is a ground for disciplinary action.

7. If a respondent fails to respond to an informal complaint pursuant to subsection 5, the respondent shall be deemed to have admitted each allegation set forth in the informal complaint. The Board may, based on such an admission, impose appropriate disciplinary action against the respondent.

~~{ 8. If a respondent responds to an informal complaint pursuant to subsection 5, and the respondent admits each allegation set forth in the informal complaint and agrees to the imposition of the proposed disciplinary action, the Board shall consider the matter settled and will take no further action regarding the informal complaint. }~~

Sec. 12. NAC 656.430 is hereby amended to read as follows:

656.430 1. If a response is filed pursuant to subsection 5 of NAC 656.420 and the Board does not settle the matter , ~~{or impose disciplinary action against the respondent,}~~ the staff of the Board shall review the informal complaint and the responses made thereto, may enlist the aid of a member of the Board or any other qualified person in conducting the review and may take any

other reasonable action required to further the review. After reviewing the informal complaint and the responses thereto, the staff of the Board may:

(a) Investigate each allegation set forth in the informal complaint and employ any person required by the staff to further the investigation;

(b) Consult with a person who is an expert in an appropriate field, including, without limitation, employing such a person for the purpose of an investigation or hearing;

(c) Investigate any new information discovered or allegation made during the course of the investigation;

(d) Enlist the aid of a member of the Board or any other qualified person to conduct the investigation; and

(e) Take any other reasonable action required to further the investigation.

2. During an investigation of an informal complaint, the staff of the Board or any investigator employed by the staff may demand that the respondent produce ~~his or her~~ records or other evidence for inspection or copying, with or without notice to the respondent, and with or without a subpoena. A respondent shall not deny any such demand for records or other evidence if the record or evidence is not confidential as provided by law. If a respondent refuses or fails to cooperate with a request for records in violation of this section, the Board may immediately suspend the certificate *or license* of the respondent until ~~he or she~~ *the respondent* complies with the request. If the respondent continues to refuse or fail to comply with a request for records or other evidence in violation of this section, the Board may take such further disciplinary action against the respondent as the Board determines necessary.

3. If the staff of the Board or any investigator employed by the staff determines that a record or other evidence is required for an investigation, the staff or investigator may copy the record or

evidence. If the record or other evidence can be readily copied at the location of the record or evidence, the respondent shall copy the record or evidence and submit the copy to the staff or investigator at that location. If a record or other evidence cannot be readily copied at the location of the record or evidence, the respondent shall copy the record or evidence and submit the copy to the staff or investigator within 10 business days after the staff or investigator requests the record or evidence.

Sec. 13. NAC 656.440 is hereby amended to read as follows:

656.440 1. When an investigation of an informal complaint is complete, the staff of the Board and any investigator employed by the staff shall determine whether ~~substantial~~ *a preponderance of* evidence exists to sustain the alleged violation of a statute or regulation set forth in the informal complaint. If the staff and the investigator determine that no allegation of a violation of a statute or regulation set forth in the informal complaint is sustainable, the staff shall provide a written notice of that determination to the respondent and the complainant. If the staff and the investigator determine that an allegation of a violation of a statute or regulation set forth in the informal complaint is sustainable, the Board or the legal counsel for the Board shall:

(a) Offer to:

- (1) Engage in mediation;
- (2) Enter into a settlement agreement;
- (3) Stipulate to any fact or to the existence or extent of any liability; or
- (4) Conduct any informal hearing; or

(b) Prepare a notice of hearing and a formal complaint.

2. The notice of hearing and the formal complaint prepared pursuant to subsection 1 must:

(a) Set forth a plain statement of the facts asserted and any applicable provision of the statute or regulation allegedly violated by the respondent;

(b) Include the date, time and place for the hearing; and

(c) Be signed by the legal counsel for the Board and, if a member of the Board participated in the investigation, by that member of the Board.

3. If a notice of hearing and a formal complaint are prepared pursuant to subsection 1, the staff of the Board shall, by certified mail, send the notice of hearing and formal complaint to the respondent named in the notice of hearing and formal complaint.

4. A respondent who receives a notice of hearing and a formal complaint pursuant to subsection 3 ~~shall~~ *may* file an answer to the notice of hearing and the formal complaint not later than ~~15~~ *20* days after the date of service of the notice of hearing and formal complaint.

~~The answer must respond to each allegation and statement made in the notice of hearing and the formal complaint by admitting to or denying each allegation and statement. If the respondent fails to file an answer as required pursuant to this subsection, he or she shall be deemed to have admitted each allegation and statement set forth in the notice of hearing and the formal complaint. The Board may, based on such an admission, enter a finding and impose appropriate disciplinary action against the respondent in the same manner as if the allegation or statement had been proven by substantial evidence at a hearing held by the Board on the formal complaint.~~

~~5. Not later than 10 days after the respondent files an answer to a notice of hearing and a formal complaint pursuant to subsection 4, the respondent and the legal counsel for the Board shall exchange a list of the witnesses and any evidence that will be used at the hearing. A party may not present any testimony or other evidence obtained by the party after the date of the exchange required pursuant to this subsection unless the party demonstrates to the Board that:~~

~~—(a) The evidence or witness providing the testimony was not available upon diligent investigation before the date the exchange was required; and~~

~~—(b) The evidence or the name of the witness was given or communicated to the other party immediately after it was obtained.~~

~~—6.†~~ 5. The Board may join two or more formal complaints into a single formal complaint if:

(a) The causes of action set forth in each formal complaint are against the same person and allege the same or substantially similar violations of statutes or regulations; and

(b) The joining of the formal complaints will serve the best interests of the Board, complainants and respondent.