

Supreme Court Board of Certified Reporters

Arizona State Courts Building
1501 West Washington, Phoenix, AZ 85007
Conference Room CLD1
10:00 a.m. - 2:00 p.m.

May 8, 2006

Approved Regular Session Minutes

Members Present:

James Bouley
Judge Jan Kearney
Jean Lea
Sandra Markham
Kathleen Montalvo
Jennifer Stadler
Judge Lawrence Winthrop

AOC Staff Present:

Rhonda Simmons
Nancy Swetnam
Brenda Dominguez
Nina Preston

Guests:

Joseph Notaro
John Bouley
Michele Balmer
Linda Hironimus
Leslie Foldy
Terri Faust
Maria Geare
Patrick Geare
Jen Schuck

Members Telephonically Present:

Patricia Seguin

Members Absent:

William Druke

Guests Telephonically Present:

Doris Zahner
Marilyn Sanchez
Linda Drake
Marvin Atwood
Norm Hertz

CALL TO ORDER

The meeting was called to order by Sandra Markham at 10:04 a.m.

1) ADMINISTRATIVE ISSUES

1-A Review, discussion and possible action regarding proposed revisions of ACJA § 7-201 including a review of public comments received.

Nancy Swetnam discussed proposals specific to §7-201. The Board reviewed and discussed § 7-201 proposed revisions and the public comments that have been received.

The Board discussed whether a dismissed complaint is confidential or open to the public in section H(e) Confidentiality of Complaints. Program staff recommended all complaints be open with the exception of those complaints dismissed by the Division Director in which there is no merit or jurisdiction.

A **motion** was made by Judge Lawrence Winthrop and seconded by Kathleen Montalvo to recommend the Court adopt a position on confidentiality whereby complaints which are resolved at the Director's level remain confidential; however, complaints which are brought to the Board's attention for consideration and action shall be open to the public. Motion passed. **BCCR-06-073**

The Board discussed whether to accept a complaint which is verbal or anonymous in Section H(2) Complaints, Investigations, Disciplinary Action Proceedings, and Hearings. Nancy Swetnam recommended a verbal or anonymous complaint only be accepted if the complaint allegations would be such that it would justify discipline, and good cause shown as to why the complaint can not be in writing or the complainant can not be identified.

A **motion** was made by Judge Lawrence Winthrop and seconded by Kathleen Montalvo to recommend the Arizona Judicial Council and the Supreme Court adopt the position whereby the Deputy Director is authorized to accept verbal or anonymous complaints on behalf of the Board if the Deputy Director in fact believes there is a threat to public health, safety or welfare, and the findings shall be documented. Motion passed. **BCCR-06-074**

The Board discussed the policy and procedures regarding proxies in Appendix A, G(3) Proxy. Nancy Swetnam informed the Board the Attorney General's Office is questioning whether it is appropriate to have a proxy designation when Board members are making decisions on an individual's certification whether it be renewal or disciplinary matters.

A **motion** was made by Jennifer Stadler and seconded by James Bouley to recommend to the Arizona Judicial Council and the Supreme Court Appendix A, Section G(3) Proxy be stricken and amended to state there shall be no proxy. Motion passed. **BCCR-06-075**

A **motion** was made by Judge Lawrence Winthrop and seconded by Kathleen Montalvo to recommend to the Arizona Judicial Council and the Supreme Court to adopt the code revisions in § 7-201 along with the specific recommendations made during this Board meeting. Judge Jan Kearney opposed. Motion passed. **BCCR-06-076**

Judge Jan Kearney stated she would like to state her reasons for opposing motion BCCR-06-076. Judge Kearney is troubled by the one-size-fits-all approach of the entire scheme and does not think the reporters are well served by having those making decisions that affect their careers made by people with basically no knowledge of what reporters do. Even though the matter comes back to the Board members the reporters need to go through a lengthy and expensive process if a serious complaint is made against them. Further, Judge Kearney is concerned regarding the consolidated power of the Director and Deputy Director which this entire legislation represents; she does not feel this is in the best interest of the certificate holders and the citizens of Arizona. Even though the statutory scheme does not say so, the prosecutorial model which is currently in effect for attorneys and judicial officers that have

risen out of the statutory scheme is inappropriate in dealing with complaints against professionals.

1-B Discussion and possible action regarding the National Voice Writers examination, validation and determination of the proficiency exam for certification.

The Board discussed possible actions regarding the National Voice Writer's examination. The members of the Board requested to go into Executive Session for advice from legal counsel.

EXECUTIVE SESSION – 11:02 a.m.

A **motion** was made by Jennifer Stadler and seconded by Jean Lea to go into Executive Session for advice from legal counsel. Motion passed. **BCCR-06-077**

EXECUTIVE SESSION ENDED – 11:40 a.m.

1-B Discussion and possible action regarding the National Voice Writers examination, validation and determination of the proficiency exam for certification. (continued)

Dr. Norm Hertz, Comira, addressed the Board and gave background information on the validation of examinations. Dr. Hertz developed the voice writer exam and stated the exam is based on content of the actual work performed on the job and transcripts must be accurate to pass this exam.

James Bouley and Jennifer Stadler stated they need to see a recent voice writers' exam in order to evaluate and make a determination of the proficiency of the exam for certification of reporters.

Leslie Foldy, past president of the Arizona Court Reporters Association, urged the Board to accept the RPR as the test for reporters; one test for all certified reporters would be the best course. Ms. Foldy stated there are a number of differences between the two tests and one in particular is the literary portion of the skills test which the voice writers take twice and then the individual taking the test decides which one is to be turned in for grading.

Judge Lawrence Winthrop stated comments such as those of Leslie Foldy are consistent with other comments which have been submitted to the Board. While collectively the public and this Board may wish to impose one test for all reporters the legislation in its current form may prevent the Board from going to a single test standard.

A **motion** was made by Judge Lawrence Winthrop and seconded by James Bouley to request the National Verbatim Reporters Association provide a version of their test currently being given for the written portion of the skills test to the Board for review in order to make a recommendation at the June meeting. Motion passed. **BCCR-06-078**

1-C Review, discussion and possible action regarding proposed revisions of ACJA § 7-206 including a review of public comments received.

The Board reviewed and discussed the proposed revisions to ACJA § 7-206 and the public comments received.

1-D Discussion and possible action regarding ACJA Code of Conduct Standard 1, Standard 3 and Standard 6 regarding 60% rate differential and other Standards relating to contracting and possibly impact impartiality including a review of Public Comments received.

The Board discussed and reviewed public comments and language staff drafted to address potential conflicts within the Code of Conduct with respect to contracting and reduced rates. The Board recommended the following language be added to the Code of Conduct under Standard 3(a): “Additional copies purchased by the same ordering party may be charged at a reduced rate, provided the same rate is offered to all parties involved in the case.”

A **motion** was made by Judge Jan Kearney and seconded by James Bouley recommending to the Arizona Judicial Council and the Supreme Court § 7-206, Code of Conduct Standard 3(a) to adopt the above language. Motion passed. **BCCR-06-079**

A **motion** was made by Judge Lawrence Winthrop and seconded by Jean Lea to recommend to the Arizona Judicial Council and the Supreme Court § 7-206, Code of Conduct Standard 3(a)(1) be stricken. Motion passed. **BCCR-06-080**

A **motion** was made by Jean Lea and seconded by Judge Lawrence Winthrop recommending to the Arizona Judicial Council and the Supreme Court § 7-206, Code of Conduct Standard 3(d) there be language added stating the calculation for an original transcription includes a per diem charge. Motion passed. **BCCR-06-081**

1-E Discussion and possible action regarding the request from John Bouley to revise the certification eligibility requirements and possible amendment of § 7-206(E) and (G).

John Bouley addressed the Board and requested the modification of the proficiency requirements for certification by allowing a reporter who has passed two of the three skill components of the RPR and the written component of the RPR to be granted Standard Certification.

A **motion** was made by Judge Jan Kearney and seconded by Jennifer Stadler for the Board to approve the concept of a recommendation of code amendment to permit those applicants for certification who have held Provisional Standard Certification as of December 31, 2005 and who have completed all requirements for certification except for one leg of the RPR be permitted to be certified on condition they continue to pursue completion of the RPR by retaking the missing portion of the RPR each time it is offered until the RPR has been completed. Furthermore, the Board directed staff to draft a provision to be reviewed by the Board at the June meeting to determine whether it should be presented for consideration at the Arizona Judicial Council meeting, and staff's draft may be a part of the package for code revisions going to the Arizona Judicial Council subject to any revision which may be necessitated after the Board's discussion at the June meeting. Motion passed. **BCCR-06-082**

A motion was made by Judge Lawrence Winthrop and seconded by James Bouley to recommend to the Arizona Judicial Council and the Supreme Court to adopt the proposed code revisions set forth in § 7-206 with the exceptions addressed by separate motions during this Board meeting. Motion passed. **BCCR-06-083**

2) CERTIFICATION AND ELIGIBILITY

2-A Discussion and possible action regarding the Hearing Officer's Report and Recommendation with respect to Maria Geare.

Patrick Geare (attorney) addressed the Board on behalf of Maria Geare.

A **motion** was made by Jean Lea and seconded by Judge Jan Kearney to accept the Hearing Officer's recommendation to extend Temporary Certification for Maria Geare and to reject the language in the Conclusions of Law in which it states "and/or grandfathering". Motion passed. **BCCR-06-084**

3) REVIEW OF CERTIFICATION APPLICATIONS

3-A Applicants for Initial Standard Certification.

None at this time.

CALL TO THE PUBLIC

The Board meeting with the exception of the Executive Session was open for public comment.

ADJOURNMENT

A **motion** was made by Judge Jan Kearney and seconded by Jennifer Stadler to adjourn.
Motion Passed. **BCCR-06-085**

The meeting of the Board of Certified Reporters adjourned at 1:57 p.m.

/bld