

APPENDIX “A”

ARIZONA SUPREME COURT CERTIFICATION PROGRAM ADMINISTRATIVE RULES

Rule 5 Court Reporter Temporary Certification Rule

- 5.1 **Applicability.** This rule applies to the temporary certification of court reporters pursuant to the Arizona Revised Statutes, Title 32, Chapter 40. Temporary certification will expire December 31, 2002. This rule does not limit the contempt powers of the court or the authority of the court to discipline court employees.
- 5.1.1 Temporary certification shall include: procedures for applying for temporary certification, necessary application fees, procedures and criteria for approving or denying applications, procedures for resolving complaints against court reporters and the discipline and administrative hearing process for temporary certification. Rule 5, Court Reporter Temporary Certification Rule, is the rule governing court reporters in Arizona. A “certified court reporter” or “court reporter” and “report” is defined as:
- 5.1.1.1 A person who is certified by the Board and who records and transcribes a verbatim record in any sworn proceeding by means of written symbols or abbreviations in shorthand or machine writing.
- 5.1.1.2 “Report” means to stenographically record and transcribe sworn proceedings.
- 5.2 **Purpose.** A person shall not engage in the stenographic reporting of proceedings in any court in this state and shall not take stenographic depositions in this state for use in any court in this state unless the person is certified pursuant to Title 32, Chapter 40 of the Arizona Revised Statutes. In order to be eligible to record and transcribe a verbatim record in any sworn proceeding all persons must be certified and comply with the requirements of these rules, unless exempt pursuant to section 5.7. The reporter’s transcript is an important document before, during and after a trial. The paper transcript and its electronic version are used for trial preparation, briefs, impeachment purposes and appellate review. Property, freedom and life all can depend on a clear and accurate record. Court reporting is integrally related to the prompt, effective and impartial operation of the judicial system.
- 5.3 **Designation.** A certified court reporter shall include the title “certified court reporter” and the reporter’s certificate number on the title or cover page of any transcript, on any business card, advertisement or letterhead and on the certificate of any transcript.

5.4 Role of the Administrative Office of the Courts, Arizona Supreme Court.

5.4.1 The Supreme Court shall administer the court reporter certification program and shall adopt rules and establish and collect fees necessary for its implementation.

5.4.2 The Administrative Director of the Supreme Court, (Director), shall have the authority to approve or disapprove matters of administration of the Court Reporter Program that involve the expenditure of program funds. Any power, duty or function, whether ministerial or discretionary, vested in the Director may be exercised or discharged by any other person designated by the Director, acting in the Director's name and by delegated authority.

5.5 Role of the Board of Certified Court Reporters. A “board” and “certify” are defined as:

5.5.1 “Board” means the Board of Certified Court Reporters.

5.5.2 “Certify” means Board authorization to engage in activities regulated by the Board.

5.5.3 The Board is established consisting of nine members appointed by the Chief Justice of the Arizona Supreme Court for terms of service pursuant to Arizona Revised Statutes § 32-4004. The Board shall maintain the membership list and terms of the Board of Certified Court Reporters and make it available upon request.

5.5.4 The Board shall make recommendations to the Supreme Court regarding rules to implement and enforce Arizona Revised Statutes, Title 32, Chapter 40 regulating the certification and conduct of court reporters. These recommendations shall include a code of conduct, continuing education requirements, a fee schedule and other matters pertaining to certified court reporters.

5.5.5 The Board, upon the Board’s own motion or upon receiving a complaint, may conduct such investigations as the Board deems proper to determine whether a person has violated these rules or for the purpose of securing information useful in the lawful administration of Title 32, Chapter 40 of the Arizona Revised Statutes or these rules. The Board may prosecute and adjudicate alleged violations of Title 32, Chapter 40 of the Arizona Revised Statutes.

5.5.5.1 All judicial officers or their designee shall, and any person may, notify the Board if it appears that a certificate holder has violated these rules. All complaints shall be in writing with sufficient specificity to warrant further investigation. The name of the complainant and telephone number shall also be provided.

- 5.5.5.2 In conducting an investigation the Board may subpoena witnesses or documentary evidence, administer oaths and examine under oath any individual relative to the subject of any hearing or investigation. Subpoenas shall be served as described in section 5.26.
- 5.5.5.3 If a person fails to obey a subpoena served in accordance with the provisions of these rules, the Board may request the Superior Court issue an order that requires the appearance of the person or the production of documents or other items, or both. The court may treat the failure to obey the order as contempt of court and may punish the contempt.
- 5.5.5.4 Information or documents obtained or generated by the Board, Program Coordinator or court employees in the course of an open investigation or received in an initial report of misconduct shall be deemed confidential except as mandated by public record by the rules adopted by the Arizona Supreme Court.
- 5.5.5.5 Upon completion of an investigation, the Board may: 1) determine that no violation exists, 2) issue a letter of concern, 3) resolve the violation by consent order or other negotiated settlement between the parties, 4) request staff to prepare the Notice of Hearing for possible disciplinary action or 5) forward the findings to the Office of the Attorney General for preparation of a Notice of Hearing for possible disciplinary action. If the Director requests staff to prepare the Notice of Hearing, staff may represent the program at any hearing.
- 5.5.6. The Board shall ensure that a current register of all temporarily certified court reporters is maintained and make the roster available to the public upon request.
- 5.5.7 The Board shall ensure that a record of all Board meetings and all official actions are maintained.
- 5.5.8 The Board shall issue certificates to qualified applicants as prescribed by the Arizona Revised Statutes and the Administrative Rules governing Court Reporters adopted by the Arizona Supreme Court.

5.6 **Role of the Program Coordinator.**

- 5.6.1 The Director shall designate a Program Coordinator. The Program Coordinator is responsible for the administration of the Court Reporter Program in compliance with applicable laws, Arizona Rules of Court and Administrative Orders and Administrative Rules adopted by the Arizona Supreme Court. The Program Coordinator may delegate any duties and responsibilities to staff.

5.6.2 The Program Coordinator shall perform tasks of administration of the Court Reporter Program and provide updates to the Board, make recommendations regarding matters pertaining to certification, complaints and investigations, and all other matters relevant to certified court reporters.

5.6.3 The Program Coordinator shall receive from the Clerks of the Superior Court all Superior Court certificates of examination in their possession pursuant to Arizona Revised Statutes §12-222 (B) (repealed pursuant to Chapter 335, Laws 1999, effective August 6, 1999). The Superior Court Clerks may then destroy the certification documentation previously attached. The Program Coordinator, upon determining that all criteria for temporary court reporter certifications have been met, may destroy the Superior Court certificate of examination, unless the certificate was used as the criteria pursuant to Rule 5.8, Certification Qualification. Any court reporter files that do not contain certificates must be transferred in their entirety to the Program Coordinator.

5.7 Exemptions from Temporary Certification.

5.7.1 No temporary certification shall be required of persons, entities or courts that use nonstenographic means of recording.

5.8 Certification Qualification. In accordance with Rule 5, Court Reporter Temporary Certification Rule, any individual person, if qualified pursuant to section 5.8.1 *et seq.* may apply for certification.

5.8.1 Qualification for Individual Certification.

In order to be qualified or eligible for certification an applicant must meet the eligibility requirements outlined in sections 5.8.1.1, 5.8.1.2, and 5.8.1.3 *et seq.* as well as fulfill all the requirements of sections 5.8.1.4 through 5.8.1.10 of Rule 5, Court Reporter Temporary Certification Rule. The Board shall grant temporary certification to persons who, to the satisfaction of the Board, and subject to denial based upon the grounds stated in Arizona Revised Statutes §32-4024 and section 5.11, meet the criteria in these rules. The certification shall not be granted until the Board has received a completed application, fees and the verified statement signed under oath stating that the applicant has fully disclosed all background information and the disclosure clearly establishes that there is no history of a felony conviction or a background that does not represent “good moral character.” In the event the fingerprint background check discloses information not reported in the application the Board may automatically deny temporary certification. An applicant shall:

5.8.1.1 Be 18 years of age or more.

5.8.1.2 Be a citizen or legal resident of the United States.

5.8.1.3 Possess one of the following:

5.8.1.3.1 A high school diploma or a general equivalency diploma (GED) evidencing the passing of the General Education Development Test; or

5.8.1.3.2 A similar document or certificate.

5.8.1.4 Possess one of the following:

5.8.1.4.1 One year of experience in making verbatim reports of proceedings, or

5.8.1.4.2 A verified statement of the satisfactory completion of a prescribed course of study from a court reporting school accredited or licensed pursuant to laws of this state or another state, that evidences the equivalent proficiency and the ability to make a verbatim record of material that is dictated as follows:

Proficiency as verified by a statement of satisfactory completion demonstrating the court reporter's ability to pass or complete all of the following:

1. Three testimony tests (Question and Answer) at 225 WPM at 95% accuracy; and
2. Three jury charge tests at 200 WPM with 95% accuracy; and
3. Three literary tests at 180 WPM with 95% accuracy; and
4. Two five- minute keyboarding tests at net 60 WPM; and
5. Forty hours of internship verified by a working certified court reporter; and
6. Production of a forty-page salable transcript; and
7. Course work that includes: Introduction to Law, Court Procedures, Business English, Word Processing, Computer-aided Transcription and Medical Vocabulary.

5.8.1.4.3 A certificate as a Registered Professional Reporter or a Registered Merit Reporter from the National Court Reporters Association, or

- 5.8.1.4.4 A valid certificate issued by another state that at a minimum is equal to the Arizona Statutes, Arizona Supreme Court Rules and Administrative Orders governing court reporters.
- 5.8.1.4.5 Demonstrated reasonable proficiency in making verbatim records of trial or judicial or related proceedings through the applicant's ability to pass a board approved examination for certification.
- 5.8.1.5 File the completed application with the Board. The application shall be signed by the applicant and duly verified under oath.
- 5.8.1.6 Upon the request of the Board, provide a signed affidavit from three attorneys or judges for whom the court reporter has reported depositions or other judicial proceedings and prepared transcripts.
- 5.8.1.7 Provide a full set of fingerprints, in accordance with section 5.9.
- 5.8.1.8 Pay all applicable fees as outlined in the Fee Schedule adopted by the Arizona Supreme Court.
- 5.8.1.9 Be of good moral character.
- 5.8.1.10 Comply with the Arizona Revised Statutes, Arizona Rules of Court, and the Administrative Rules and Administrative Orders governing court reporters and the laws of other states if applicable.

5.9 **Fingerprinting.**

- 5.9.1 The applicant is responsible for providing the Board with a readable fingerprint card. The applicant shall pay any costs attributable to the original fingerprinting or subsequent fingerprinting due to unreadable fingerprints and any fees required for the submission or resubmission of fingerprints. The applicant shall only use the fingerprint card issued in the application packet and shall be fingerprinted by a law enforcement agency.
- 5.9.2 The Board shall submit completed applicant fingerprint cards and the fees to the Arizona Department of Public Safety. The Arizona Department of Public Safety shall conduct applicant criminal history record checks pursuant to applicable state laws. The Arizona Department of Public Safety, on behalf of the Board, shall exchange registration applicant fingerprint card information with the Federal Bureau of Investigation for national criminal history record checks.

- 5.9.3 In the event that definitive fingerprints are not obtainable, the Board may require the applicant to make a written statement, under oath, that the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application. In the event the applicant is unable to provide such a statement the Board may refuse to accept the application.
- 5.10 **Expiration Date.** All temporary certifications shall expire on midnight, December 31, annually in the years 2000, 2001 and 2002.
- 5.11 **Denial of Certification.**
- 5.11.1 The Board may consider denial of certification or renewal of any applicant if one or more of the following is found pursuant to the Arizona Revised Statutes, Chapter 32, Title 40:
- 5.11.1.1 Fraud or material misrepresentation in the application for or attempt to obtain a certificate in this state or another state.
 - 5.11.1.2 Fraud, dishonesty or corruption on a certification examination in another state.
 - 5.11.1.3 The applicant has a record of a conviction by final judgment of a felony or any other offense involving moral turpitude.
 - 5.11.1.4 The applicant was adjudicated in need of court ordered treatment pursuant to Arizona Revised Statutes Title 36 or incapacitated pursuant to Arizona Revised Statutes Title 14.
 - 5.11.1.5 The applicant is subject to revocation or suspension of a certificate as pursuant to Arizona Revised Statutes § 32-4041 or the Court Reporter Certification Rules.
 - 5.11.1.6 The applicant has not been fingerprinted pursuant to section 5.9 and the Board has not received and reviewed the criminal background analysis.
- 5.11.2 The Board shall refuse to issue a certificate if the Board finds that either of the following applies:
- 5.11.2.1 The applicant does not meet the qualifications or eligibility requirements as specified in Arizona Revised Statutes, §32-4021 and in the Court Reporter Certification Rules.
 - 5.11.2.2 The applicant is currently on probation, parole or community supervision for a felony offense or is named in an outstanding arrest warrant.

5.12 **Notification of Temporary Certification or Denial.**

5.12.1 The Board shall promptly certify applicants qualified for temporary certification in accordance with these rules.

5.12.2 The Board shall promptly notify all applicants denied certification or renewal of the certification, the reasons for the denial, and of the applicant's rights to a hearing, pursuant to section 5.20.

5.12.3 An applicant shall be entitled to a hearing, pursuant to these rules, on the decision to deny certification or renewal if a written request is received within fifteen (15) days after receipt of notice of such denial. At such hearing the applicant shall be the moving party and have the burden of proof.

5.12.4 Upon certification, each applicant certified will receive a document evidencing certification, in a form as may be determined by the Board, stating the applicant's name, date of certification, and expiration. Each certification shall expire as described in section 5.10.

5.13 **Disciplinary Action.** The Board may impose cease and desist orders, issue letters of concern or warnings or order revocation or suspension of certification for violations of Arizona Revised Statutes, Title 32, Chapter 40 and the Court Reporter Certification Rules and may assess costs associated with these activities.

5.13.1 A certificate holder is subject to disciplinary action if the Board finds, after notice and hearing, if requested, that one or more of the following applies to the certificate holder:

5.13.1.1 Wilful violation of or wilful noncompliance with applicable laws or a court order or an order of the Board, or any provision of Arizona Rules of Court and the Administrative Rules governing Court Reporters adopted by the Arizona Supreme Court.

5.13.1.2 Failure to perform any duty to discharge any obligation required by these rules.

5.13.1.3 Unprofessional conduct.

5.13.1.4 Gross negligence or incompetence in the performance of duties.

5.13.1.5 Fraud, dishonesty or corruption.

5.13.1.6 Inability to perform the duties of a court reporter at a level of skill that is required by the Board.

- 5.13.1.7 Aiding or assisting another person to engage in the verbatim reporting of any judicial proceeding if the other person is not a certified court reporter.
- 5.13.1.8 Conviction by final judgment of a felony offense or any other offense involving moral turpitude.
- 5.13.1.9 Adjudication determining that the individual is in need of court ordered treatment pursuant to Title 36, Arizona Revised Statutes or incapacitated pursuant to Title 14, Arizona Revised Statutes.

5.13.2 The Board shall issue an order which shall specify in what manner and to what extent such failure or violation is found and specify any sanctions pursuant to these rules.

5.14 Sanctions.

5.14.1 The Board may place restrictions on temporary certification, mandate additional training, suspend a temporary certification for a period not to exceed twelve months, or revoke a certification issued under these rules.

5.15 Emergency Suspension. If the Board finds that the public safety or welfare requires emergency action and incorporates a finding to that effect in the order, summary suspension of a certificate holder may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted within thirty (30) days. All Superior Court Presiding Judges shall be immediately notified of any summary suspension.

5.16 Procedure after Suspension or Revocation.

5.16.1 Upon suspension or revocation of any certification the Board shall forthwith serve notice upon the certificate holder either in person or by certified mail, return receipt requested, addressed to the last address of record with the Board. Notice by mail is complete upon deposit in the United States mail.

5.16.2 The Board shall not again issue any certification under these rules to any person whose certification has been revoked until the court reporter whose certificate was suspended or revoked applies in writing for a reinstatement of the certificate on a showing of good cause and payment of the renewal fee. The Board may grant or deny the request and may impose other conditions for reinstatement.

5.17 Certification Renewal, Denial of Renewal and Voluntary Surrender.

5.17.1 A court reporter must annually submit a completed renewal application and applicable fees by December 31st to remain eligible to serve as a court reporter in Arizona.

- 5.17.2 The Board shall renew a certification if the certificate holder:
- 5.17.2.1 Files an application on an approved form; and
 - 5.17.2.2 Files documentation demonstrating successful completion of at least ten (10) hours of approved continuing education each year; and
 - 5.17.2.3 Has completed the renewal requirements and paid the renewal fees prescribed in the rules on or before the expiration date.
- 5.17.3. The Board shall deny the issuance of a renewal certificate if it determines that the applicant has violated any provisions of Arizona Revised Statutes, Title 32, Chapter 40 or any of the provisions of section 5.11.2 apply.
- 5.17.4 The Board may deny the issuance of a renewal certificate if it determines that any of the provisions of sections 5.11.1.1 to 5.11.1.5 apply.
- 5.17.5 When a certificate holder has filed a timely and complete application for the renewal of certification, the existing certification does not expire until the application has been approved or denied by the Board. In the case that the renewal application is denied the existing certification does not expire until the last day for seeking a hearing on the decision pursuant to section 5.20.
- 5.17.6 All certifications shall continue in force until expired, suspended, revoked or terminated, subject to payment received by the Arizona Supreme Court, Administrative Office of the Courts, Certification and Licensing Division before the expiration date detailed in the rules. Any certification for which such request for renewal and payment of the fee is not received by the Board shall be deemed to have expired as of the expiration date in the rules. Any renewal application postmarked after the expiration date will be treated as a new application.
- 5.17.7 Before granting a renewal of certification, the Board may require additional information which is reasonably necessary to determine if the applicant continues to meet the qualifications specified in these rules, which may include background information or fingerprinting, pursuant to sections 5.8 and 5.9, or a signed affidavit pursuant to section 5.8.1.6.
- 5.17.8 Voluntary surrender of a certification shall not be valid until accepted by the Board. The Board may require additional information which is reasonably necessary to determine if the certificate holder has violated any of these rules. Within 120 days of the voluntary surrender of the certification the Board must either file a Notice of Hearing or accept the

surrender.

5.17.9 The expiration provisions described in section 5.10 of these rules do not affect the right of the Board to suspend or revoke the certification of a certificate holder, if a complaint or investigation is pending prior to the expiration date. Nonrenewal of the certification by the certificate holder does not affect this provision.

5.18 **Change of Name or Address.** All certificate holders shall notify the Board of any change in name or address within thirty (30) days of any change.

5.19 **Fees.** The Board shall collect in advance the fees specified in the Fee Schedule which are not refundable. All payments shall be in personal check or money order. The fees shall be deposited with the Supreme Court, Administrative Office of the Courts, in accordance with the applicable statutes, the Supreme Court's Minimum Accounting Standards and Generally Accepted Accounting Principles and used for the purpose of the Court Reporter Program, in compliance with these rules and Title 32, Chapter 40 of the Arizona Revised Statutes.

5.20 **Hearings.**

5.20.1 The Board shall appoint a Presiding Hearing Officer, knowledgeable in conducting hearings, to hold a hearing when required to do so pursuant to these rules, or upon written demand by a person entitled to a hearing, pursuant to these rules. All demands for hearing must specify: 1) the section of the rules which entitles the person to a hearing, 2) the factual basis supporting the request for hearing and 3) the relief demanded. The Board may request that the Presiding Judge of the Superior Court in the county in which the alleged violation took place supply the appointed Presiding Hearing Officer, a hearing room and any other necessary resources.

5.20.2 The hearing will be held within 45 days of receipt of the request if the request is made by an applicant, unless postponed by mutual consent. In the event the request is from the Board, the hearing will be held as soon as practical at the discretion of the Presiding Hearing Officer but no less than fifteen (15) days after notice, as required by section 5.21.1.

5.20.3 The Presiding Hearing Officer shall have the authority to decide all motions, conduct prehearing conferences, determine the order of proof and manner of presentation of other evidence, issue subpoenas, place witnesses under oath, recess or adjourn the hearing and prescribe and enforce general rules of conduct and decorum. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.

5.20.4 The Presiding Hearing Officer may order a prehearing conference at the request of any party or on the Presiding Hearing Officer's own initiative. The purpose of the conference

is to consider any or all of the following actions:

- 5.20.4.1 To reduce or simplify the issues to be adjudicated.
- 5.20.4.2 To dispose of preliminary legal issues, including ruling on prehearing motions.
- 5.20.4.3 To stipulate to the admission of evidence, facts and legal conclusions that are not contested.
- 5.20.4.4 To identify witnesses.
- 5.20.4.5 To consider any other matters that will aid in the expeditious conduct of the hearing.

5.21 **Notice.**

- 5.21.1 At least fifteen (15) days prior to the date set for hearing, the parties will be given notice, prepared by the Board, which shall include the following information:
 - 5.21.1.2 A statement of the time, place and nature of the hearing.
 - 5.21.1.3 A statement of the legal authority and jurisdiction under which the hearing is to be held.
 - 5.21.1.4 A reference to the particular sections of the statutes, rules and policies involved.
 - 5.21.1.5 A short and plain statement of the allegations or factual basis supporting the relief requested, which may be amended as necessary.
 - 5.21.1.6 If the notice is for a violation or denial of certification and if the hearing date has not previously been set, a statement indicating that the registrant or applicant will be afforded a hearing upon request, if a request is made in writing within fifteen (15) business days of receipt of the notice.
- 5.21.2 Service of the notice shall be accomplished by personal service or by certified mail, return receipt requested to the last business address of record with the Board. Proof of service shall be made by filing with the Presiding Hearing Officer a verified statement that service was made. Service by mail is complete upon deposit in the United States mail.
- 5.21.3 In the event a party is represented by an attorney, service shall be made upon the attorney.

5.22 Rights of Parties.

5.22.1 At a hearing a party shall be entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and generally participate in the conduct of the proceeding.

5.22.2 Any person may represent themselves or appear through counsel. An attorney who intends to appear on behalf of a party shall promptly notify the Presiding Hearing Officer and the Board providing the name, address and telephone number of the party represented and the name, address and telephone number of the attorney. A corporate officer may represent a business entity in any proceeding under these rules.

5.23 Conduct During Hearing. All persons appearing before a Presiding Hearing Officer in any proceeding shall conform to the conduct expected in the Superior Court of the State of Arizona.

5.24 Filing; Pleading.

5.24.1 Answers to the notices are required and must be filed within ten (10) business days after the date on which the notice is served, unless otherwise ordered by the Presiding Hearing Officer. Answers must be full and complete, and shall be in compliance with Rule 8 of the Arizona Rules of Civil Procedure. If a party fails to file an answer within the time provided, such person shall be deemed in default and the proceeding may be determined against the party by the Presiding Hearing Officer and one or more of the assertions contained in the notice may be deemed to be admitted. Any defenses not raised in the answer shall be deemed to be waived.

5.24.2 All motions must be filed at least five (5) business days prior to the scheduled hearing date, unless otherwise ordered by the Presiding Hearing Officer.

5.24.3 Responses to motions must be filed within five (5) business days of the filing of the motion.

5.24.4 Copies of all filings shall be delivered to the Presiding Hearing Officer, the Board and all parties to the proceeding.

5.24.5 All filings shall be made in accordance with Rule 5(h), Arizona Rules of Civil Procedure.

5.25 Discovery.

5.25.1 Except as provided in these rules no discovery is permitted, unless mutually agreed to by the parties or permitted by the Presiding Hearing Officer.

- 5.25.2 The Presiding Hearing Officer, upon written request, shall order a party to allow the requesting party to have a reasonable opportunity to inspect and copy, at the requesting party's expense, admissible documentary evidence or documents reasonably calculated leading to admissible evidence prior to a hearing, so long as such evidence is not privileged.
- 5.25.3 The Presiding Hearing Officer, on the Presiding Hearing Officer's motion or upon request, may require, prior to the hearing, the disclosure of documentary evidence intended to be used at the hearing, so long as the evidence is not privileged.
- 5.25.4 Depositions for use as evidence may be taken of witnesses who cannot be subpoenaed or are otherwise unable to attend the hearing. In order to take a deposition, a party shall file with the Presiding Hearing Officer a written motion, with copies to all parties, setting forth the name and address of the witness, the subject matter of the deposition, the documents, if any, sought to be produced, the time and place proposed for the deposition, and the justification for the deposition.
- 5.25.5 Responses to requests for depositions, including motions to quash, shall be filed within five (5) business days after the filing of the request for deposition.
- 5.25.6 If a deposition is permitted, a subpoena and a written order shall be issued. The subpoena and order shall identify the person to be deposed, the scope of testimony to be taken, the documents, if any, to be produced, and the time and place of the deposition. The party requesting the deposition shall arrange for service of the subpoena and order. The subpoena and order shall be served on all parties five (5) business days before the time fixed for taking the deposition unless, for good cause shown, such time is shortened by the Presiding Hearing Officer.

5.26 Subpoenas.

- 5.26.1 Subpoenas shall be issued in the same manner as provided for by the Arizona Rules of Civil Procedure and may be served by an employee of the court or any other person as designated by the Arizona Rules of Civil Procedure.
- 5.26.2 Subpoenas may be served as follows:
- 5.26.2.1 By personal service.
 - 5.26.2.2 By leaving a copy at the person's dwelling house, or usual place of abode, with a person of suitable age and discretion, but not less than fourteen (14) years of age, then residing therein.
 - 5.26.2.3 By leaving a copy at the person's usual place of business or employment with

an employee, coordinator, owner, officer, partner or other similar person of suitable age and discretion.

5.26.2.4 By delivering a copy to an agent authorized by appointment or by law to receive service of process for the person to whom the subpoena is addressed.

5.26.2.5 By mailing a copy of the subpoena in an envelope addressed to the last known home or business address, postage prepaid. This envelope shall be sent by certified mail with return receipt requested. The signed return receipt shall constitute proof of service.

5.26.3 A motion to modify or quash the subpoena shall be filed prior to the return date of the subpoena. The Presiding Hearing Officer may decide to modify or quash the subpoena if a finding is made that:

5.26.3.1 The testimony required is not reasonably related to the subject matter of the hearing.

5.26.3.2 The subpoena does not adequately describe the evidence required to be produced.

5.26.3.3 The production of the evidence will impose an undue hardship.

5.26.3.4 The material or testimony requested is privileged by statute, rule, or constitutional guarantee.

5.26.3.5 The subpoena has been sought for the purpose of harassment or intimidation.

5.26.4 If a person fails to obey a subpoena lawfully served, the Presiding Hearing Officer may request the Superior Court to issue an order that requires the appearance of the person or the production of documents or other items, or both. The Court may treat the failure to obey the order as contempt of court and may punish the contempt.

5.27 **Record.**

5.27.1 Oral proceedings or any part thereof shall be electronically recorded and shall be transcribed on request of any party. The cost of the transcript shall be paid by the party making the request.

5.27.2 The Presiding Hearing Officer shall cause a full stenographic record of the proceedings to be made by a competent court reporter if requested by a party within five (5) days prior to a hearing. The cost of the transcript shall be the responsibility of the requesting party. The Presiding Hearing Officer may require prepayment or a monetary deposit to cover the cost of the transcript. If transcribed, such record shall be a part of the court's record of the hearing and a copy of such stenographic record shall be furnished to any other party having a direct interest therein at the request and expense of such party. If no request is made for a stenographic record, the proceedings shall be recorded as described in section 5.27.1.

5.28 **Procedure at Hearing.**

5.28.1 Hearings are presided over by the Presiding Hearing Officer. There is no right to a jury. All hearings are open to the public. The Presiding Hearing Officer may question witnesses.

5.28.2 A hearing may be conducted in an informal manner and without adherence to the rules of pleading or evidence. The evidence supporting a decision must be substantial, reliable and probative. Irrelevant, immaterial or unduly repetitious evidence shall be excluded.

5.28.3 All testimony to be considered shall be under oath or affirmation, except matter of which judicial notice is taken or entered by stipulation. The Presiding Hearing Officer may administer oaths and affirmations.

5.28.4 In all matters brought at the request of the Board, evidence in support of the Board's action shall be presented first and carry the burden of proof. In matters brought at the request of someone other than the Board, including requests for hearing on the denial of certification, the person seeking the hearing shall present first and carry the burden of proof.

5.29 **Recommendations of Presiding Hearing Officer.** The Presiding Hearing Officer shall within thirty (30) days of the closing of the record of a hearing, prepare recommendations and deliver the recommendations to the Board. The recommendations shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be by a preponderance of evidence.

5.30 **Decisions and Orders.**

5.30.1 The final decision shall be rendered by the Board. Any final decision or order shall be in writing and shall include findings of fact and conclusions of law, separately stated. Findings of fact shall be by a preponderance of the evidence. Parties shall be notified either personally or by mail to their last known address of any decision or order.

5.30.2 Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

5.31 **Rehearing.**

5.31.1 Upon written request of a party to a hearing being filed with the Presiding Hearing Officer within fifteen (15) days after any order made pursuant to a hearing has been mailed or delivered to the person entitled to receive such order, the Presiding Hearing Officer may grant a rehearing or reargument of the matters involved in the hearing. The decision to grant or deny the request shall be made within thirty (30) days of the date of filing of the request. A request for rehearing or review shall be based upon one or more of the grounds listed in Rule 59, Arizona Rules of Civil Procedure, which materially affected the rights of a party and shall conform to the requirements of Rule 59.

5.31.2 Any party served with a request for rehearing shall be permitted to file a response within fifteen (15) days of service.

5.32 **Appeals.** Decisions of the Board pursuant to these rules shall be subject to judicial review in the Arizona Superior Court in Maricopa County pursuant to the provisions of the Arizona Revised Statutes, Title 12, Chapter 7, Article 6.