

# IN THE SUPREME COURT OF TEXAS

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Misc. Docket No. 18-9060

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## ORDER APPROVING AMENDMENTS TO THE RULES AND FEES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION AND ADOPTING A CODE OF ETHICS FOR CERTIFIED SHORTHAND REPORTERS AND COURT REPORTING FIRMS

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**ORDERED** that:

1. The Supreme Court of Texas approves the following amendments to the rules and fees of the Judicial Branch Certification Commission and also adopts the attached Code of Ethics for Certified Shorthand Reporters and Court Reporting Firms.
2. The rule and fee amendments incorporate changes to comply with Act of May 19, 2017, 85th Leg., R.S., ch. 313 (SB 1096, codified at TEX. GOV'T CODE § 155); Act of May 24, 2017, 85th Leg., R.S., ch. 516 (SB 43, codified at TEX. GOV'T CODE Chs. 151–57); and Act of May 25, 2017, 85th Leg., R.S., ch. 715 (SB 36, codified at TEX. GOV'T CODE § 155).
3. The rule amendments take effect immediately, except:
  - a. amendments to Rule 3.2(c) and new Rule 7.8(a) take effect September 1, 2018;
  - b. new Rules 10, 10.1, 10.2, 10.3, 10.4, 10.5, and 10.6 take effect on June 1, 2018.
4. The fee amendments take effect September 1, 2018.
5. The Code of Ethics takes effect immediately.
6. The Code of Ethics supersedes the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms that is currently in effect.
7. The Clerk is directed to:
  - a. file a copy of this order with the Secretary of State;
  - b. cause a copy of this order to be mailed to each registered member of the State Bar of Texas by publication in the *Texas Bar Journal*;
  - c. send a copy of this order to each elected member of the Legislature; and
  - d. submit a copy of this order for publication in the *Texas Register*.

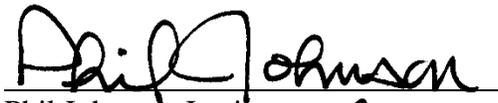
Dated: April 12, 2018.



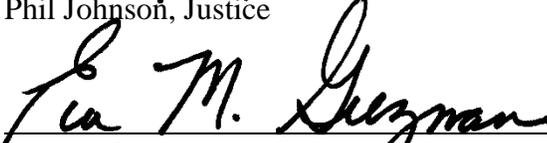
Nathan L. Hecht, Chief Justice



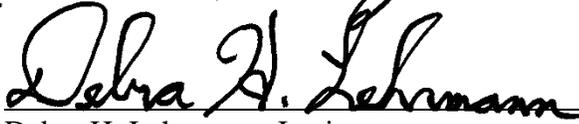
Paul W. Green, Justice



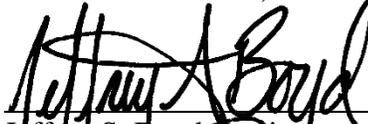
Phil Johnson, Justice



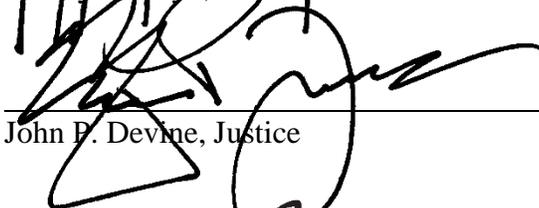
Eva M. Guzman, Justice



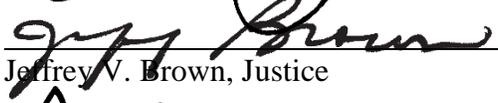
Debra H. Lehrmann, Justice



Jeffrey S. Boyd, Justice



John P. Devine, Justice



Jeffrey V. Brown, Justice



James D. Blacklock, Justice

## RULES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

### 1.0 General Provisions

#### 1.1 Authority

These rules are promulgated under Sections 152.101, 155.151, and 155.203 of the Government Code.

#### 1.2 Definitions

The following words and terms, when used in these rules, have the following meanings, unless the context clearly indicates otherwise.

- (a) **Act** means the laws enforced by the Commission, which are codified at Act of May 2, 2013, 83rd Leg., R.S., ch. 42, § 1.01 (SB 966), which is codified in Chapters 151-157 of the Government Code.
- (b) **Advisory board** means a board that is established by law or the Commission to advise the Commission on rules, policies, or technical matters.
- (c) **Applicant** means any person seeking a certification, registration, or license from the Commission.
- (d) **Certification** means a certification issued by the Commission. The term includes provisional certification.
- (e) **Commission** means Texas Judicial Branch Certification Commission.
- (f) **Complainant** means any person, including the Director, who has filed a complaint with the Commission against any person whose activities are subject to the Commission's jurisdiction.
- (g) **Director** or **Administrative Director** means the Administrative Director of the Office of Court Administration of the Texas Judicial System, or the Director's designee.
- (h) **License** means a license issued by the Commission.
- (i) **Office** means the Office of Court Administration of the Texas Judicial System.
- (j) **Presiding officer** means the Commission member designated by the Supreme Court under Section 152.056 of the Government Code or the presiding officer's temporary designee under that section.
- (k) **Registration** means a registration issued by the Commission.
- (l) **Regulated person** means a person who, or a program; corporation; partnership; firm; other business entity; local, county, or regional agency; or nonprofit entity that holds a

certification, registration, or license issued by the Commission, but, pursuant to Section 155.208 of the Government Code, does not include guardianships registered under Section 155.151 of the Government Code.

- (m) **Respondent** means any person, regardless of whether the person is certified, registered, or licensed, who is charged with violating a law that establishes a regulatory program administered by the Commission, a rule adopted by the Commission, or an order issued by the Commission or the Director.
- (n) **Review committee** means a committee of advisory board members appointed by the Commission to review complaints ~~filed against a regulated person.~~

### **1.3 Program Fees**

- (a) Fees set by the Commission for each program are published on the Commission's website separately from these rules and must be paid as prescribed on the website. The program fees include fees for initial applications, renewals, duplicate licenses, examinations, and any other fees specific to a particular program.
- (b) All program fees are nonrefundable unless stated otherwise.

### **1.4 Counting Time**

In computing any period of time prescribed or allowed by these rules, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Saturdays, Sundays, and legal holidays must otherwise be counted for purposes of calculating time periods under these rules.

### **1.5 Access to Commission Records**

As a judicial branch entity, the Commission is not a governmental body subject to the Public Information Act set forth in Chapter 552 of the Government Code. Public access to the Commission's records is governed either by Rule 12 of the Rules of Judicial Administration or by applicable statutory or common law. The Director is the Commission's records custodian.

## **2.0 Powers, Duties, and Responsibilities**

### **2.1 Powers and Duties of the Commission**

- (a) The Commission shall:
  - (1) administer and enforce the Act, these rules, and the standards or codes of ethics applicable to each profession regulated by the Commission;
  - (2) in consultation with appropriate advisory boards, develop and recommend rules to the Supreme Court;

- (3) in consultation with appropriate advisory boards, develop and recommend to the Supreme Court a code of ethics for each profession regulated by the Commission;
  - (4) set fees in amounts reasonable and necessary to cover the costs of administering the programs or activities administered by the Commission subject to approval of the Supreme Court;
  - (5) in consultation with appropriate advisory boards, establish qualifications for certification, registration, and licensing; and
  - (6) approve curriculum for court reporter career schools and colleges and court reporter programs in technical institutes and public community colleges.
- (b) The Commission may:
- (1) require applicants to pass an examination and charge fees for the examination;
  - (2) approve continuing education courses and require regulated persons to obtain continuing education ~~and approve continuing education courses~~; and
  - (3) elect officers and appoint necessary committees.

## **2.2 Commission Meetings**

- (a) Every meeting of the Commission must be open to the public as provided by the Commission's Public Meetings Policy.
- (b) A quorum for the Commission is a majority of all the members of the Commission. When a quorum is present, a motion before the Commission is carried by an affirmative vote of the majority of the Commission members present that are participating in the vote.
- (c) The presiding officer may limit the number and length of comments provided on any item on the agenda.
- (d) The Commission must provide the public with a reasonable opportunity to appear before the Commission and speak on any issue under the Commission's jurisdiction. A person who wishes to speak at a Commission meeting must sign in and may speak at the designated time.
- (e) The presiding officer or the presiding officer's designee may grant continuances with regard to hearings and other matters before the Commission.

## **2.3 Powers and Duties of the Administrative Director**

- (a) The Administrative Director must administer and enforce the Commission's programs and policies as provided by the Act and other applicable law, including, but not limited to:
  - (1) processing applications for and issuing certifications, registrations, and licenses;
  - (2) developing procedures and forms;
  - (3) conducting investigations;
  - (4) issuing cease and desist orders as provided by Section 153.003 of the Government Code;
  - (5) administering exams, including administering exams in conjunction with a person with whom the Commission contracts to develop and administer examinations;
  - (6) maintaining records pertaining to applicants and regulated persons; and
  - (7) performing any other duty assigned by the Commission or specified by law.
- (b) The Administrative Director must supervise the Office's provision of support to the Commission under the administrative attachment required by Section 152.103 of the Government Code. The Administrative Director may delegate the powers and duties prescribed by law or these rules to staff of the Office after providing written notice of such delegation to the Commission.
- (c) The Administrative Director may bring items to the Commission's attention for its consideration, including, but not limited to, proposals for new or amended rules and agenda items for Commission meetings.

## **2.4 Advisory Boards**

- (a) Advisory boards must advise the Commission on policy and regulated persons.
- (b) Each advisory board must meet at least once each year and at the call of the presiding officer.
- (c) Advisory boards must assist the Commission by developing and recommending rules to the Commission and may establish subcommittees to provide this assistance.
- (d) Advisory boards must perform other duties as requested by the Commission or required by law.
- (e) The purpose and membership of each advisory board is detailed in the provisions of the Act for each specific program regulated by the Commission. The Commission may establish other advisory boards. The following advisory boards are created by the Act:

- (1) Court Reporters Certification Advisory Board;
- (2) Guardianship Certification Advisory Board;
- (3) Process Server Certification Advisory Board; and
- (4) Licensed Court Interpreter Advisory Board.

### **3.0 Certification, Registration, and Licensing**

#### **3.1 Initial Applications**

- (a) An applicant must comply with submission requirements stated on the application form. Incomplete applications will not be processed.
- (b) An applicant must provide the Commission with his or her Texas and national criminal history records by fingerprint search according to directions published on the Commission's website. The criminal history searches must be conducted ~~no more than 90 days before~~ after an application is submitted.

#### **3.2 Renewal Applications**

- (a) A person must not perform work requiring certification, registration, or a license under the Act with an expired certification, registration, or license.
- (b) The Commission will notify a regulated person by email no later than 30 days before the date that the person's certification, registration, or license is scheduled to expire. A regulated person's failure to receive a renewal notice from the Commission does not exempt the person from any requirement of these rules or of any other rules governing the person's profession.
- (c) All certification, registration, and license renewal applications must be submitted through the JBCC online certification, registration, and licensing system on forms published on the Commission's website. A regulated person must comply with submission requirements stated on the renewal form. Incomplete applications will not be processed.
- (d) The renewal application and all applicable fees are due ~~45 days prior to~~ on or before the expiration of the certification, registration, or license. An application is timely if it is submitted postmarked on or before its expiration the due date. Failure to submit complete a renewal application ~~at least 45 days prior to~~ on or before expiration will may result in a lapse of the legal authority to practice in accordance with the certification, registration, or license.
- (e) In order to renew a certification, registration, or license after its expiration, a regulated person must pay late renewal fees as follows:

- (1) If the renewal application is submitted 90 days or less after expiration, the renewal fee is one and one-half times the normally required renewal fee; and
- (2) If the renewal application is submitted more than 90 days but less than 1 year after expiration, the renewal fee is twice the normally required renewal fee.
- (f) Upon the 1-year anniversary of the expiration of a certification, registration, or license, it terminates, becomes permanently invalid, and cannot be renewed. A person; program; corporation; partnership; firm; other business entity; local, county, or regional agency; or nonprofit entity whose certification, registration, or license is invalid may obtain a new certification, registration, or license by fulfilling all requirements, including examination, for obtaining an initial certification, registration, or license.
- (g) Notwithstanding (f), a person may renew a certification, registration, or license 1 year after expiration or later, if:
- (1) the person moved to another state or jurisdiction before applying for renewal;
- (2) the person is certified, registered, or licensed in good standing to engage in the practice of the same profession in the other state or jurisdiction;
- (3) the person has been engaged in that practice for a period of at least 1 year preceding the date the person applies for renewal; and
- (4) the person pays a renewal fee which is twice the normally required renewal fee.
- (h)(e) Any continuing education that is required to be fulfilled as part of the renewal application must be completed prior to the certification, registration, or license expiration date to avoid payment of a late renewal fee.
- (i)(f) Notwithstanding (b) through (h)(e), a regulated person who fails to renew his or her certification, registration, or license in a timely manner because the person was on active duty in the United States armed forces serving outside this State is exempt from any increased renewal fee that the person would otherwise be required to pay for failing to renew in a timely manner.
- (j)(g) Notwithstanding (b) through (h)(e):
- (1) A regulated person who is a member of the state military forces or a reserve component of the armed forces of the United States, and who is ordered to active duty by the proper authority, is entitled to an extension of his or her certification, registration, or license period equal to the deployment period and an additional amount of time to complete any continuing education requirements and any other requirements related to the renewal of the person's certification, registration, or license.

- (2) The individual must submit to the Director a written request, accompanied by a copy of the orders placing the person on active duty.
- (3) The Director must make the extension based on information in the copy of the orders provided. The additional amount of time must be equal to the total number of months that the person serves on active duty.
- (4) An individual making a request under this rule must notify the Director of any change in the length of deployment.
- (5) A regulated person is exempt from any increased fee or other penalty for failing to renew the person's certification, registration, or license in a timely manner if the individual furnishes to the Commission satisfactory documentation that the individual failed to renew in a timely manner because the individual was on active duty in the United States armed forces serving outside this State.

~~(k)(4)~~ The Commission must refuse to accept a regulated person's application for renewal if the Commission receives notice of child support arrearages pursuant to Section 232.0135 of the Family Code. Upon receipt of further notice that the person has complied with Section 232.0135(b), the Commission must accept an application for renewal subject to all requirements of these rules.

### **3.3 Endorsement; Reciprocity**

- (a) The Commission may waive any prerequisite to obtaining a certification, registration, or license for an applicant after reviewing the applicant's credentials and determining that the applicant holds a certification, registration, or license issued by another jurisdiction that has certification, registration, or licensing requirements substantially equivalent to those of this State.
- (b) The Commission may waive any prerequisite to obtaining a certification, registration, or license for an applicant who holds a certification, registration, or license issued by another jurisdiction with which this State has a reciprocity agreement. Subject to the approval of the Supreme Court, the Commission may make an agreement with another state to allow for certification, registration, or licensing by reciprocity.

### **3.4 Alternative Application Procedure for Military Spouses, Military Service Member, and Veterans**

- (a) Pursuant to Chapter 55 of the Occupations Code, the Commission must grant credit toward certification, registration, and licensing requirements for relevant verified military service education, training, and experience earned by a military service member or a military veteran who applies for certification, registration, or licensure. The Commission may withhold credit from a military service member or veteran who holds a restricted certification, registration, or license issued by another jurisdiction or has an unacceptable criminal history.

~~(b)~~ The Commission must expedite applications for certification, registration, and licensure which are filed by military service members, military veterans, and military spouses. This rule applies to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the United States.

~~(c)(b)~~ The Commission may issue a certification, registration, or license to an applicant ~~described under (a)~~ who is a military service member, the spouse of a military service member, or a military veteran and:

- (1) holds a current certification, registration, or license issued by another state that has requirements that are substantially equivalent to the requirements for the certification, registration, or license; or
- (2) within the five years preceding the application date, held a certification, registration, or license in this State ~~that expired while the applicant lived in another state for at least six months.~~

~~(d)(e)~~ The Commission may allow an applicant who meets the requirements of ~~(c)(b)~~ to demonstrate competency by alternative methods or credentials in order to meet the requirements for obtaining a particular certification, registration, or license issued by the Commission. For purposes of this Section, the standard methods of demonstrating competency are the specific exam, education, and experience required to obtain a particular certification, registration, or license.

~~(e)(d)~~ In lieu of the standard methods of demonstrating competency for a particular certification, registration, or license and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

- (1) education;
- (2) continuing education;
- (3) examinations (written or skills);
- (4) letters of good standing;
- (5) letters of recommendation;
- (6) work experience; or
- (7) other methods or credentials required by the Commission.

~~(f)(e)~~ The applicant must:

- (1) submit an application and proof of the requirements under this rule and for that particular certification, registration, or license on a form and in a manner prescribed by the Commission; and
- (2) be subject to the same criminal history background check required of the persons applying for that particular certification, registration, or license.

~~(g)(f)~~ A person who applies for a certification, registration, or license under this rule is exempt from paying an application fee.

~~(g) — The Director may issue a license by endorsement under this rule to an applicant who meets the requirements of (b) in the same manner set forth in Section 51.404 of the Occupations Code.~~

### **3.5 Eligibility for Persons with Criminal History**

- (a) An initial or renewal application may be denied, and a regulated person may be disciplined, if the person's criminal history or other information indicates that the person lacks the honesty, trustworthiness, or integrity to hold the certification, registration, or license. After consultation with the appropriate advisory boards, the Commission will develop and publish on its website guidelines for each regulatory program listing the categories of crimes that are considered to indicate that a person lacks the honesty, trustworthiness, or integrity to hold the particular certification, registration, or license. The Director will determine whether an initial or renewal application will be denied under this rule using the guidelines developed by the Commission and the factors listed in (b). If the Director denies an application, the applicant may request that the Commission reconsider the decision under Rule 3.6.
- (b) In making a determination under (a), the Commission or Director may consider:
  - (1) the nature and seriousness of the crime;
  - (2) the extent to which certification, registration, or licensing might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved;
  - (3) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the occupation;
  - (4) the extent and nature of the person's past criminal activity;
  - (5) the age of the person when the crime was committed;
  - (6) the amount of time that has elapsed since the person's last criminal activity;
  - (7) the conduct and work activity of the person before and after the criminal activity;

- (8) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;
  - (9) proof that the applicant:
    - (A) maintained a record of steady employment;
    - (B) supported his or her dependents;
    - (C) maintained a record of good conduct; and
    - (D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted; and
  - (10) any other evidence of the person's fitness, including, but not limited to, letters of recommendation.
- (c) A person may request that the Commission, through the Director, issue a criminal history evaluation letter regarding the person's eligibility for certification or licensure under this rule.
- (1) The person may request a criminal history evaluation letter if the person:
    - (A) is enrolled or is planning to enroll in an educational program that prepares a person for an initial certification or license or is planning to take an examination required by the Commission for an initial certification or license; and
    - (B) has reason to believe that the person is ineligible for certification or licensing due to a conviction or deferred adjudication for a felony or misdemeanor offense or other criminal history.
  - (2) The request must be in writing and must state the basis for the person's potential ineligibility. The requestor must provide the Commission with his or her criminal records pursuant to the fingerprinting requirements for the particular certification or licensing program. The Commission may request additional information from the requestor.
  - (3) If the Director determines that a ground for ineligibility does not exist, the Director must notify the requestor in writing of the Director's determination on each ground of potential ineligibility.
  - (4) If the Director determines that the requestor is ineligible, the Director must issue a letter setting out each basis for potential ineligibility and the Director's determination as to eligibility.

- (5) The Director must provide notice under ~~(e)(c)~~(3) or issue a letter under ~~(e)(c)~~(4) not later than the 90<sup>th</sup> day after the date ~~that~~ the Commission receives the request or, if applicable, the Commission receives additional information regarding the request under (c)(2) of this rule.
- (6) The Commission is not bound by the Director's determination if:
  - (A) the requestor fails to disclose known information that is relevant to the evaluation; or
  - (B) there is a change in the person's circumstances after the evaluation notice or letter is issued.

### **3.6 Denial of Application; Reconsideration**

- (a) **Application Review.** The Director must review each application and determine whether the applicant meets the Commission's qualifications for the particular certification, registration, or license. The Director must also determine whether the applicant meets the Commission's criminal history eligibility requirements. If a person who has applied to be a certified guardian does not clearly meet the experience or education requirements in these rules, the Director must consult with members of the Guardianship Certification Advisory Board before approving or denying the application.
- (b) **Denial of Application.** The Director may deny an application only if the applicant fails to meet the qualifications set forth in these rules or the Commission's criminal history eligibility requirements. The Director must furnish to the applicant a written statement that succinctly states the reason for denying the application.
- (c) **Request for Reconsideration.** Within 20 days of the date of the notice that the Director has denied an application, the applicant may request that the Commission reconsider the denial. The request must be in writing, identify each point or matter about which reconsideration is requested, and set forth the grounds for the request for reconsideration.
- (d) **Reconsideration Procedure.** The Commission must reconsider the request at its next meeting and may allow the applicant or other witnesses to appear at the meeting and present sworn testimony. The Commission may limit the number of witnesses appearing and the time allotted for a witness's testimony.
- (e) **Commission Action on Request.** After reconsidering a decision of the Director, the Commission may:
  - (1) affirm the Director's decision; or
  - (2) reverse the Director's decision.

- (f) Final Decision. The Commission must notify the applicant in writing of its decision on reconsideration. The Commission's decision is final and may not be appealed.

### **3.7 Examination Security**

- (a) Except as provided in Rule 3.10, when an applicant must take an examination in order to obtain a certification or license, the applicant may only use methods of assistance that are available to, and authorized for, other persons taking the examination. A person who uses or provides unauthorized assistance in connection with an examination violates this rule. Conduct that violates this rule includes but is not limited to the following:
- (1) obtaining or attempting to obtain from any source examination questions or answers for use by an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;
  - (2) providing or attempting to provide examination questions or answers to an applicant, prospective applicant, or any other person, including a person associated with a school or examination preparation course;
  - (3) presenting a falsified or fraudulent document to gain entry to an examination;
  - (4) presenting a falsified or fraudulent document concerning an individual's results from an examination;
  - (5) taking an examination for another person;
  - (6) as an applicant or prospective applicant, knowingly allowing another person to take an examination for the applicant or prospective applicant;
  - (7) while taking an examination, using any materials not authorized by the Commission or testing service for use in the examination, including but not limited to notes or study aides;
  - (8) bringing to the examination site or leaving the examination site with examination questions or answers obtained from the current examination or from previous examination attempts;
  - (9) while taking an examination, communicating with any person, other than an authorized representative of the Commission or testing service, about the examination; or
  - (10) for open book examinations, bringing any materials into the examination, including hand-written notes in approved reference materials, other than those materials approved by the Commission or testing service.

- (b) The contents of any examination that is required for the issuance of a Commission certification or license are confidential.
- (c) An applicant who cheats on an examination will be disqualified and may not take the examination again until two years have elapsed from the date of the examination at which the applicant was disqualified.

### **3.8 Examination Rescheduling**

- (a) A person may reschedule an examination to another regularly scheduled examination date at no charge if the person notifies the Commission or vendor at least two days prior to the examination and complies with the instructions of the Commission or vendor.
- (b) A person who reschedules an examination under this rule may apply the examination fee paid for the cancelled examination to the rescheduled examination.

### **3.9 Examination Fee Refund**

- (a) To obtain a refund of an examination fee, a person who is unable to take the examination must:
  - (1) if the examination is administered by a vendor, comply with the vendor's notice and documentation requirements; or
  - (2) if the examination is administered by the Commission, provide written notice to the Director not less than 10 days prior to the date of the examination or provide the Director, as soon as possible, with documentation of the person's inability to take the examination because of an emergency.
- (b) A person seeking a refund must apply for the refund in writing within one year of the date that the person paid the fee. The person must, upon request, provide the Office additional information necessary to process the refund.

### **3.10 Access to Examinations and Examination on Religious Holy Days**

- (a) Reasonable accommodation for examinations will be made available as required by the Americans with Disabilities Act of 1990, Public Law 101-336, to address a condition or circumstances that would prevent a person from taking the examination in the same manner as a person who does not need accommodation. Reasonable accommodation means an adjustment or modification of the standard testing conditions that ameliorates the impact of the applicant's disability, after the applicant provides reasonable notice under subsection (c), without doing any of the following:
  - (1) fundamentally altering the nature of the examination;

- (2) fundamentally altering the Commission's ability to determine through the examination whether the applicant possesses the essential eligibility requirements;
  - (3) compromising the validity of the examination;
  - (4) compromising the security of the examination; or
  - (5) imposing an undue burden on the Commission or on the examination vendor.
- (b) If an examination is scheduled on a date that is a religious holy day, a person whose religious beliefs prevent that person from taking an examination on such date will be permitted to take the examination on an alternate date. The alternate date must be a regularly scheduled examination date unless the person's religious beliefs prevent the person from taking the examination on such date.
- (c) A person who needs a reasonable accommodation for an examination ~~or who requests to take the examination on an alternate date~~ must notify the Director or examination vendor, as applicable, of the request at least 10 days prior to the scheduled examination.

### **3.11 Examination Results**

- (a) Unless the examination is graded or reviewed by a testing service, not later than the 30<sup>th</sup> day after the date that a person takes an examination, the Commission must notify the person of the results of the examination.
- (b) If the examination is graded or reviewed by a testing service:
- (1) the Commission must notify the person of the results of the examination not later than the 30<sup>th</sup> day after the date that the Commission receives the results from the testing service; and
  - (2) if notice of the examination results will be delayed for longer than 90 days after the examination date, the Commission must notify the person of the reason for the delay before the 90<sup>th</sup> day.
- (c) If requested in writing by a person who fails an examination, the Commission must furnish the person with an analysis of the person's performance on the examination.
- (d) Examination results are valid for two years ~~one year~~ from the date of the examination, ~~unless stated otherwise in specific program statutes or rules.~~ A person who does not apply or otherwise meet qualifications for a certificate or license within two years after the date of the examination must pass the examination again in order to apply for the certificate or license.

### **3.12 Responsibilities of Regulated Persons**

- (a) A regulated person must comply with the rules for the program under which the person is regulated.
- (b) A regulated person must respond to requests for information from the Commission or the Director pertaining to renewal of certification, registration, or licensure; complaints alleging misconduct by the regulated person; and investigative inquiries by the Commission or Director. The regulated person must respond to a request for information within the time prescribed in the request.
- (c) A regulated person must provide the Commission with the person's name, business name, business address, home address, business and home telephone numbers, email address, and fax number, and must notify the Commission of any change in contact information within 30 days of the change. Failure to comply with this rule may result in disciplinary action.
- (d) A regulated person who, after being certified, registered, or licensed, is convicted of any felony or misdemeanor offense must immediately notify the Commission of the conviction.

### **3.13 Voluntary Surrender of Certification, Registration, or License**

- (a) A regulated person may voluntarily surrender the person's certification, registration, or license. The surrender must be submitted to the Director on the form approved by the Commission, and the form must be completed fully. The Director may request additional information.
- (b) A voluntary surrender is effective after the Director receives it, verifies that the form is complete, and changes the person's status on the Commission's website.
- (c) The person must provide written notice of the voluntary surrender as required by the Director.
- (d) The circumstances under which the certification, registration, or license is surrendered will be noted in the person's records with the Commission and will be taken into account if the person applies in the future. A voluntary surrender does not affect any disciplinary matters before the Commission at the time of surrender.

### **3.14 Two-year License Term**

A certification, registration, or license expires on the last day of the month in which the second anniversary of the date on which it was issued occurs unless the certification, registration, or license is renewed on or before that date.

### **3.15 Reissuance after Disciplinary Sanction**

- (a) A person whose certification, registration, or license has been revoked or denied renewal by the Commission as a disciplinary sanction may apply in writing to the Commission for

reissuance of the certificate, registration, or license. An applicant seeking reissuance bears the burden of proving good cause for reissuance. The applicant must demonstrate:

- (1) Rehabilitative efforts, including letters of reference, completion of programs to treat substance abuse, and education or training certification;
  - (2) Good faith efforts to correct, resolve, or cure damages caused by the applicant;
  - (3) Mitigating circumstances of the applicant's conduct that led to the revocation or refusal of renewal;
  - (4) The length, quality, and nature of applicant's subsequent work history and the extent to which it resembles the services performed under the certificate, registration, or license;
  - (5) The applicant's payment of administrative penalties and adherence to conditions or fulfillment of prerequisites for reissuance;
  - (6) The reissuance does not pose a risk to public health, safety and welfare; and
  - (7) The correction of the grounds for the revocation or denied renewal.
- (b) Upon reissuing a certification, registration, or license, the Commission may impose a probationary period in accordance with Rule 5.4(d).

#### **4.0 Continuing Education**

##### **4.1 Applicability**

These rules establish continuing education requirements for each of the professions regulated by the Judicial Branch Certification Commission. Additional continuing education requirements may be found in the rules for each program.

##### **4.2 Continuing education requirement**

A regulated person must obtain the minimum number of hours of continuing education required by the rules for the person's particular program. The person must obtain the required hours within the prescribed time period.

##### **4.3 Approval of continuing education courses**

- (a) Continuing education courses must be approved by the Commission. A continuing education course is an organized program of learning designed to increase or maintain the skills or competence of the regulated persons for whom it is intended. A continuing education course must be developed and presented by persons with education or experience in the subject matter of the course.

- (b) The provider of a continuing education course may request approval of a course. To request approval of a course, a provider must file a completed application on the appropriate form published on the Commission's website.
  - (1) The application must be accompanied by an outline and materials that describe the course objectives and content, describe the teaching methods to be used, identify the presenters and provide their credentials, indicate the time allotted to each segment, and provide the date and location of the program.
  - (2) The course must comply with the course content requirements contained in the rules for the group of regulated persons to whom it will be offered.
- (c) A regulated person may request approval of a continuing education course on the appropriate form published on the Commission's website.
  - (1) The person may request approval prior to the date that the course will be offered or at the time the person files a renewal application.
  - (2) The request application must be accompanied by an outline and materials that describe the course content, identify the presenters, indicate the time allotted to each segment, and provide the date and location of the program.
  - (3) The course must comply with the course content requirements contained in the rules for the group of regulated persons to whom it will be or has been offered.
- (d) The Director may approve or deny a request for approval of a continuing education course. Upon approval, the Director will determine the number of hours of continuing education for the course.
- (e) The Commission will publish on its website a list of courses that are approved as continuing education.
- (f) A continuing education provider whose course has been approved must retain participant course completion records for a period of three years after completion of the course. Upon request, a provider must provide information, including attendance records, to the Commission within 10 days of the request.
- (g) A regulated person must obtain a certificate of attendance or other documentation from a continuing education course provider to prove the person's attendance or completion of all continuing education activity from the provider and submit the documentation to the Commission with the person's renewal application. The person must retain a copy of the documentation for a period of three years after completion of the course.
- (h) A regulated person may appeal the Director's denial of a request for approval by submitting a written appeal to the Commission within 15 days of notification of the denial. The Commission must review the denial at its next regularly scheduled meeting. The regulated

person will be notified of the Commission's decision not ~~less~~ more than 15 days after the decision.

- (i) The Commission, through the Director, may request additional information from a regulated person to verify the person's compliance with continuing education requirements.
- (j) If a regulated person's certification or license expires and the person is permitted under these rules to renew late, the person must comply with the continuing education requirements for the person's profession. The continuing education credit must be earned during the certification or license period preceding expiration, or within the appropriate late renewal period. Continuing education credit earned during the late renewal period may not be used to satisfy the continuing education for the person's subsequent renewal period.
- (k) The following do not qualify as continuing education activities under these rules:
  - (1) attendance at, or participation in, professional or association business meetings, general sessions, or policy making sessions;
  - (2) service on a committee or council or as an officer in a professional organization;
  - (3) activities completed to satisfy the requirements of a disciplinary action; and
  - (4) any activity completed as ordered by a judicial officer.

## **5.0 Commission Enforcement**

### **5.1 Investigations**

The Commission, through the Director, may conduct investigations as necessary to enforce the laws administered by the Commission and these rules.

### **5.2 Subpoenas**

- (a) The Commission may issue a subpoena as provided by this rule. No party, complainant, or other person may request that the Commission issue a subpoena.
- (b) The Commission may request and, if necessary, compel by subpoena:
  - (1) the production for inspection and copying of records, documents, and other evidence relevant to the investigation of an alleged violation of the Act, a law establishing a regulatory program administered by the Commission, a rule adopted under the Act, or an order issued by the Commission or Director; and
  - (2) the attendance of a witness for examination under oath.

- (c) A subpoena under this rule may be issued throughout this State and may be served by any disinterested person designated by the Commission or the Director.
- (d) The Commission, acting through the Attorney General, may bring an action to enforce a subpoena issued under this rule against a person who fails to comply with the subpoena.
- (e) Venue for an action brought under this rule is in a district court in:
  - (1) Travis County; or
  - (2) any county in which the Commission may hold a hearing.
- (f) The court must order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

### **5.3 Cease and Desist Orders**

- (a) The Director may issue a temporary cease and desist order if the Director determines that the action is necessary to prevent a violation of:
  - (1)(a) the Act;
  - (2)(b) a law establishing a regulatory program administered by the Commission; or
  - (3)(e) a rule adopted under the Act or order issued by the Commission or the Director.
- (b) A cease and desist order may require a person to cease and desist from committing a violation listed under (a) or from engaging in any practice regulated by the Commission to prevent the violation.
- (c) A cease and desist order is effective for the duration of an investigation and any disciplinary action taken by the Commission. Within 10 days after receipt of a cease and desist order, the person to whom it was issued may file a written request for a Commission hearing on the necessity for the order, the evidence justifying the order, the duration of the order, the scope of the order, or any other matter relating to the validity of the order. The Commission must conduct the hearing within 30 days after the request.

### **5.4 Administrative Sanctions—Denial, Revocation, Suspension, or Refusal to Renew; Reprimand; Probation**

- (a) The Commission may deny, revoke, suspend, or refuse to renew a certification, registration, or license or may reprimand a regulated person:
  - (1) for a violation of the Act, a law establishing a regulatory program administered by the Commission, a rule adopted under the Act, or an order issued by the Commission or Director; or

- (2) based on the person's criminal history or other information as authorized by these rules.
- (b) If the Commission revokes a certification, registration, or license, the Commission may state the length of the revocation and establish prerequisites for reissuance in its order.
- (c) Suspension.
  - (1) The Commission may suspend a certification, registration, or license:
    - (A) for a designated period of time, except that a court reporter's certification may not be suspended longer than 12 months;
    - (B) until the regulated person corrects the deficiencies that were the grounds for suspension; or
    - (C) until the regulated person complies with any conditions imposed by the Commission.
  - (2) A person who was suspended under ~~(e)(c)~~(1)(B) or (C) must apply for reinstatement.
  - (3) The Commission on its own motion may conduct a hearing to inquire into a suspension and may revoke the certification, registration, or license of a regulated person if it finds that the person has not corrected the deficiencies that were the grounds for the suspension or has not complied with the conditions imposed.
- (d) The Commission may place on probation a person whose certification, registration, or license is suspended. If a certification, registration, or license suspension is probated, the Commission may require the person to:
  - (1) report regularly to the Commission on matters that are the basis of the probation;
  - (2) limit practice to the areas prescribed by the Commission; or
  - (3) complete professional education until the person attains a degree of skill satisfactory to the Commission in those areas that are the basis for the probation.
- (e) The Commission must suspend a regulated person's certification, registration, or license pursuant to the provisions of Section 232.011 of the Family Code upon receipt of a final order issued under Chapter 232 of the Family Code. Pursuant to Section 232.011, the Commission must take such action without a hearing or additional review.

## **5.5 Injunction**

- (a) The Commission may apply to a district court in any county for an injunction to restrain a violation of the Act or a rule adopted under the Act.
- (b) At the request of the Commission, the Attorney General must initiate and conduct an action in a district court in the State's name to obtain an injunction under Section 153.005 of the Government Code.
- (c) If the State prevails in a suit under Section 153.005, the Attorney General may recover on behalf of the State reasonable attorney's fees, court costs, and reasonable investigative costs incurred in relation to the proceeding.
- (d) The Commission may also request that a court having jurisdiction over a guardian remove the guardian under Section 1203.052(b) of the Estates Code.

## **5.6 Administrative Penalty and Administrative Sanction**

- (a) The Commission may impose an administrative penalty on a person regulated under the Act who violates the Act or a rule or standard adopted or order issued under the Act.
- (b) A proceeding imposing an administrative penalty may be combined with a proceeding to impose an administrative sanction otherwise imposed under the Act.

## **5.7 Amount of Penalty**

- (a) The amount of an administrative penalty may not exceed \$500 for each violation. Each day that a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (b) The amount of the penalty may be based on:
  - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;
  - (2) the threat to health or safety caused by the violation;
  - (3) any previous violations;
  - (4) the amount necessary to deter a future violation;
  - (5) whether the violator demonstrated good faith, including, when applicable, whether the violator made good faith efforts to correct the violation; and
  - (6) any other matter that justice may require.

## **5.8 Complaint Filing and Review; Report and Notice of Violation, Penalty, and Sanction**

- (a) A complaint ~~alleging a violation of the Act or Commission rule against a regulated person~~ may be filed by a person with personal knowledge of the alleged violation, ~~or~~ by the staff of the Commission, or a court of this State.
- (b) A complainant, other than ~~the~~ Commission staff or a court, must use the complaint form provided on the Commission's website. The complaint must include the name and contact information of the complainant and the respondent, describe the factual basis for any allegations, and include any necessary documentation or other supporting materials or information. The complaint must be signed by the complainant and submitted to the Commission according to the instructions on the Commission's website.
- (c) Upon receipt of a properly executed complaint, ~~the~~ Commission staff must send a copy of the complaint and any attachments to the respondent and direct the respondent to submit a written answer to the complaint under penalty of perjury, within 20 days after receipt of the date of the notice. The notice will be sent to the respondent's last known address in the Commission's records, if applicable. If the respondent is a provisionally certified guardian, ~~the~~ Commission staff must also send a copy of the complaint and attachments to the guardian's supervisor. The respondent may request an extension of time to file an answer, but the request must be made before the expiration of the 20-day period.
- (d) The Commission's staff must refer a properly executed complaint and the results of any investigation conducted by the staff Commission to a review committee established by the Commission and comprised of members of the appropriate advisory board.
- (1) The review committee must hold at least one meeting to review the complaint and answer, make the initial determination on whether a violation occurred, and impose ~~recommend the imposition of~~ a penalty, a sanction, or both.
  - (2) The review committee may hold additional meetings to consider a complaint or seek additional information, but it has no obligation to do so. The review committee is not an investigatory body and will generally render its determination recommendation to the Commission based on the submissions of the complainant and the respondent and the information gathered by an Office investigation.
  - (3) The complainant and the respondent may attend the review committee's meetings. The chair of the review committee may limit the length of comments made to the Committee.
  - (4) The review committee must state its determination and the imposed penalty or sanction, if any, make its recommendation to the Commission in writing as proposed findings of fact and conclusions of law, separately stated, and notify the respondent of its recommendation. If the review committee requests additional information, it may allow up to 30 days to provide the additional information.
- (e) The ~~Commission must review the determination and recommendation of the~~ review committee must, accept or revise the determination and recommendation as necessary, and

give the respondent written notice by certified mail of ~~its the Commission's~~ determination on whether a violation occurred and of each ~~imposed recommended~~ penalty or sanction, if any. The notice will be sent to the respondent's last known address in the Commission's records, if applicable.

- (f) The notice required under (e) must:
- (1) include a brief summary of the alleged violation;
  - (2) state the amount of any ~~recommended~~ penalty;
  - (3) state any ~~recommended~~ sanction; and
  - (4) inform the respondent of the respondent's right to a hearing on the occurrence of the violation, the amount of the penalty, or the imposition of the sanction.
- (g) The Director may dismiss complaints that clearly do not allege misconduct, ~~or that~~ are not within the Commission's jurisdiction, or allege misconduct which took place more than five years before the complaint was filed. The Director must inform the Commission and the complainant of all dismissals made under this rule. No later than 30 days after the date of the notice of dismissal, the complainant ~~A person who files a complaint that is dismissed under this rule~~ may request in writing that the Commission reconsider the complaint.

## 5.9 Penalty Paid, Sanction Accepted, or Hearing Requested

- (a) Not later than the 20<sup>th</sup> day after the date ~~that~~ the respondent receives the notice sent under Rule 5.8(e), the respondent in writing may:
- (1) accept the review committee's determination ~~of the Commission~~ and the recommended penalty or sanction; or
  - (2) request a hearing on the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.
- (b) If the respondent accepts the determination and recommended penalty or sanction ~~or fails to respond to the notice, the Commission by order must approve the determination and impose the recommended penalty or sanction. Commission staff will present the review committee's findings of fact, conclusions of law, and imposed administrative penalty or sanction to the Commission as an agreed order in accordance with Rule 5.14.~~
- (c) The Commission may accept the agreed order as a final order, revise the order, or remand the matter to the review committee for further deliberation.
- (d) The Commission shall give the respondent written notice of its decision under subsection (c). If the Commission revised or remanded the agreed order, the respondent may, not later

than the 20<sup>th</sup> day after receipt of the notice, request a hearing on the Commission's determination.

(e) If the respondent does not timely respond to the notice, given pursuant to Rule 5.8(e), of the review committee's determination and imposed penalty, sanction, or both, the Commission may issue a default order to approve the review committee's determination and accept or revise the review committee's administrative penalty, sanction, or both.

## **5.10 Notice; Hearing**

- (a) If the respondent timely requests a hearing, the Commission must give the parties written notice of the hearing that includes the time, place, legal authority, and jurisdiction under which the hearing is held and the laws and rules related to the violation. A party may not make ex parte communications with any member of the Commission regarding any matter relating to the hearing. Any written material or other evidence that is provided to the Commission regarding a hearing must be provided to the other party.
- (b) The presiding officer of the Commission may hold prehearing conferences and may issue scheduling orders, discovery control plans, orders on motions in limine, and other orders to ensure a just and efficient hearing.
- (c) The respondent may appear, testify, present evidence, and respond to questions from the Commission at the hearing. The complainant may appear and may testify at the discretion of the prosecutor and the presiding officer.
- (d) A party may appear by telephone or videoconference or present the testimony of a witness by telephone or videoconference according to the procedures below.
- (1) A party may request to appear by telephone or to present the testimony of a witness by telephone, upon timely motion stating the reason for the request, containing the pertinent telephone number, and affirmatively stating that the proposed witness will be the same person who appears telephonically at the hearing. A party may request to appear by videoconference or to present the testimony of a witness by videoconference, upon timely motion stating the reason for the request and the city in which the party or witness will be located at the time of the proceeding. A timely motion for telephone or videoconference appearance will not be deemed granted unless granted by written order of the presiding officer.
  - (2) The motion is timely if it is filed no later than 10 days before the hearing. The presiding officer may grant an exception to this requirement if it clearly appears from specific facts shown in writing that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party.
  - (3) All substantive and procedural rights apply to telephone and videoconference proceedings, subject only to the limitations of the physical arrangement.

- (4) Documentary evidence to be offered at a telephone or videoconference proceeding must be served on all parties and filed with the Commission at least 7 ~~seven~~ days before the proceeding unless the presiding officer, by written order, amends the filing deadline. If a party intends to utilize documentary evidence with a witness at a telephone or videoconference proceeding, it is the offering party's responsibility to ensure that the witness has the document.
- (5) For a telephone or videoconference proceeding, the following may be considered a failure to appear and grounds for default:
  - (A) failure to answer the telephone or videoconference line;
  - (B) failure to free the line for the proceeding; and
  - (C) failure to be ready to proceed as scheduled.
- (e) At the request of the Commission, at least one member of the applicable advisory board complaint review committee may attend the hearing to respond to ~~consult with the~~ Commission inquiries on the reasons for the advisory board complaint review committee's determination and imposed disciplinary action ~~recommendations~~ under Rule 5.8(d).
- (f) At the hearing, the Commission must apply the general rules of evidence applicable in a district court, except that the Commission may admit and consider any information that the Commission determines is relevant, trustworthy, and necessary for a full and fair adjudication and determination of fact or law. The Commission may establish rules for the conduct of the hearing.
- (g) The Commission will deliberate and announce its decision at the conclusion of the hearing. The Commission must make findings of fact and conclusions of law, which may be based upon the review committee's written determination, and must promptly issue an order on the occurrence of the violation, the amount of any penalty imposed, and the imposition of any sanction. The Commission must serve the respondent and the complainant with a copy of the order by certified mail with return receipt requested or by certified mail with electronic return receipt.
- (h) The notice of the Commission's order under (g) must include a statement of the right of the respondent to appeal the order under Section 153.058 of the Government Code.
- (i) The complainant and respondent are each responsible for their own costs of preparing for and attending the hearing.
- (j) If the respondent fails to appear at the hearing:
  - (1) upon proof that notice of the hearing was given to the respondent, the Commission may proceed in the respondent's absence; and

- (2) the factual allegations in the complaint may be deemed admitted.
- (k) Proof that a document was sent to a party's last known address, as shown by the Commission's records, creates a rebuttable presumption that the document was received. The addressee's failure to claim a document that was properly addressed and served is insufficient to rebut the presumption.

### **5.11 Options Following Decision: Pay, Accept, or Appeal**

Not later than the 30<sup>th</sup> day after the date that the Commission issues an order imposing an administrative penalty or sanction, the respondent must:

- (a) accept the obligation to pay the penalty in accordance with the order or accept the sanction;  
or
- (b) file an appeal of the Commission's order contesting the occurrence of the violation, the imposition or amount of the penalty, or the imposition of the sanction.

### **5.12 Collection of Penalty**

- (a) If the respondent does not pay the penalty and the enforcement of the penalty is not stayed, the Attorney General may sue to collect the penalty and may recover reasonable expenses, including attorney's fees, incurred in recovering the penalty.
- (b) A penalty collected under these rules will be deposited in the state treasury in the general revenue fund.

### **5.13 Appeal**

- (a) A person seeking to appeal an order that imposes a penalty or sanction must submit a written appeal of the order to the General Counsel of the Office within 30 days after the Commission's order is issued. The General Counsel must promptly forward the appeal to a special committee consisting of three Administrative Regional Presiding Judges.
- (b) The committee will be chosen by the Presiding Judges, but the committee must not include the Presiding Judge for the administrative region in which the appellant resided at the time of the decision. If the alleged violation involves a certified guardian, the committee must consist of two Regional Presiding Judges and the Presiding Judge of the statutory probate courts.
- (c) The General Counsel must notify the Commission of the filing of an appeal and, upon request, must make the appeal materials available to the Commission or its legal representative.
- (d) The appeal must contain:

- (1) a copy of the notice of the Commission's order with which the appellant is dissatisfied; and
  - (2) a statement succinctly explaining why the appellant is dissatisfied with the Commission's decision.
- (e) The Office must adopt rules or policies to ensure that any Office employee who provides clerical, administrative, or other direct support to the Commission does not communicate regarding the substance of any appeal under this rule with any other Office employee who facilitates the appeal process under this rule. The rules or policies must also provide that Office employees may communicate regarding nonsubstantive aspects of appeals, such as to ensure the completeness and accuracy of appeal materials to be forwarded to the special committee.
- (f) Upon receiving notice of an appeal of a disciplinary action imposing a penalty or sanction, the Commission must provide to the General Counsel, and the General Counsel must submit to the special committee, electronic or paper copies of the complaint and any original attachments, any written answer timely submitted by the appellant, notice of the Commission's decision imposing a penalty or sanction, and any other documents or written evidence admitted into the record considered by the Commission pertaining to the decision complained of on appeal. The Commission staff must provide a copy of these items to an appellant upon request, and may charge costs for such copies as set forth in Rule 12.7 of the Rules of Judicial Administration.
- (g) Absent approval by the special committee, submission of materials other than those described in (f) is prohibited. The special committee may, in its sole discretion, allow an appellant to submit additional written materials relating to the appeal. Otherwise, only the written materials described in (f) will be considered. A request to submit additional materials must clearly identify the additional materials for which inclusion is requested.
- (h) The special committee must consider the appeal under an abuse of discretion standard of review for all issues except issues involving questions of law. The standard of review for issues involving questions of law is de novo. Under either standard, the burden is on the appellant to establish that the Commission's decision was erroneous.
- (i) The special committee may consider the appeal without a hearing and may conduct its deliberations by any appropriate means. The special committee may, in its sole discretion, conduct a hearing and allow testimony from the appellant or any other person with knowledge of the underlying facts relating to the disciplinary action complained of.
- (j) The special committee may confer in writing with a certification, registration, or license holder who is in the same profession as the appellant if the special committee provides to the appellant:
- (1) notice of the special committee's request for information; and

- (2) a copy of the certification, registration, or license holder's response.
- (k) If the special committee sustains the finding that a violation occurred, the special committee may:
  - (1) uphold or reduce the amount of any penalty and order the appellant to pay the full or reduced amount of the penalty; and
  - (2) uphold or reduce any sanction and order the imposition of the sanction.
- (l) If the special committee does not sustain the finding that a violation occurred, the special committee must order that a penalty is not owed and that a sanction may not be imposed.
- (m) If the appellant paid the penalty and if the amount of the penalty is reduced or the penalty is not upheld by the special committee, the special committee must order that the appropriate amount plus accrued interest be remitted to the appellant not later than the 30<sup>th</sup> day after the date the judgment of the special committee becomes final. The interest accrues at the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest must be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.
- (n) The special committee must notify the Commission and appellant in writing of its decision. No rehearing or further appeal is allowed.

#### **5.14 Disposition by Agreement**

- (a) Any disciplinary matter may be disposed of by agreement, unless precluded by law. The agreement must be in writing and may be in the form of a stipulation, a settlement agreement, or a consent order.
- (b) The Commission may designate its presiding officer or the Director to adopt or reject an agreement.
- (c) The agreement must:
  - (1) include proposed findings of fact and conclusions of law; and
  - (2) be signed by all parties to the agreement and their representatives.
- (d) Upon receipt of the agreement, the Commission or the Director may:
  - (1) adopt the agreement and issue a final order;
  - (2) reject the agreement and remand the disciplinary matter for a hearing before the Commission;

- (3) reject the agreement and order further investigation ~~by the Director~~; or
- (4) take such other action as the Commission or the Director find just.

### **5.15 Alternative Dispute Resolution**

- (a) In addition to the procedures under Rule 5.14, the Commission encourages the resolution and early settlement of all contested disciplinary matters through voluntary settlement procedures.
- (b) At any time after the filing of a complaint against a ~~regulated person~~ respondent and before referral to a review committee under Rule 5.8(d), the Director may initiate a settlement conference on the Director's own motion or at the request of any party. Settlement conferences are voluntary.
- (c) The Director, on behalf of Commission staff, complainant and the respondent are the parties in a settlement conference. The complainant Commission (through one or more Commission members, Office staff, or counsel) may also participate as a party in a settlement conference at the sole option of the presiding officer.
- (d) A settlement conference may be used to reach agreement about all or a portion of the ultimate issues in a disciplinary matter or to reach agreement about how to handle disputed matters. The parties may use a mediator for a settlement conference or conduct the settlement conference without a mediator.
- (e) The parties to a settlement conference cannot complainant and the respondent may not bind the Commission to any resolution of a disciplinary matter pending before the Commission. The presiding officer may appoint one or more Commission members or staff to attend the settlement conference. The Commission representative must participate in the proceedings in an effort to resolve the dispute within the parameters of any instructions received from the Commission and must recuse themselves from any subsequent hearings or deliberations regarding the case.
- (f) In the event a settlement of some or all of the disputed issues is reached during the settlement conference, the Commission must review the terms of the settlement at the next regularly scheduled Commission meeting. The Commission may accept the settlement terms, reject the settlement terms and restore all proceedings on the disciplinary matter to the status quo as it existed immediately prior to the settlement conference, or refer the matter for further negotiation.
- (g) The parties may agree to retain a mediator to assist with the settlement conference.
  - (1) The parties must notify the presiding officer in writing of their agreement to retain a mediator. That notice must include the name, address, and telephone number of the mediator selected; a statement that the parties have entered into an agreement

with the mediator as to rate and method of his or her compensation; and an affirmation that the mediator is qualified to serve.

- (2) Upon receipt of a properly filed notice under (1), the presiding officer will enter an order referring the case to the mediator.
- (h) If the parties do not agree to a mediator, the presiding officer may appoint an individual to serve as mediator in the settlement conference.
- (i) An individual appointed to serve as a mediator under (g) or (h) must meet the qualifications set forth in the Civil Practice and Remedies Code Section 154.052. ~~Pursuant to Section 154.052(e) of the Code, an individual who has served as a judge in Texas may be appointed to serve as a mediator.~~
- (j) The Commission will not pay any fees or costs associated with a settlement conference unless good cause is shown and the Commission and Office agree to do so prior to the settlement conference.
- (k) All communications in the settlement conference between or among the parties, and between each party and mediator, if any, are confidential under the same terms as provided in Section 154.053 of the Civil Practice and Remedies Code. Information shared with the mediator in separate meetings will not be given to any other party unless the party sharing the information explicitly gives the mediator permission to do so. Material provided to the mediator is not required to be provided to the other parties and will not be filed or become a record in the disciplinary proceedings. Notes taken during the settlement conference by the parties and the mediator must be destroyed at the end of the process.
- (l) Any agreement reached by the parties will be reduced to writing and signed by the parties before the end of the settlement conference. These writings may be informal in nature. The parties may agree that the written agreement remain confidential if there is no requirement of law to the contrary. Any part of the agreement that may affect the disposition of the disciplinary proceeding (such as agreements concerning relevant facts) must be filed in the record of the disciplinary proceeding.
- (m) If the parties use a mediator for the settlement conference, the mediator must maintain confidentiality in accordance with Section 2009.054 of the Government Code. The mediator may not communicate to the Commission matters discussed with the parties in the settlement conference. The mediator will report to the Commission in writing whether the settlement conference resulted in a settlement of the matter in dispute, or other stipulations or matters that the parties agreed be reported.
- (n) Required Filings. The following documents must be filed with the Commission: any request for the appointment of a mediator, any objection to the referral of the matter to a settlement conference, any objection to the appointment of a mediator, any notice required to be given, any settlement agreement, any report prepared by the mediator, and any similar

documents as may become necessary or appropriate in the course of the settlement conference.

## **6.0. Court Reporters Certification and Shorthand Reporting Firms Registration**

### **6.1 Definitions**

- (a) **Advisory Board** means the Court Reporters Certification Advisory Board.
- (b) **Certification** means a certification issued by the Supreme Court of Texas on the Commission's recommendation.
- (c) **Code of Ethics Professional Conduct** means the Code of Ethics or, if applicable, its predecessor, the Code of Professional Conduct for Certified Shorthand Reporters and Court Reporting Firms approved by the Supreme Court of Texas.
- (d) **Court reporter** and **shorthand reporter** mean a person who engages in shorthand reporting.
- (e) **Court reporting** and **shorthand reporting** mean the practice of shorthand reporting for use in litigation in the courts of this State by making a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.
- (f) **Court reporting firm, shorthand reporting firm, and affiliate office** mean an entity wholly or partly in the business of providing court reporting or other related services in this State. A court reporting firm, shorthand reporting firm, or affiliate office is considered to be providing court reporting or other related services in this State if:
  - (1) any act that constitutes a court reporting service or shorthand reporting service occurs wholly or partly in this State;
  - (2) the firm or affiliate office recruits a resident of this State through an intermediary located inside or outside of this State to provide court reporting services, shorthand reporting services, or other related services in this State; or
  - (3) the firm or affiliate office contracts with a resident of this State by mail or otherwise and either party is to perform court reporting services, shorthand reporting services, or other related services wholly or partly in this State.
- (g) **Official court reporter** means the shorthand reporter appointed by a judge under Section 52.041 of the Government Code as the official court reporter for a particular court.
- (h) **Registration** means a registration issued by the Commission.

(i) RMR means a Registered Merit Reporter certification issued by the National Court Reporters Association.

(j)⊕ **RPR** means the Registered Professional Reporter certification issued by the National Court Reporters Association.

(k)⊕ **Uniform Format Manual** means the manual approved by the Supreme Court of Texas that governs the form of official reporters' records and freelance transcriptions.

## 6.2 Requirement of Certification or Registration

(a) A person may not engage in shorthand reporting in this State or be appointed as an official court reporter or deputy court reporter unless that person is certified as a shorthand reporter by the Supreme Court of Texas.

(1) A certification must be for one or more of the following methods of shorthand reporting:

(A) written shorthand;

(B) machine shorthand;

(C) oral stenography; or

(D) any other method of shorthand reporting authorized by the Supreme Court.

(2) A person may not assume or use the title or designation "court recorder," "court reporter," or "shorthand reporter," or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the person is a court reporter or shorthand reporter, unless the person is certified as a shorthand reporter by the Supreme Court of Texas. Nothing in this rule must be construed to either sanction or prohibit the use of electronic court recording equipment operated by a noncertified court reporter pursuant and according to rules adopted or approved by the Supreme Court of Texas.

(b) A court reporting firm and its affiliate offices must register with the Commission. Unless a firm and its affiliate offices are registered with the Commission, the firm must not:

(1) use the title or designation "court recording firm," "court reporting firm," or "shorthand reporting firm" or any abbreviation, title, designation, words, letters, sign, card, or device tending to indicate that the firm is a court reporting firm or shorthand reporting firm; or

(2) offer services as a court reporting firm or shorthand reporting firm, ~~unless the firm and its affiliate offices are registered with the Commission.~~

~~(c)~~ — A certification or registration expires at 12:01 a.m. on January 1 following the second anniversary of the date on which it was issued unless the certification or registration is renewed before that time pursuant to Rule 6.3(d)(1). Thereafter, the certification or registration expires at 12:01 a.m. on each second January 1 unless renewed.

~~(c)(d)~~ These rules do not apply to:

- (1) a party to the litigation involved, the party's attorney, or a full-time employee of either; or
- (2) court reporting services performed outside of this State by a shorthand reporter who is not certified in this State for use in a court proceeding in this State, provided that the work resulting from those services is produced and billed wholly outside of this State.

~~(d)(e)~~ Subject to the requirements of Rule 6.4(d) and (e), nothing in these rules should be construed to prohibit the employment of a noncertified shorthand reporter until a certified shorthand reporter is available in the judicial district where services of a shorthand reporter are desired.

~~(e)(f)~~ To qualify for certification, a person must:

- (1) satisfy the requirements of Section 3.0 of these rules;
- (2) pass an examination as required by the Commission in one or more of the methods of shorthand reporting authorized by Rule 6.2(a)(1); and
- (3) be a high school graduate or possess the GED equivalent.

~~(f)(g)~~ Examination procedures.

- (1) To take an examination, an applicant for certification must file the required forms and pay the required fees according to the deadlines established by the Commission.
- (2) Prior to or simultaneously with the submission of an applicant's application to take Part A of the examination, the applicant must submit a statement of proficiency.
  - (A) The statement of proficiency must be on the form provided by the Commission and must contain the certification of a court reporting school instructor.
  - (B) If the applicant attended and learned court reporting skills at a court reporting school, the statement of proficiency must be countersigned by the appropriate administrative officer of the school.

- (C) The person making the certification required in (f)(2)(A) must certify that the applicant has satisfactorily passed at the rate of 95% accuracy at least two tests on new material of each of the following:
- (i) five minutes of two-voice dictation of questions and answers given at 225 words per minute;
  - (ii) five minutes of dictation of a jury charge given at 200 words per minute; and
  - (iii) five minutes of dictation of selected literary material given at 180 words per minute.
- (D) The tests required by (f)(2)(C) ~~(e)~~ must be administered and graded by the person who certifies the applicant's statement of proficiency and must be taken by the method of shorthand reporting for which the applicant has applied for examination. The two tests must have been taken and passed no more than one year apart.
- (E) The applicant may not be deemed eligible to take an examination until the Commission receives the statement of proficiency.
- (F) If the Commission has on file a valid statement of proficiency for an applicant, the applicant is not required to file a new statement of proficiency. A statement of proficiency is valid for one year from the date of the last proficiency test described in (f)(2)(C) ~~(e)~~ and must be valid on the date of the examination for which the applicant has applied.
- (G) In lieu of the statement of proficiency, an applicant who:
- (i) is licensed in good standing in another jurisdiction may submit proof of licensure from the licensing authority of that jurisdiction; or
  - (ii) is certified as an RMR, as an RPR, or pursuant to a national examination that the Commission determines is of equivalent or greater degree of difficulty than the RMR or RPR examinations may submit a letter from the certifying organization.
- (H) The letter submitted under (f)(2)(G) must:
- (i) be an original on the certifying organization's letterhead;
  - (ii) state the certification that the applicant has attained and the date the certification expires; and

(iii) attest that the applicant has passed the exam for the certification and is currently certified and in good standing.

(I) The national certification must be valid on the date of the Texas examination for which the applicant has applied.

(J) The letter submitted under ~~(f)(2)~~(G) is valid until the next expiration date of the applicant's national certification.

~~(g)(h)~~ Each examination will be given in two parts to be designated Part A and Part B.

(1) Part A component.

(A) Part A will be composed of five minutes of two-voice dictation of questions and answers given at 225 words per minute, five minutes of dictation of a jury charge given at 200 words per minute, and five minutes of dictation of selected literary material given at 180 words per minute.

(B) Each applicant must personally take down the test and must reduce the takedown to writing.

(C) The minimum passing grade on each section of Part A is 95% accuracy. An error will be charged for:

(i) each wrong word;

(ii) each omitted word;

(iii) each added word not dictated;

(iv) each contraction where read as two words;

(v) two words where read as a contraction;

(vi) each misplaced word;

(vii) each misplaced period that materially alters the sense of a group of words or a sentence;

(viii) each misspelled word;

(ix) each plural or singular if the opposite was dictated; and

(x) each wrong number.

(D) Applicants may use a dictionary during Part A.

- (E) Applicants will be allowed three hours to complete the transcription of Part A of the test. If time permits, an applicant may review his or her transcript but may use only the original takedown from which the transcript was prepared to review the transcript.
- (2) Part B component.
  - (A) Part B of the test must consist of objective questions touching on elementary aspects of court reporting, spelling, and grammar and Texas rules and procedure.
  - (B) Applicants may not use a dictionary during Part B.
  - (C) The minimum passing grade on Part B is 75%.
- (3) Notwithstanding Rule 3.11(d), an applicant who passes Part A or Part B of the examination but fails the other part will not be required to be reexamined on the part that the applicant passed.
- ~~(h)(i)~~ An applicant who fails an examination may request that the examination be regraded by sending a written request to the Commission office within 20 days of the date of notice that the applicant has failed the examination. If the examination is regraded, the Commission will inform the applicant of the results of the regrading. Upon receipt of the regrading results, the applicant may request a personal review of the examination with a member of the advisory board. The request for a personal review must be in writing and filed within ~~twenty~~ 20 days of the notice of regrading results.
- ~~(i)(j)~~ The Commission must certify to the Supreme Court of Texas the names of applicants who have completed all application requirements and are determined on examination to be qualified in professional shorthand reporting. In its certification, the Commission must specify the method or methods of reporting used by each successful applicant in taking the examination.
- ~~(j)(k)~~ A person certified under Chapter 52 of the Government Code prior to September 1, 1983, may retain a general certification authorizing the person to use any method of shorthand reporting authorized in Rule 6.2(a)(1), provided that the person keeps the certification in continuous effect.
- ~~(k)(l)~~ To register, a court reporting firm or affiliate office must pay all required fees and register on a form provided by the Commission. The registration form must state whether any officers, directors, or managerial employees of the firm or affiliate office have been finally convicted of a felony or misdemeanor other than a minor traffic offense or juvenile offense.
- ~~(l)(m)~~ The Commission may:

- (1) refuse to certify to the Supreme Court the application of a person who was finally convicted of an offense that directly relates to the duties and responsibilities of a certified court reporter as determined using the factors listed in Rule 3.5; or
- (2) refuse to register a court reporting firm or affiliate office if an officer, director, or managerial employee of the firm or affiliate office was finally convicted of a felony or misdemeanor that directly relates to providing court reporting services as determined using the factors listed in Rule 3.5.

### **6.3 Renewal of Certification or Registration**

- (a) Notwithstanding Rule 3.2(b), not later than the 30<sup>th</sup> day before the date a court reporter's or court reporting firm's certification or registration is scheduled to expire, the Commission will notify the reporter or firm of the impending expiration at the reporter's or firm's last known address according to the Commission's records. Failure to receive the notice does not exempt a court reporter or a court reporting firm from any requirements of these rules.
- (b) Nonrenewal due to student loan default.
  - (1) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation (TGS LC) under Section 57.491(e) of the Education Code unless the reporter presents to the Board a certificate issued by TGS LC certifying that:
    - (A) the reporter has entered a repayment agreement on the defaulted loan; or
    - (B) the reporter is not in default on a loan guaranteed by TGS LC.
  - (2) The Commission must not renew the certification of a certified shorthand reporter who is designated to be in default on a repayment agreement with TGS LC under Section 57.491(g) of the Education Code unless the reporter presents to the Commission a certificate issued by TGS LC certifying that:
    - (A) the reporter has entered another repayment agreement on the defaulted loan; or
    - (B) the reporter is not in default on a loan guaranteed by TGS LC or on a repayment agreement.
  - (3) The Commission must provide a certified shorthand reporter an opportunity for a hearing under the procedures set out in Rule 5.10 prior to taking action concerning nonrenewal of certification for default on a student loan.
- (c) To qualify for renewal of certification or registration, a certified court reporter, court reporting firm, or affiliate office must pay all required fees, submit all required forms, and

comply with renewal procedures. In addition, certified court reporters must comply with the Commission's continuing education requirements in Rules 4.1-4.3 and 6.6. An application for renewal must state:

- (1) if the applicant is a court reporter, whether the applicant has been finally convicted of a criminal offense other than a minor traffic offense since the reporter's last certification;
- (2) if the applicant is a court reporting firm or affiliate office, whether an officer, director, or managerial employee has been finally convicted of a criminal offense other than a minor traffic offense since the firm's or affiliate office's last registration; and
- (3) if the applicant is a court reporter, whether the applicant has ever been the subject of a disciplinary action by a licensing authority in another jurisdiction requiring certification, registration, or licensure to provide court reporting services, and whether the applicant is the subject of a pending disciplinary action before the Commission, including actions in which the Commission imposed a sanction that has not been completed.

~~(d) — Renewal before and after expiration.~~

- ~~(1) — A person who is otherwise eligible to renew a certification or registration may renew an unexpired certification or registration by paying the required renewal fee and submitting the required forms to the Commission before the expiration of the certification or registration.~~
- ~~(2) — A person whose certification or registration has expired may not engage in activities that require a certification or registration until the certification or registration has been renewed.~~
- ~~(3) — A person whose certification or registration has been expired for less than one year may renew the certification or registration by paying to the Commission the appropriate renewal fee.~~
- ~~(4) — A person whose certification or registration has been expired for one year or more may not renew the certification or registration. The person may obtain a new certification or registration by complying with the requirements and procedures for obtaining an original certification or registration, including the examination requirements.~~
- ~~(5) — A person who was certified as a court reporter in this State, moved to another state, and is currently certified and has been in practice in the other state for the two years preceding the date of application may obtain a new certification without reexamination if the person:~~

- ~~(A) — submits appropriate renewal forms and documentation showing that the person has complied with the continuing education requirements in the Commission’s rules;~~
  - ~~(B) — pays the appropriate renewal fee;~~
  - ~~(C) — submits documentation from the other state indicating that the person is currently licensed, has been licensed for the two years immediately preceding the application for renewal in Texas, and is in good standing; and~~
  - ~~(D) — submits documentation from the person’s employer showing that the person has been working for at least two consecutive years prior to the date of application in Texas.~~
- ~~(6) — The documentation required under (d)(5)(D) must include the beginning date of the person’s employment and must be original, notarized, and on the employer’s letterhead. If the person has been employed by more than one employer during the two-year period, the person must submit documentation from each employer showing the beginning and ending date of the person’s employment.~~

#### **6.4 Responsibilities of Certified Court Reporters**

- (a) A certified court reporter is entitled to use the title “Certified Shorthand Reporter” or the abbreviation “CSR.” A certified shorthand reporter may administer oaths to witnesses anywhere in this State.
- (b) The transcription of any proceeding and any other document certified by a certified shorthand reporter for use in litigation in the courts of this State must contain a signed certificate certification in the form required by the Uniform Format Manual.
- (c) A certification of a transcript of a court proceeding by an official court reporter must contain a signed certificate in the form required by the Uniform Format Manual.
- (d) A noncertified shorthand reporter may report an oral deposition only if:
  - (1) the noncertified reporter delivers an affidavit to the parties or to their counsel present at the deposition stating that a certified shorthand reporter is not available; or
  - (2) the parties or their counsel stipulate on the record at the beginning of the deposition that a certified shorthand reporter is not available.
- (e) A noncertified shorthand reporter who is employed when a certified shorthand reporter is not available must include with the certification of a transcription of a court proceeding an affidavit that no certified shorthand reporter was available to perform the duties of the court reporter.

- (f) Official court reporters, deputy court reporters, and substitute court reporters must comply with the Act, Chapter 52 of the Government Code, and all applicable provisions of the Texas Rules of Appellate Procedure in conducting of the business of their offices.

## 6.5 Enforcement

- (a) After notice and an opportunity for a hearing under Rule 5.10, the Commission ~~may must~~ reprimand, ~~impose an administrative penalty assess a reasonable fine against,~~ or ~~deny,~~ suspend, revoke, or refuse to renew a shorthand reporter's certification for:
  - (1) fraud or corruption;
  - (2) dishonesty;
  - (3) willful or negligent violation or failure of duty;
  - (4) incompetence;
  - (5) fraud or misrepresentation in obtaining certification;
  - (6) a final conviction of an offense that directly relates to the duties and responsibilities of a certified shorthand reporter, as determined using the factors listed in Rule 3.5;
  - (7) engaging in the practice of shorthand reporting using a method for which the reporter is not certified or while certification is suspended;
  - (8) unprofessional conduct, including but not limited to:
    - (A) failing to deliver a transcript or statement of facts to a client or court in a timely manner as determined by statute, court order, or agreement;
    - (B) producing an inaccurate transcript or statement of facts;
    - (C) producing an incomplete transcript or statement of facts except upon order of a court, agreement of the parties, or request of a party;
    - (D) failing to disclose as soon as practical to the parties or their attorneys existing or past financial, business, professional, family, or social relationships, including contracts for court reporting services, that might reasonably create an appearance of partiality;
    - (E) advertising or representing falsely the qualifications of a certified shorthand reporter or that an unlicensed individual is a certified shorthand reporter;

- (F) failing to charge all parties or their attorneys to an action the same price for an original transcript or statement of facts and failing to charge all parties or their attorneys the same price for a copy of a transcript or statement of facts or for like services performed in an action;
- (G) failing to disclose in writing to all parties or their attorneys upon request at any time an itemization of all rates and charges to all parties or their attorneys;
- (H) reporting any proceeding if the reporter is related to a party or their attorney within the second degree by affinity or consanguinity unless:
  - (i) as soon as practicable, the reporter discloses the relationship in writing to all parties and the court; and
  - (ii) either
    - A. no objection to the use of the reporter on the grounds of the relationship is made by any party or the court within a reasonable period after the disclosure; or
    - B. the court enters an order finding that, under the circumstances, the relationship does not create an appearance of partiality and that good cause exists to permit use of the reporter;
- (I) reporting a proceeding if the reporter is financially interested in the action or is associated with a firm that is financially interested in the action;
- (J) failing to notify all parties or their attorneys of a request for a transcript or statement of facts, or any part thereof, in sufficient time for copies to be prepared and delivered ~~simultaneously with the original~~;
- (K) going “off the record” during a deposition when not agreed to by all parties or their attorneys unless ordered to do so by the court;
- (L) giving, directly or indirectly, benefiting from, or being employed as a result of any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate per recipient per year; and
- ~~(M) charging for a copy at a rate more than one third the per page cost of the original and first copy; and~~
- ~~(M)(N)~~ failing to comply with the requirements of the Uniform Format Manual for Texas Court Reporters;

- (9) entering into or providing services under a prohibited contract described by Section 154.115 of the Government Code; or
- (10) committing any other act that violates Chapter 154 of the Government Code, a rule adopted under the Act, or a provision of the Code of Ethics. Professional Conduct;  
~~or~~

~~(11) —other sufficient cause.~~

(b) In this rule, an officer, director, or managerial employee of a shorthand reporting firm or affiliate office will be referred to as “a principal.” After notice and an opportunity for a hearing under Rule 5.10, the Commission may reprimand, ~~assess a reasonable fine against~~ impose an administrative penalty, or deny, suspend, revoke, or refuse to renew the registration of a shorthand reporting firm or affiliate office for:

- (1) fraud or corruption;
- (2) dishonesty;
- (3) conduct on the part of a principal if the principal orders, encourages, or permits conduct that the principal knows or should have known violates this chapter;
- (4) failure of a principal to take reasonable remedial action to avoid or mitigate the consequences of conduct by a person who the principal knows or should have known violated this chapter and over whom the principal has direct supervisory authority;
- (5) fraud or misrepresentation in obtaining registration;
- (6) a final conviction of a principal of a felony or misdemeanor that directly relates to providing court reporting services, as determined under Rule 3.5;
- (7) engaging the services of a reporter that the shorthand reporting firm or affiliate office knew or should have known was using a method for which the reporter is not certified;
- (8) knowingly providing court reporting services while the shorthand reporting firm’s or affiliate office’s registration is suspended or engaging the services of a shorthand reporter whose certification was suspended if a principal knew or should have known of the suspension;
- (9) unprofessional conduct, including a pattern of giving (directly or indirectly), benefiting from, or being employed as a result of giving any gift, incentive, reward, or anything of value to attorneys, clients, or their representatives or agents, except for nominal items that do not exceed \$100 in the aggregate for each recipient each

year— provided, however, that nothing in this rule should be construed to define providing value-added business services, including long-term volume discounts, such as the pricing of products and services, as prohibited gifts, incentives, or rewards;

(10) entering into or providing services under a prohibited contract described by Section 154.115 of the Government Code;

(11) committing any other act that violates Chapter 154 of the Government Code, a rule adopted under the Act, or a provision of the Code of ~~Ethics. Professional Conduct;~~  
~~or~~

~~(12) —other sufficient cause.~~

(c) When a certified shorthand reporter or court reporting firm reports an alleged violation to the Commission pursuant to the reporting obligation in the Code of ~~Professional Conduct Ethics~~, the information must be provided in writing and must be signed by the person providing the information and accompanied by pertinent documentation, if any.

## **6.6 Continuing Education**

(a) A certified court reporter must complete at least 10 hours of approved continuing education during each certification period. The 10 hours must include a minimum of 2.5 hours in ethics, Texas rules, or both. A certified court reporter may carry forward to the next certification period up to 4 hours of continuing education hours, but ethics credit may not be carried forward.

(b) The required hours must be earned prior to the expiration of the certified court reporter's certification period.

(c) Notwithstanding Rule 4.3~~(e)(1)~~, a certified court reporter must submit requests for approval of continuing education no later than 2 months before the date the by September 30 of the year that the reporter's certification expires.

(d) Continuing education may be earned by:

(1) verified attendance or participation in an approved program, activity, or course;

(2) verified personal preparation of educational presentations pertaining to the profession of court reporting or serving as an instructor, speaker, or panel member at an approved continuing education course; or

(3) writing articles pertaining to the court reporting profession that are published in a state or nationally recognized professional journal of court reporting or law— provided, however, that no more than 2.5 hours may be earned under this category during any one certification period.

- (e) Credit earned under (d)(2) will be awarded as follows:
  - (1) for participation as an instructor in an approved continuing education program, the number of hours approved for attendees of the presentation; and
  - (2) for preparation time, up to 2.5 hours.
- (f) A court reporter may earn preparation and teaching credit for instructing an approved continuing education course only one time per certification period.
- (g) An article submitted under (d)(3) must be approved by the Director to receive continuing education credit. Credit will not be allowed for the same article published in more than one publication.
- (h) All courses must be relevant to the needs of court reporters and the reporting service needs of users and must:
  - (1) contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the individual in the practice of shorthand reporting;
  - (2) include at least one subject that is directly related to the court reporter's ability to produce accurate and timely transcripts, such as:
    - (A) English, including grammar, linguistics, and transcript styles;
    - (B) medicine, including terminology, techniques, and concepts likely to be encountered during litigation;
    - (C) the legal system, including litigation procedures and substantive presentations on various specialties within the law;
    - (D) technology-related subjects, including terminology and concepts likely to be encountered during litigation (e.g., accident reconstruction) and technological developments in the field of court reporting (e.g., computer technology);
    - (E) transcript preparation; or
    - (F) business management, including financial issues, personnel issues, and time management.
- (i) In addition to the activities listed in Rule 4.3(k), the following do not qualify as continuing education activities for certified court reporters under these rules:
  - (1) entertainment and recreation;

- (2) tours or visiting exhibits;
- (3) any function for which the court reporter receives remuneration as part of his or her regular employment;
- (4) courses that emphasize nonverbal skills (e.g., golf, tennis, dancing, basket-weaving, CPR or first aid courses, floral design, etc.);
- (5) any activity completed before the first renewal period for which the renewal applicant is required to obtain continuing education; and
- (6) reading books or articles or submitting book reviews, article reviews, or tests (including those books and accompanying tests that are part of the approved reading list of the National Court Reporters Association).

## **7.0 Guardianship Certification**

### **7.1 Definitions**

- (a) **Certified guardian** means a person who is certified by the Commission to provide guardianship services in this State.
- (b) **Corporate fiduciary** has the meaning assigned by Section 1002.007 of the Estates Code.
- (c) **Engaged in the business of providing guardianship services** means to perform, offer to perform, or advertise the performance of guardianship services for compensation.
- (d) **Guardian** has the meaning assigned by Section 1002.012 of the Estates Code.
- (e) **Guardianship program** means a corporation; partnership; firm; other business entity; local, county, or regional agency; or nonprofit entity program that provides guardianship and related services to an incapacitated person or other person who needs assistance in making decisions concerning the person's own welfare or financial affairs. This definition does not apply to service-providers that provide guardianship services pursuant to a contract with the Health and Human Services Commission Office of Guardianship.
- (f) **Guardianship services** means conducting, performing, or administering the duties and powers prescribed by the Estates Code or under a court order in a guardianship matter.
- (g) **Incapacitated person** has the meaning assigned by Section 1002.017 of the Estates Code.
- (h) **Code of Ethics and Minimum Standards for Guardianship Services** means the document titled "Code of Ethics and Minimum Standards for Guardianship Services" promulgated under Section 155.101 and Section 155.152 of the Government Code.

- (i) **Private professional guardian** means a person, other than an attorney or a corporate fiduciary, who is engaged in the business of providing guardianship services.
- (j) **Provisionally certified guardian** means a person who has received provisional certification to provide guardianship services in this State from the Commission.
- (k) **Supervisor** means a certified guardian who has notified the Commission that he or she will be responsible for overseeing ~~an applicant for provisional certification~~ a provisionally certified guardian.
- (l) **Volunteer** means a person who renders guardianship services on behalf of a guardianship program or on behalf of the Health and Human Services Commission Office of Guardianship ~~Department of Aging and Disability Services~~ and who does not receive compensation that exceeds the authorized expenses that the person incurs in performing those services.
- (m) **Ward** has the meaning assigned by Section 1002.030 of the Estates Code.

## 7.2 Requirement of Certification

- (a) To provide guardianship services in this State, the following individuals must be certified by the Commission:
  - (1) an individual who is a private professional guardian;
  - (2) an individual who will provide those services to a ward of a private professional guardian or to a ward of an attorney who is appointed guardian on the guardian's behalf;
  - (3) an individual who will supervise the provision of those services, other than a volunteer, who will provide those services, or other services under Section 161.114, Human Resources Code, to a ward of a guardianship program ~~or the Department of Aging and Disability Services on the program's or department's behalf;~~
  - (4) an individual who will provide or supervise the direct provision of those services to a ward on behalf of the Health and Human Services Commission Office of Guardianship; and
  - (5) a person who at any time supervises direct providers of guardianship services, unless the person is an attorney or corporate fiduciary exempt under Section 155.001(6) of the Government Code.
- (b) To be eligible for certification, a person must:
  - (1) satisfy the requirements of Section 3.0 of these rules;

- (2) be at least 21 years of age;
- (3) be a high school graduate or possess the GED equivalent;
- (4) have two years of relevant work experience related to guardianship or have met the following education or training requirements:
  - (A) a minimum of a bachelor's degree conferred by a college or university accredited by an organization recognized by the Texas Higher Education Coordinating Board in a field related to guardianship; or
  - (B) completion of a course curriculum or training specifically related to guardianship approved by the Commission;
- (5) successfully pass, after no more than four exam attempts, an examination approved by the Commission that covers Texas law and procedure related to guardianship and any other examination required and approved by the Commission testing knowledge of guardianship issues;
- (6) attest under penalty of perjury whether he or she has ever been adjudged guilty of, or entered a plea of guilty or no contest in return for a grant of deferred adjudication with respect to, any felony or misdemeanor offense, which will be considered using the factors listed in Rule 3.5; and
- (7) attest under penalty of perjury whether he or she:
  - (A) has ever been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
  - (B) has ever been found civilly liable or settled a claim in an action, including but not limited to a surcharge action, that involved allegations of fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion on the applicant's part;
  - (C) has ever been denied certification or had his or her certification revoked or suspended in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship services; or
  - (D) has ever surrendered his or her certification in Texas or any other jurisdiction that requires certification, registration, or licensure to provide guardianship certification.

- (c) If any of the circumstances described in (b)(6) or (7) exist, the applicant must describe the circumstances with particularity and provide any related documentation requested by the Commission.
- (d) Examination.
  - (1) An individual who has failed the exam four times is not eligible for certification unless the individual petitions the Commission in writing for permission to take the exam again. The petition must set out in detail all facts that support the request, demonstrate that the individual has completed all other requirements for certification except for passing the exam, and demonstrate that no other impediments to certification exist.
  - (2) The Commission must consider the petition at its next regularly scheduled meeting and determine, without a formal hearing, whether permission to take the exam again will be granted or denied. The Commission may impose conditions to granting permission, including requiring the petitioner to provide additional information or complete specified continuing education prior to taking the exam again. If an individual fails or refuses to strictly and completely comply with the conditions specified by the Commission, permission to take the exam again will be denied.
  - (3) An individual may petition the Commission only one time for permission to take the exam following four unsuccessful attempts. An individual who is granted permission to take the exam again and who fails the exam again is not eligible for certification. If the Commission denies permission to take the exam again, the individual is not eligible for certification.
  - (4) The decision of the Commission is final and is not subject to appeal, reconsideration, or any further action.
- (e) Notwithstanding Rule 7.2(a), an individual who must be certified but does not meet the requirements for certification under Rule 7.2(b) may provide guardianship services in this State if the person obtains provisional certification pursuant to Rule 7.4.
- (f) Notwithstanding any other provision of these rules:
  - (1) pursuant to Section 1104.253 of the Estates Code, a family member or friend of an incapacitated person is not required to be certified under these rules to serve as the person's guardian; and
  - (2) an employee of the United States ~~Department of Veterans Affairs Veterans Administration~~ appointed to serve as a guardian for an incapacitated person ~~under Section 1002.017(3) of the Estates Code~~ is not required to be certified under these rules to serve as the person's guardian.

~~(g) Upon certification, the certified guardian will be issued a certificate, which will be valid for two years from the date of issuance. New certificates will be issued for successive two-year periods upon timely and satisfactory completion of the renewal process.~~

~~(g)(h)~~ A certified guardian may use the designation “TxCG” to indicate that the guardian is certified by the Commission. Provisionally certified guardians may not use such designation.

### **7.3 Responsibilities of Certified Guardians; Reporting Requirements**

(a) Standards and Rules. A certified guardian must comply with these rules and with the Code of Ethics and Minimum Standards for ~~the Provision of~~ Guardianship Services adopted by the Commission.

(b) Notice to Commission and Courts. A certified guardian must immediately notify the Commission and all courts in which the guardian is serving, if:

- (1) the guardian is indicted for, formally charged with, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication with respect to any felony or misdemeanor offense;
- (2) any proceeding listed in Rule 7.2(b)(7) is initiated;
- (3) events or circumstances would require any changes to the attestation required by Rule 7.2(b)(7); or
- (4) the guardian is removed as a guardian under Chapter 1203 of the Estates Code.

(c) Notice from Commission. If the Commission receives notice of any of the items in (b) in any manner other than from the certified guardian, the Director will contact the certified guardian regarding the notice by first class mail. Notice from the Director on behalf of the Commission is deemed given when sent to the certified guardian at the last home address on file in the Commission’s records.

(d) Documents filed with court. Each document prepared by or on behalf of a certified guardian and filed with a court must include the certified guardian’s certification number.

(e) Not later than January 31 of each year, each guardianship program must provide to the Commission the following information for the preceding year:

- (1) the number of wards served by the guardianship program reported by county in which the application to create a guardianship for the ward was filed, and the total number of wards served by the guardianship program;

- (2) the name, business address, and business telephone number of each individual employed by or volunteering or contracting with the guardianship program to provide guardianship services to a ward or proposed ward of the program;
  - (3) the name of each county in which an individual described in (e)(2) provides or is authorized to provide guardianship services;
  - (4) the total amount of money received from the State of Texas for the provision of guardianship services; and
  - (5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources.
- (f) Not later than January 31 of each year, each private professional guardian must provide to the Commission the following information for the preceding year:
- (1) the number of wards served by the private professional guardian reported by county in which the application to create a guardianship for a ward was filed and the total number of wards served by the private professional guardian, including the name of each ward and the docket number and court having jurisdiction of the guardianship;
  - (2) the aggregate fair market value of the property of all wards that was managed by the private professional guardian;
  - (3) the name, business address, and business telephone number of each individual who provided guardianship services to a ward of a private professional guardian on behalf of the private professional guardian;
  - (4) the total amount of money received from the State of Texas for the provision of guardianship services;
  - (5) the amount of money received from any other public source, including a county or the federal government, for the provision of guardianship services, reported by source, and the total amount of money received from those public sources;
  - (6) whether the private professional guardian was removed as a guardian by the court or resigned as a guardian in a particular case, and, if so, a description of the circumstances causing the removal or resignation, the style of the suit, the docket number, and the court having jurisdiction over the proceeding;
  - (7) reaffirmation of Rule 7.2(b)(6) and (7); and

- (8) a copy of the private professional guardian's application for a certificate of registration with each county clerk required by Section 1104.302 of the Estates Code.
- (g) Not later than January 31 of each year, the Health and Human Services Commission Office of Department of Aging and Disability Services Guardianship ~~Program~~ must provide to the Commission a statement containing:
- (1) the name, address, and telephone number of each ~~department~~ employee who is or will be providing guardianship services to a ward or proposed ward on behalf of the Office of Guardianship ~~the department; and~~
  - (2) the name of each county in which each employee named in (1) is providing or is authorized to provide those services; and
  - (3) the total number of wards who receive guardianship services from the Office of Guardianship.
- (h) Information that must be submitted under (e), (f), and (g) must be submitted on appropriate forms and in the manner determined by the Commission.

#### **7.4 Provisional Certification**

- (a) Application for provisional certification. An individual who does not meet the requirements for certification in Rule 7.2(b)(4) and (5) may apply for provisional certification in writing on the forms provided by the Commission. An applicant for provisional certification must identify the applicant's supervisor on the application form. The supervisor must sign the application form.
- (b) Requirements for provisional certification. To be eligible for provisional certification, an applicant must meet all requirements in Rule 7.2(b)(1)-(3), (b)(6)-(7), and (c). Provisional certification expires on the second anniversary of the date the certificate is issued.
- (c) Responsibilities of provisionally certified guardian.
- (1) A provisionally certified guardian may provide guardianship services in this State only under the supervision of a certified guardian supervisor. In order to maintain provisional certification, a provisionally certified guardian must have a certified guardian supervisor, even if the provisionally certified guardian is not currently providing guardianship services.
  - (2) A provisionally certified guardian must comply with these rules and with the Code of Ethics and Minimum Standards for Guardianship Services.

- (3) Notice to Commission and Courts. A provisionally certified guardian must immediately notify the Commission and all courts in which the provisionally certified guardian is serving if:
    - (A) the provisionally certified guardian obtains a different supervisor or is without a supervisor;
    - (B) the provisionally certified guardian is indicted for, formally charged with, adjudged guilty of, or enters a plea of no contest in return for a grant of deferred adjudication with respect to any felony or misdemeanor offense;
    - (C) any proceeding listed in Rule 7.2(b)(7) is initiated;
    - (D) events or circumstances would require any changes to the attestation required by Rule 7.2(b)(7); or
    - (E) the provisionally certified guardian is removed as a guardian under Chapter 1203 of the Estates Code.
  - (4) Documents filed with court. Each document prepared by or on behalf of a provisionally certified guardian and filed with a court must include the provisionally certified guardian's certification number and the name and certification number of his or her supervisor.
  - (5) A provisionally certified guardian must comply with the continuing education requirements in Rules 4.1-4.3 and 7.7. A provisionally certified guardian, when he or she meets the qualifications for certification, must submit documentation as described in Rule 4.3(g) with his or her application for certification.
- (d) Responsibilities of supervisor.
- (1) A supervisor must:
    - (A) assume primary responsibility for guiding the provisionally certified guardian's work and for supervising, generally and directly, as necessary, the quality of the provisionally certified guardian's work;
    - (B) meet with each provisionally certified guardian at least once every two weeks, with at least one of these meetings being face-to-face each month;
    - (C) assist the provisionally certified guardian in activities to the extent that the supervisor considers it necessary and appropriate;
    - (D) ensure that the provisionally certified guardian is familiar with the provisions of these rules and the Code of Ethics and Minimum Standards for Guardianship Services; and

- (E) monitor the provisionally certified guardian's compliance with these rules and the [Code of Ethics and Minimum Standards for Guardianship Services](#).
- (2) A supervisor may not supervise more provisionally certified guardians than a reasonably prudent supervisor operating under substantially similar circumstances would supervise at one time.
- (3) A supervisor whose certification expires, is revoked, or is suspended, or who voluntarily surrenders his or her certification, may not continue as a supervisor and must notify all provisionally certified guardians under that person's supervision that the person may not continue as a supervisor.
- (4) A supervisor must immediately notify the Commission, or cause notice to be sent to the Commission, if the supervisor ceases to supervise a provisionally certified guardian.
- (5) A supervisor may not:
  - (A) be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to a person whom he or she is supervising; or
  - (B) be an employee of or under the employment supervision of a person whom he or she is supervising.
- (e) Notice from Commission. If the Commission receives notice from the supervisor under (d)(4), or receives notice of any of the items in ~~(e)(c)~~(3) in any manner other than from the provisionally certified guardian, the Director, on behalf of the Commission, will contact the provisionally certified guardian regarding the notification by first class mail. Notice from the Director on behalf of the Commission is deemed given when sent to the provisionally certified guardian at the last home address on file in the Commission's records.
- (f) Prohibition on representation as a certified guardian. The supervisor and provisionally certified guardian may not state, represent, or imply that the provisionally certified guardian is a certified guardian.
- (g) Expiration of provisional certification.
  - (1) A provisionally certified guardian may be provisionally certified for only one two-year period unless a waiver is approved by the Commission. For a provisionally certified guardian, a waiver may only be granted by the Commission before the expiration of the two-year period. For a formerly certified guardian whose certification expired or was surrendered unrelated to discipline, the Commission may grant a new provisional certification to allow the individual to work while

pursuing certification again. It is the responsibility of the provisionally certified guardian to contact the Director regarding any questions or concerns about the expiration of provisional certification, requirements for full certification, or requesting a waiver.

(A) To request a waiver from the Commission, the provisionally certified guardian must send a written request to the Director. The request must include the reasons for seeking the waiver, the time period of the extension, and verification of attendance at Commission-approved continuing education during the provisional certification period. The provisionally certified guardian may include information in support of his or her request for a waiver, such as a letter of support from the designated guardian supervisor. If the provisionally certified guardian has not yet passed the required exam or completed required continuing education, the provisionally certified guardian must include in a request for a waiver the details of his or her plan for completion of these requirements and the amount of time necessary to do so.

(B) The Commission will consider the request at a regularly scheduled Commission meeting. The request must be received by the Director not less than 30 days prior to the next scheduled meeting of the Commission. If a request for waiver is not received in time to be heard at a regularly scheduled meeting before the provisional certification expires, the request will not be considered.

(2) Upon expiration of a provisionally certified guardian's certification, the guardian must immediately provide written notice of the expiration to each court in which the guardian has been appointed pursuant to Section 1101.151 or Section 1101.152 of the Estates Code and, if the guardian provides guardianship services on behalf of the ~~Health and Human Services Commission Office of Guardianship Department of Aging and Disability Services~~ or a guardianship program, to each of those organizations on whose behalf the guardian provides guardianship services.

(h) If a provisionally certified guardian applies to be a certified guardian within one year of obtaining provisional certification, the applicant need not submit a new criminal history record.

## 7.5 Renewal of Certification

~~(a) — A renewal application and all applicable fees are due 45 days prior to the expiration of the certification. An application is timely if it is postmarked on or before the due date. Failure to complete a renewal application at least 45 days prior to expiration may result in a lapse of certification.~~

~~(b) — To be eligible for renewal, the certified guardian must:~~

- (a) ~~(1)~~ pay all required fees;
- (b) ~~(2)~~ apply within the required time;
- (c) ~~(3)~~ comply with Rule 7.2(b)(6)-(7); and
- (d) ~~(4)~~ meet the continuing education requirements in Rules 4.1-4.3 and 7.7.

## 7.6 Enforcement

- (a) After notice and an opportunity for a hearing under Rule 5.10, the Commission may deny, suspend, refuse to renew, or revoke certification, ~~or~~ provisional certification, ~~or~~ guardianship program registration; issue a ~~public or private~~ reprimand; or impose an administrative penalty or other disciplinary action, if the applicant, certified guardian, ~~or~~ provisionally certified guardian, or registered guardianship program has:
  - (1) failed to comply with any rule applicable to certified guardians, ~~or~~ provisionally certified guardians, or registered guardianship programs, respectively;
  - (2) failed to comply with any of the Code of Ethics and Minimum Standards for ~~the Provision of~~ Guardianship Services;
  - (3) failed to pay any applicable fee established by the Commission;
  - (4) failed to meet the requirements for certification, provisional certification, registration, or renewal established by the Commission;
  - (5) falsely represented or misstated any material fact to the Commission;
  - (6) been adjudged guilty of or entered a plea of guilty or no contest in return for a grant of deferred adjudication to any felony or misdemeanor offense, and the factors listed in Rule 3.5 weigh in favor of disciplinary action;
  - (7) been found civilly liable or settled a claim in an action, including but not limited to a surcharge action, that involved fraud, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
  - (8) been relieved of responsibilities as a guardian or fiduciary by a court, employer, or client for actions involving fraud, moral turpitude, misrepresentation, material omission, misappropriation, theft, assault, battery, abuse, neglect, breach of trust, breach of fiduciary duty, or conversion;
  - (9) been found liable in a subrogation action by an insurance or bonding agent or in a subrogation action brought by an interested party;

- (10) failed to notify the Commission of a violation of any of the provisions set forth in Rule 7.2(b)(6)-(7); or
  - (11) engaged in conduct that poses a substantial threat to the well-being of a ward or the ward's estate.
- (b) The Commission may suspend or revoke certification, ~~or~~ provisional certification, or registration, if ~~it the certificate~~ was granted:
- (1) contrary to these rules and the requirements for certification, ~~or~~ provisional certification, or registration; or
  - (2) to an individual or program, if applicable, which ~~who~~ is not eligible to acquire a certificate, ~~or~~ provisional certificate, or registration certificate or ~~who~~ has made any false representations or misstatement of material fact to the Commission.
- (c) If the respondent in a complaint or enforcement proceeding is a provisionally certified guardian, all notices sent to the respondent under Rule 5.10 will be copied to his or her designated certified guardian supervisor.

## **7.7 Continuing Education**

- (a) A certified guardian must complete at least 12 hours of approved continuing education during each certification period. The 12 hours must include a minimum of two hours of ethics and one hour of legislative update. In this rule, the term “certified guardian” includes a provisionally certified guardian.
- (b) The required hours must be earned prior to the expiration of the certified guardian's certification period.
- (c) A certified guardian may carry forward for the following certification period not more than four regular continuing education hours, not including ethics or legislative update hours, which were earned in excess of the 12 hours used to satisfy the continuing education requirements of the immediately previous certification period. Ethics hours and legislative update hours may not be carried forward from one certification period to another certification period even if the hours were earned in excess of the minimum requirements for ethics and legislative update hours.
- (d) A continuing education activity for a certified guardian must be an organized program of learning dealing with matters that are directly related to the guardianship profession, the services guardians provide, and the legal process involved in guardianship proceedings. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified guardian, and the certified guardian's impact on the judicial process and the public.

- (e) Continuing education activities for certified guardians must include one or more of the following subjects:
- (1) guardianships;
  - (2) trust administration;
  - (3) powers of attorney;
  - (4) mental or physical health or geriatric health;
  - (5) ethics for guardians, including cooperation with lawyers, judges, and fellow guardians and courtesy to all litigants;
  - (6) Texas statutes, rules, and case law relevant to the guardianship profession;
  - (7) the role and responsibilities of the certified guardian under the Estates Code, rules adopted by the Supreme Court relating to guardianship certification, and the Code of Ethics and Minimum Standards for ~~the Provision of~~ Guardianship Services adopted by the Commission; and
  - (8) management issues, including financial planning and accounting.
- (f) A certified guardian may request up to six hours of continuing education credit during each two-year certification period for teaching courses, speaking at seminars, or authoring books or articles related to the subject matter specified in (e). The certified guardian must submit an application for teaching credit on a form provided by the Commission. Credit for preparation and presentation may be provided on the basis of hour-for-hour credit for each hour spent preparing the article or book or making the presentation.

## **7.8 Registration of Guardianship Programs**

- (a) A guardianship program must hold a registration certificate issued by the Commission in order to offer or render guardianship services and related services.
- (b) In order to become registered, a guardianship program must apply online on the Commission's website and provide the following information:
- (1) the name and certification number of each certified guardian employed by, volunteering with, or under contract with the guardianship program;
  - (2) the name, address, telephone number, and email address of each employee, volunteer, or contractor who is to provide guardianship services on behalf of the guardianship program;
  - (3) the number of wards served by the guardianship program;

- (4) the organizational chart or other description of the role and responsibility of each person in the guardianship program;
  - (5) the name and certification number of each certified guardian who supervises or directly provides guardianship services to wards or other incapacitated persons on behalf of the guardianship program;
  - (6) the number of provisionally certified guardians and other personnel each certified guardian supervises;
  - (7) any sanction imposed by a court in Texas or another jurisdiction arising from any probate matter and any disciplinary history with a regulatory agency in another jurisdiction for each certified guardian and provisionally certified guardian who would render services on behalf of the program; and
  - (8) for each certified guardian, the name, cause number, and county of each ward or other person who receives guardianship services under the supervision of the certified guardian.
- (c) All guardianship services rendered by a guardianship program must be performed by a certified guardian in good standing, a provisionally certified guardian in good standing, or a volunteer under the supervision of a certified guardian in good standing.
- (d) After consideration of the nature of the conduct at issue in a complaint against a certified guardian or provisionally certified guardian at the guardianship program and the outcome of the investigative and disciplinary process, the time elapsed since the conduct, and any rehabilitative efforts undertaken by the program, the Commission may deny the registration application of a guardianship program or register the program subject to restrictions or probation for a specified period of time.
- (e) Notwithstanding Rule 3.14, each registration certificate issued to a guardianship program expires every second anniversary of its issuance. Each guardianship program must renew the registration certificate on or before its expiration in order to continue to offer or render guardianship services. An expired registration certification may be renewed prior to one year after expiration, upon the payment of a late renewal fee, in accordance with Rule 3.2.
- (f) In addition to the annual report required by Section 155.105 of the Government Code, each guardianship program must update the information filed with the Commission under (b) no later than January 31 of each year.

## **7.9 Successor Guardians; Continuity of Guardianship Services**

- (a) A guardianship program must immediately cease applying for or accepting appointment as a guardian upon the expiration, suspension, or revocation of the guardianship program's registration certificate or upon the Commission's refusal to renew the program's

registration certificate. Upon the expiration, suspension, revocation or non-renewal of its registration certificate, a guardianship program must, within seven days, provide written notice of the need to appoint a successor or temporary guardian to each court for which the guardianship program serves as guardian of a ward of the court. The guardianship program must send a copy of the written notice to the Commission.

(b) Upon the suspension or revocation of a guardianship program's registration certificate or upon the suspension or revocation of a certification of a guardian for a guardianship program, the Commission must provide written notice to each court with probate jurisdiction.

(c) Each guardianship program is subject to disciplinary action for failing to provide timely written notice to the courts and the Commission regarding any interruption of the legal authority of the guardianship program to provide guardianship services. Each certified guardian who exercise managerial authority over a guardianship program is subject to disciplinary action for failing to provide timely written notice to the courts and the Commission regarding any interruption of the legal authority of the guardianship program to provide guardianship services.

## **8.0 Process Server Certification**

### **8.1 Definitions**

**Certified process server** means a person who is certified by the Commission to serve process statewide.

### **8.2 Initial Certification Requirement**

- (a) A person seeking statewide certification to serve process must file with the Commission an application, sworn or under penalty of perjury, in the form prescribed by the Commission.
- (b) An application must comply with the requirements of Rule 3.1. ~~The and also contain a statement indicating whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude. The Commission or Director may deny certification to an applicant convicted of a felony or of a misdemeanor involving moral turpitude. If an applicant's criminal history reflects that the applicant was charged with a felony or a misdemeanor involving moral turpitude and the charges resulted in an outcome other than acquittal or conviction (such as pretrial diversion, probation, deferred adjudication, community supervision, or similar result), the Commission or Director may consider the applicant's criminal history using the factors listed in Rule 3.5 in determining whether the application should be granted.~~
- (c) The application must include a certificate from the director of a civil process service course, approved by the Commission for certification in every state court, stating that the applicant has completed the approved course within the prior year for initial certification. The

applicant bears the burden of establishing that he or she has completed within the prior year a course approved by the Commission for certification in every state court.

- (d) Applications will be reviewed and either approved or rejected for good cause stated. In appropriate circumstances, the Commission or Director may approve applications on a conditional or probationary basis.
- ~~(e) — Certification is effective for three years from the last day of the month that the certification issues, unless it is revoked or suspended under these rules.~~

### 8.3 Renewal of Certification

- (a) — To renew a certification, a certified process server must timely submit to the Commission a renewal application, including a current criminal history statement and all applicable fees, and complete the continuing education requirements in Rules 4.1-4.3 and 8.5.
- ~~(b) — The renewal application and all applicable fees are due 45 days prior to the expiration of the certification. An application is timely if it is postmarked on or before the due date. Failure to complete a renewal application at least 45 days prior to expiration may result in a lapse of certification.~~
- ~~(c) — A certified process server whose certification expires between September 1, 2014 and August 31, 2017 must, before renewing the certification, provide the Commission with his or her Texas and national criminal history records by having his or her fingerprints submitted according to directions published on the Commission's website. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the renewal application is submitted.~~

### 8.4 Enforcement

After notice and hearing under Rule 5.10, the Commission may deny, revoke, suspend, or refuse to renew any certification issued under Rule 8.2; issue a letter of reprimand to a certified process server; or impose an administrative penalty on a certified process server for violation of the laws, rules, or the Code of Ethics relating to certified process servers that are enforced by the Commission.;

- ~~(a) — conviction of a felony offense or of a misdemeanor offense involving moral turpitude, as determined using Rule 3.5; or~~
- ~~(b) — other good cause as determined by the Commission.~~

### 8.5 Continuing Education

- (a) To renew certification, a certified process server must establish that all required continuing education has been completed. Rules 4.1-4.3 supplement this rule and establish additional requirements for continuing education.

- (b) A certified process server must complete at least eight ~~12~~ hours of approved continuing education during the certified process server's two-year ~~three-year~~ certification period. ~~For process servers who are already certified on the effective date of these rules, the three-year requirement begins with the process server's next three-year certification period. A certified process server may carry forward to the next certification period up to four hours of continuing education hours.~~
- (c) A continuing education activity for a certified process server must be an organized program of learning dealing with matters that are directly related to service of process. A continuing education activity should increase participants' understanding of the Texas judicial system, the responsibilities of a certified process server, and the certified process server's impact on the judicial process and the public.

## 9.0 Licensed Court Interpreters

### 9.1 Definitions

- (a) A **Basic Designation** permits the interpreter to interpret court proceedings in justice courts and municipal courts that are not municipal courts of record but does not permit the interpreter to interpret, other than a proceeding before the court in which the judge is acting as a magistrate.
- (b) **Dishonorable** means lacking in integrity, indicating an intent to deceive or take unfair advantage of another person, or bringing disrepute to the profession of court interpretation.
- (c) **Licensed court interpreter** means a person who is licensed by the Commission to interpret court proceedings for an individual who can hear but who has no or limited English proficiency ~~does not comprehend English or communicate in English.~~
- (d) A **Master Designation** permits the interpreter to interpret court proceedings in all courts in this State, including justice courts and municipal courts.
- (e) **Unethical** means conduct that does not conform to generally accepted standards of conduct for professional court interpreters.

### 9.2 Licensing Requirement

- (a) The Commission must issue a court interpreter license to a person who:
- (1) satisfies the requirements of Section 3.0 of these rules;
  - (2) prior to filing an application with the Commission, satisfactorily completes a Commission-approved orientation course of at least six hours;
  - (3) satisfies the examination requirements of Rule 9.3; and

- (4) completes all requirements, including satisfying the examination requirements within one year of the date of the application.
- (b) A license issued under this rule ~~is valid for one year from the date of issuance and~~ must have a language endorsement for each language that the applicant will interpret.

### 9.3 Examination

- (a) Each applicant must pass all parts of a Commission approved language examination for each language that the applicant will interpret.
- (b) An applicant must pass the written examination with a score of at least 80% in order to be eligible to take any part of the oral examination. A passing score on the written examination is valid for 2 years. An applicant who does not become licensed during that 2-year period must take the orientation course and pass the written examination again.
- (c) An applicant must pass all three parts of the oral examination according to the following:
  - (1) An applicant scoring at least 60% on each part of the oral examination is eligible for a Basic Designation license.
  - (2) An applicant scoring at least 70% on each part of the oral examination is eligible for a Master Designation license.
- (d) An applicant taking an examination must comply with the Commission's examination requirements under Rules 3.7-3.9.
- (e) An applicant who fails an examination may apply for reexamination at a scheduled examination held at least six months after the date the individual failed the original examination.

### 9.4 Renewal

- ~~(a) To renew a license, a court interpreter must timely submit to the Commission a renewal application and all applicable fees and complete the continuing education requirements in Rules 4.1-4.3 and 9.7.~~
- ~~(b) The renewal application and all applicable fees are due 45 days prior to the expiration of the license. An application is timely if it is postmarked on or before the due date. A licensed court interpreter's failure to receive a renewal notice from the Commission does not exempt the interpreter from any requirements of these rules or of other rules governing the profession.~~
- ~~(c) A person whose license has been expired for one year or less may renew the license by paying to the Commission the appropriate renewal fee for late renewals.~~

~~(d) — A licensed court interpreter [whose license expires between September 1, 2014 and August 31, 2015] must, before renewing the license, provide the Commission with his or her Texas and national criminal history records by having his or her fingerprints submitted according to directions published on the Commission’s website. The Texas and national criminal history searches must be conducted no earlier than 90 days preceding the date the renewal application is submitted.~~

## **9.5 Responsibilities of Licensed Court Interpreters**

- (a) A licensed court interpreter must include his or her name and license number on all official correspondence and on all contracts and invoices for court interpreter services.
- (b) A licensed court interpreter must present his or her court interpreter license upon the request of a court or an officer of the court.

## **9.6 Enforcement**

- (a) After notice and an opportunity for a hearing under Rule 5.10, the Commission may deny, revoke, suspend, or refuse to renew a license or reprimand a licensed court interpreter on finding that the person:
  - (1) made a material misstatement in an application for a license;
  - (2) disregarded or violated Chapter 157 of the Government Code, or a rule adopted under Chapter 157;
  - (3) engaged in dishonorable or unethical conduct likely to deceive, defraud, or harm the public or a person for whom the interpreter interprets; or
  - ~~(4) engaged in criminal conduct related to court interpretation was finally convicted of a crime that indicates the person lacks the honesty, trustworthiness, or integrity to hold the license,~~ as determined using Rule 3.5.
- (b) The Commission may reissue a license to an individual whose license has been revoked or denied renewal if the individual applies in writing to the Commission and shows good cause to justify reissuance of the license in accordance with Rule 3.15.
- (c) The Commission may impose assess an administrative penalty under Chapter 153 of the Government Code against a person who violates Chapter 157 of the Code or a rule adopted under that chapter.

## **9.7 Continuing Education**

- (a) ~~To renew a license, a~~ A licensed court interpreter must complete sixteen eight hours of approved continuing education in courses approved by the Commission, including four two hours of instruction in ethics.

- (b) Except as provided by (c), the continuing education hours must ~~be have been~~ completed ~~during within~~ the term of the current license ~~plus any later period after expiration of the license, if the license is renewed late, in the case of a timely renewal. For a late renewal, the continuing education hours must [have been completed within the one year period immediately prior to the date of renewal.~~
- (c) A licensed court interpreter may carry forward to the next certification period up to ~~eight~~ four continuing education hours, but ethics credit may not be carried forward.
- (d) A licensed court interpreter may not receive continuing education credit for attending the same course more than once within the same license period.
- (e) Notwithstanding Rule 4.3(g), a licensed court interpreter must retain a copy of the certificate of completion for a course for ~~two years~~ one year after the date of completion. In conducting any inspection or investigation of the licensed court interpreter, the Commission may examine the licensed court interpreter's records to determine compliance with this requirement.
- (f) To be approved, a continuing education course must be dedicated to instruction in one or more of the following topics:
  - (1) law and rules affecting the practice of a licensed court interpreter;
  - (2) ethics;
  - (3) practice topics, such as etiquette, modes, vocabulary, technology, transcription, translation, grammar and spelling, and voice training; or
  - (4) business practices.

## **10.0 Guardianship Registration**

### **10.1 Definitions**

**Proposed guardian** means a person who has applied for appointment or who is to be appointed as a guardian of the estate, of the person, or both.

### **10.2 Information Submission – Proposed Guardians**

- (a) Each guardianship must be registered with the Commission. The clerk of a court with probate jurisdiction must provide written notice of the guardianship registration requirement to each person who applies for or seeks appointment as a guardian and to each attorney who files an application to create a guardianship or seeks to represent a proposed guardian. To register, each proposed guardian, or an attorney on behalf of the proposed guardian, must submit the following information to the Commission online through the Commission's website:

- (1) the name, and all former names, of the proposed guardian;
  - (2) the proposed guardian's physical address and mailing address if different, telephone number, email address, and other contact information;
  - (3) the proposed guardian's attorney's physical address and mailing address if different, telephone number, email address, and other contact information;
  - (4) the name, sex, and date of birth of the proposed ward;
  - (5) whether the proposed guardianship is of the person, the estate, or both;
  - (6) whether the proposed guardianship is based upon incapacity or minority of the proposed ward;
  - (7) the estimated value of the liquid assets of the proposed ward's estate;
  - (8) the name of the court with jurisdiction over the guardianship proceeding; and
  - (9) whether the proposed guardian is a certified guardian, attorney, or a corporate fiduciary.
- (b) The Commission must notify the court and the proposed guardian of receipt of the information required by paragraph (a). The Commission may request clarification, correction, or completion of the information.
- (c) The Commission and the clerk of the court with probate jurisdiction must provide written notice and direction to the proposed guardian to instruct the proposed guardian on completing the training and criminal history background check required by Sections 155.204 and 155.205 of the Government Code.
- (d) Submission of information under (a) does not constitute registration of the guardianship. A guardianship is not registered with the Commission until the Commission receives notice from the clerk of the court that the proposed guardian has been appointed by the court and the date of qualification in accordance with Section 1105.002 of the Estates Code.

### **10.3 Qualification of Proposed Guardians – Training**

- (a) A proposed guardian may not be appointed guardian unless:
- (1) the proposed guardian completes the training, which is provided on the Commission's website;
  - (2) the proposed guardian is a certified guardian, attorney, or a corporate fiduciary;

- (3) the proposed guardian seeks initial appointment only as a temporary guardian for no longer than 60 days, subject to the restrictions specified in Section 155.204(b)(2) of the Government Code; or
  - (4) the court waives the training requirement in accordance with Rule 10.4.
- (b) The Commission must provide the proposed guardian the web address for the training or, upon request, the written training materials and instruction for completing the training requirement. The proposed guardian must complete the training no later than 10 days before the court's hearing to consider the proposed guardian's appointment.
- (c) The Commission must include the following subjects in the training:
  - (1) the guardian's fiduciary duty to the ward;
  - (2) the laws relating to the practice of guardians, including actions guardians may take without court approval and actions requiring court approval;
  - (3) the requirement to file and maintain an adequate bond to protect the ward and the ward's estate;
  - (4) the content and information to include in inventories, annual accounts, annual reports of the person, final reports of the person, final accounts, and other filings with the court;
  - (5) the content and information to include in the annual report to the Commission;
  - (6) alternatives to guardianship;
  - (7) supports and services available to wards;
  - (8) restoration;
  - (9) the ward's bill of rights; and
  - (10) notification on health and residence to certain qualified relatives requesting information.
- (d) Upon completion of the training, each proposed guardian will receive a certificate. The Commission must confirm to the court that a proposed guardian has successfully completed the training requirement no later than 10 days before the court's hearing to consider the proposed guardian's appointment.

#### **10.4 Waiver or Postponement of Guardianship Training**

- (a) A court may waive the training requirement as a qualification for appointment as guardian, if the court finds the proposed guardian received the training during the one-year period immediately preceding the date of the application for appointment as guardian.
- (b) A court may postpone the training requirement as a qualification for appointment as guardian to a date not later than 60 days after appointment, if:
  - (1) the court makes an immediate appointment of a successor guardian under Section 1203.102(b) of the Estates Code;
  - (2) the court appoints a temporary guardian under Chapter 1251 of the Estates Code;  
or
  - (3) the court makes a written finding that due to extraordinary facts and circumstances an immediate appointment of a guardian is necessary.
- (c) If the court finds that the training is not available in a language in which the proposed guardian is proficient, a court may postpone the training requirement as a qualification for appointment to a date no later than 60 days after the Commission develops or obtains training materials in the language in which the proposed guardian is proficient.
- (d) The court must provide the Commission written notice of waiver or postponement of the training requirement, and of the reason for the waiver or postponement, within 5 days after the appointment of the guardian.

### **10.5 Qualification of Proposed Guardian – Criminal History Background**

- (a) The Commission must have a search conducted of a proposed guardian’s criminal history records upon receipt of information regarding the proposed guardian in accordance with Rule 10.2, unless the proposed guardian is a certified guardian, a provisionally certified guardian, an attorney, or a corporate fiduciary.
- (b) A proposed guardian may not be appointed guardian, or temporary guardian, unless:
  - (1) the criminal history records of the Department of Public Safety are searched for the name and any former name of the proposed guardian if the value of the estimated liquid assets in the estate of the proposed ward is \$50,000 or less; or
  - (2) the fingerprints of the proposed guardian are searched in the records of the Federal Bureau of Investigations if the value of the liquid assets of the proposed ward’s estate exceed \$50,000.
- (c) Not later than 10 days before the court’s hearing to consider the proposed guardian’s appointment, the Commission must provide a copy of the criminal history background information regarding a proposed guardian to the clerk of the court in which the related guardianship proceeding is pending. The clerk must provide the information to the court

for the exclusive use of the judge. The clerk must not file the criminal history background information in the court file.

- (d) The Commission may not disclose criminal history record information to any person or agency other than the clerk of the court in which the guardianship proceeding is pending or the court, except upon court order or consent of the subject of criminal history record information. The Commission and the clerk of the court may destroy copies of criminal history record information after it has been used for its intended purpose.

## **10.6 Notice of Guardianship – Entry in Database**

- (a) A clerk of the court must notify the Commission of the date of the guardian’s qualification under Section 1105.002 of the Estates Code.
- (b) Upon receipt of notice from a clerk of the court of the qualification of a guardian, the Commission must register information regarding the guardianship obtained under Rule 10.1 in the guardianship database maintained by the Commission pursuant to Section 155.152 of the Government Code.
- (c) A clerk of the court must notify the Commission of the dismissal, denial, or non-suit of a guardianship application within 10 days of the dismissal, denial, or non-suit. A clerk of the court must notify the Commission if a proposed guardian whose information is on file with the Commission under Rule 10.1 is not appointed or qualified as guardian for any other reason within 10 days of the date it becomes apparent that person will not be guardian. Upon receipt of the notice, the Commission may delete information regarding the previously proposed guardian.
- (d) The clerk of a court that removes a guardian or terminates a guardianship must immediately send notice of the removal or termination to the Commission. The Commission must update the registration of the guardianship in the database.
- (e) The clerk of the court which that transfers a guardianship to another venue or jurisdiction must notify the Commission within 10 days of receipt of confirmation that the receiving court has accepted the guardianship. The Commission must update the registration of the guardianship in the database.
- (f) The Commission must allow access to the guardianship database only as allowed by Section 155.153 of the Government Code and exclusively for the purposes specified in that Section.

## **10.7 Registration of Pending and Pre-existing Guardianships**

- (a) A court that has probate jurisdiction must provide written notice of registration requirements to a proposed guardian who may be appointed after June 1, 2018 pursuant to a guardianship application filed before June 1, 2018. The proposed guardian must fulfill the training requirement in accordance with Rule 10.3, unless waived under Rule 10.4, and

must undergo a criminal history record background check in accordance with Rule 10.5. The proposed guardian must complete the training and the Commission must conduct and provide a copy of the criminal history background check no later than 10 days before the hearing to appoint the proposed guardian or August 31, 2018, whichever is later.

(b) A court that has probate jurisdiction must provide to each guardian who was appointed by that court before June 1, 2018 written notice of the requirement to register the guardianship with the Commission. Each person who qualified as a guardian, in accordance with Section 1105.002 of the Estates Code, before June 1, 2018 must register with the Commission by submitting online the information listed in Rule 10.2(a) and by providing the guardian's qualification date no later than the date the next annual report or annual accounting is due to the court. For purposes of registering a guardianship that existed before June 1, 2018, a guardian need not complete the training in accordance with Rule 10.3 or undergo a criminal history background check in accordance with Rule 10.5, unless ordered to do so by the court.

## FEES OF THE JUDICIAL BRANCH CERTIFICATION COMMISSION

### Certified Court Reporters and Registered Court Reporting Firms

- (a) Applicants for Certification and Certified Reporters.
- (1) Certification Application Fee ~~—\$200. Each applicant must submit a certification fee of \$85 with the completed application.~~
  - (2) Examination Fee. ~~Each applicant who is taking the certification examination must submit an examination fee of —\$75 for Part B, \$125 for Part A, or \$190 for Parts A and B combined by the date established by the Commission.~~
  - ~~(3) Examination Late Fee. The late fee that must be paid by an applicant whose application to take the examination is late according to the deadlines established by the Commission is \$25.~~
  - ~~(3)(4) Renewal Fee (Before Expiration of Certification). Each certified court reporter must submit a renewal fee of —\$200 on or before the expiration date of the certification. If this fee is not timely paid, the certification will expire pursuant to Rule 6.3.~~
  - ~~(4)(5) Late Renewal Fee (Expired for Ninety 90 Days or Less). A person whose certification has been expired for 90 days or less may renew the certification by paying a renewal fee of —\$300.~~
  - ~~(5)(6) Late Renewal Fee (Expired More than Ninety 90 Days but Less than One 1 Year). A person whose certification has been expired for more than 90 days but less than one year may renew the certification by paying a renewal fee of —\$400.~~
  - ~~(6)(7) Recertification Fee (Moved to Another State). — \$400 (A person who was certified in this State, moved to another state, and is currently certified and has been in practice in the other state for one year ~~the two years~~ preceding the date of application may obtain a new certification without reexamination by paying a fee of \$400.)~~
  - ~~(8) Subscription Fee. With each fee required by (a)(4)–(7), a person must pay an additional, subscription fee of \$10 to fund a common Internet licensing system pursuant to Section 2054.2591 of the Government Code.~~
  - ~~(7)(9) Regrading Fee. A person who requests that an examination be regraded must pay a regrading fee of —\$35.~~
  - ~~(8)(10) Certificate Replacement Fees. A person who requests a replacement for the person's certificate must pay a fee of —\$15.~~

~~(9) Certification Card Replacement Fee—A person who requests a replacement for the person's [ID] certification card must pay a fee of \$5.~~

(b) Applicants for Registration and Registered Court Reporting Firms.

~~(1) Registration Fee—. Each registrant must submit a registration fee of \$200 along with the completed registration form.~~

~~(2) Renewal Fee (Before Expiration of Registration). Each registered court reporting firm and affiliate office must submit a renewal fee of \$200 on or before the expiration date of the registration. If this fee is not timely paid, the registration will expire pursuant to Rule 6.3.~~

~~(3) Late Renewal Fee (Expired for Ninety 90 Days or Less). A firm whose registration has been expired for 90 days or less may renew the registration by paying a renewal fee of \$300.~~

~~(4) Late Renewal Fee (Expired More than Ninety 90 Days but Less than One 1 Year). A firm whose registration has been expired for more than 90 days but less than one year may renew the registration by paying a renewal fee of \$400.~~

~~(5) Registration Replacement Fee. A firm that requests a replacement registration certificate must pay a fee of \$15.~~

~~(6) Subscription Fee. With each fee required by (b)(2) (4), a person must pay an additional, subscription fee of \$12 to fund a common Internet licensing system pursuant to Section 2054.2591 of the Government Code.~~

## Certified Guardians

(a) Certification Application Fee ~~fee—\$100~~ \$25 (An employee of the Texas Health and Human Services Commission Office of Guardianship (“HHSC”) Department of Aging and Disability Services who is applying for certification to provide guardianship services to a ward of the HHSC Department is exempt from payment of this fee.)

(b) Examination Fee ~~Exam fee~~ (initial)—\$175 (This fee must be paid separately from all other fees by the date established in the exam schedule.)

(c) Examination Fee ~~Exam fee~~ (retake)—\$175 (This fee must be paid separately from all other fees by the date established in the exam schedule.)

(d) Renewal Fee ~~fee—\$100~~ \$25 (An employee of the Texas HHSC Department of Aging and Disability Services who is applying for renewal of certification to provide guardianship services to a ward of the HHSC Department is exempt from payment of this fee.)

(e) Late Renewal Fee ~~fee (Expired for 90 Days or Less)~~—\$150 ~~\$75~~

- (f) Late Renewal Fee (Expired More than 90 Days but Less than 1 Year)—\$200
- (g) Recertification Fee (Moved to Another State)—\$200 (A person who was certified in this State, moved to another state, and is currently certified and has been in practice in the other state for one year preceding the date of application may obtain a new certification without reexamination by paying a fee of \$200.)
- (h)(f) Certification Card Replacement Fee fee—\$5

### **Registered Guardianship Programs**

- (a) Initial Registration Application Fee—\$200
- (b) Renewal Fee—\$200
- (c) Late Renewal Fee (Expired for 90 Days or Less)—\$300
- (d) Late Renewal Fee (Expired More than 90 Days but Less than 1 Year)—\$400

### **Certified Process Servers**

- (a) Certification Application Fee fee—\$200 \$225
- (b) Renewal Fee fee—\$200 \$225
- (c) Late Renewal Fee fee (Expired for 90 Days or Less late renewals, in addition to renewal fee)—\$300 \$110
- (d) Late Renewal Fee (Expired More than 90 Days but Less than 1 Year)—\$400 Subscription fee to accompany each initial or renewal application, to fund participation in a common Internet licensing system under Section 2054.2591 of the Government Code—\$5
- (e) Recertification Fee (Moved to Another State)—\$400 (A person who was certified in this State, moved to another state, and is currently certified and has been in practice in the other state for one year preceding the date of application may obtain a new certification without reexamination by paying a fee of \$400.)
- (f) Certification Card Replacement Fee fee—\$5

### **Licensed Court Interpreters**

- (a) License Application Fee fee—\$200 \$75
- (b) Renewal Application Fee application fee—\$200 \$50

- (c) Upgrade to Master ~~Application Fee application fee~~—\$25
- (d) Additional ~~Language Fee endorsement fee~~—\$25
- (e) Replacement ~~License Fee license fee~~—\$5
- (f) Written ~~Examination Fee examination fee~~—\$100
- (g) Oral ~~Examination Fee examination fee~~—\$300
- (h) ~~Late Renewal Fee (Expired for Ninety 90 Days or Less)—A person whose license has been expired for 90 days or less may renew the certification by paying a renewal fee of—\$300~~  
~~\$75.~~
- (i) ~~Late Renewal Fee (Expired More than Ninety 90 Days but Less Than One than 1 Year)—A person whose license has been expired for more than 90 days but less than one year may renew the certification by paying a renewal fee of—\$400~~  
~~\$100.~~
- (j) ~~Relicensing Fee (Moved to Another State)—\$400 (A person who was licensed in this State, moved to another state, and is currently licensed and has been in practice in the other state for one year preceding the date of application may obtain a new license without reexamination by paying a fee of \$400.)~~
- (k) ~~License Card Replacement Fee—\$5~~

### **Fee Waivers – Military Service**

Pursuant to Section 55.009 of the Occupations Code, the application and examination fees are waived for the following persons:

- (a) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements of the certification, registration, or license for which the military service member or veteran applies; or
- (b) a military service member, military veteran, or military spouse who holds a current certification, registration, or license issued by another jurisdiction which has certification, registration, or licensing requirements that are substantially similar to the requirements enforced by the Commission.

**CODE OF ETHICS  
FOR CERTIFIED SHORTHAND REPORTERS  
AND COURT REPORTING FIRMS**

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## PREAMBLE

The Code of Conduct is updated and revised as a Code of Ethics pursuant to Section 152.205 of the Texas Government Code, which requires the Judicial Branch Certification Commission to adopt a code of ethics for each profession it regulates. The Code includes ethical standards, such as prohibitions upon conflicts of interest, cheating on certification and continuing education examinations, and advertising or making other statements which are false, deceptive, or misleading. The Code is adopted by the Texas Supreme Court as a rule. If there is a conflict between the Code, in whole or part, and a statute, the statute prevails to the extent of the conflict.

### 1

## APPLICABILITY AND DEFINITIONS

The Code of Ethics applies to all Certified Shorthand Reporters and Court Reporting Firms engaged in the practice of court reporting or offering the services of a Certified Shorthand Reporter. For purposes of the Code, the following terms are defined as follows:

- (a) “Judicial Branch Certification Commission,” “JBCC,” or “Commission” - the Commission created by Section 152.051 of the Government Code to oversee the regulation of the practice of shorthand court reporting.
- (b) “Certified Shorthand Reporter,” “CSR,” “shorthand reporter,” “court reporter,” or “reporter - a person who is issued certification by the Texas Supreme Court on the recommendation of the Commission to engage in the practice of court reporting or shorthand reporting.
- (c) “Shorthand reporting” and “court reporting” - the practice of shorthand reporting for use in litigation in the courts of this State by making a verbatim record of an oral court proceeding, deposition, or proceeding before a grand jury, referee, or court commissioner using written symbols in shorthand, machine shorthand, or oral stenography.
- (d) “Court Reporting Firm,” “firm,” or “CRF” - an entity wholly or partly in the business of providing court reporting or other related services in this state as described by Section 154.001 of the Texas Government Code. The term includes officers, directors, managerial employees, and agents of a firm or its affiliate offices.
- (e) “Official Court Reporter” - the shorthand reporter appointed by a judge under Section 52.041 of the Government Code as the official court reporter for a particular court.
- (f) “Code of Ethics” or “Code” – the set of rules, adopted by Supreme Court, which specifies standards of ethics and practice in offering or rendering shorthand reporting and court reporting.

- (g) “Reporter’s Record” – a freelance reporter’s record as defined by section 1.1(j) of the Uniform Format Manual or an official reporter’s record as defined by section 1.1(r) of the Uniform Format Manual.
- (h) “Transcript” – the written record produced by the reduction into writing of an oral deposition or any legal proceeding, specified in paragraph (c).

2

LICENSE AND REGISTRATION REQUIREMENTS

- (a) A person must obtain certification by the Texas Supreme Court to offer or engage in court reporting in this State, unless otherwise authorized by rule or statute. A person who is not a certified shorthand reporter is prohibited from offering or engaging in court reporting in this State, except as otherwise authorized by rule or statute.
- (b) A certified shorthand reporter must not offer or engage in court reporting unless the reporter’s certification is current and in good standing.
- (c) A court reporting firm must not offer or engage in court reporting unless the firm’s registration is current and in good standing.
- (d) For purposes of this section, the term “good standing” means not revoked, suspended, or expired and eligible for renewal.
- (e) A certified shorthand reporter whose license has been suspended or revoked by another state or federal jurisdiction is subject to review, disciplinary action, or both, by the Commission.

3

PROFESSIONAL JUDGMENT

- (a) A certified shorthand reporter or a court reporting firm must not take any action or attempt to influence, directly or indirectly, the sound professional judgment of another certified shorthand reporter or cause a certified shorthand reporter or a court reporting firm to violate the Code.
- (b) A certified shorthand reporter must not allow an uncertified person or unregistered entity to interfere with or intervene in the reporter’s practice of court reporting.
- (c) A court reporting firm must not change the record of a certified shorthand reporter. The certified shorthand reporter may grant permission to the court reporting firm to correct identified errors on the title page, appearance page, or index page of the specific reporter’s record.

- (d) A certified shorthand reporter must avoid all relationships which could result in an uncertified reporter's or an unregistered entity's interfering with or intervening in the reporter's practice.
- (e) A certified shorthand reporter is responsible for the reporter's actions while offering or rendering court reporting. A certified shorthand reporter is directly responsible to the parties, the Court, or both, in carrying out court reporting duties in accordance with the Code.
- (f) A court reporting firm is responsible for the actions of the firm and is directly responsible to the parties, the Court, or both, in carrying out court reporting duties in accordance with the Code.

4

HONESTY, INTEGRITY AND FAIR DEALING

- (a) Each certified shorthand reporter and court reporting firm must offer and render court reporting services with honesty, integrity, and fair dealing to all parties.
- (b) The term "honesty, integrity, and fair dealing" includes the following, without limitation:
  - (1) Delivery of transcripts and reporter's records to a client, court, or a court reporting firm in a timely manner as determined by statute, court order, or agreement.
  - (2) Production of complete, not partial, transcripts and reporter's records, except when an order of a court, agreement of the parties, or a request of a party allows for the production of a partial transcript or a partial reporter's record.
  - (3) Providing notice of a request for a transcript or a reporter's record to all parties or, if applicable, their attorneys on behalf of the parties in a timely manner which allows for the delivery of copies when the original is delivered.
- (c) A certified shorthand reporter must report continuously during a deposition and must not go "off the record" unless all parties or their attorneys agree to do so or unless ordered by the Court.
- (d) A certified shorthand reporter must go "on the record," or resume court reporting, during a deposition at the request of any party or the party's attorney.
- (e) A certified shorthand reporter or a court reporting firm must not give, directly or indirectly, an incentive, reward, cash, negotiable instrument, or anything else of value to attorneys, clients, witnesses, insurance companies, or any other person or entity involved in, associated with, or otherwise interested in litigation for which the reporter or firm offers or renders court reporting services. This prohibition does not apply to:

- (1) Nominal items that do not exceed \$100 in the aggregate for each recipient each year;
- (2) Value-added business services, including long-term volume discounts on the price of products and services; and
- (3) Gifts made to family or friends which are made for reasons unrelated to the litigation.

5  
BEHAVIOR

- (a) A certified shorthand reporter or a court reporting firm must treat lawyers and members of the judiciary with respect.
- (b) A certified shorthand reporter or a court reporting firm must act in a professional manner and demonstrate respect for the Court and the law in each legal proceeding.
- (c) A certified shorthand reporter must not engage in any conduct that offends the dignity and decorum of any legal proceeding.

6  
RETENTION OF NOTES

- (a) A certified shorthand reporter must preserve the shorthand notes for a period of three (3) years unless a statute or court order specifies a longer retention period or unless a litigant requests in writing a longer retention period. The reporter must preserve the shorthand notes by storing the original paper notes or by maintaining an electronic copy of either the shorthand notes or the English transcript of the notes on computer disks, cassettes, backup tape systems, optical or laser disc systems, or any other reliable storage media.
- (b) A certified shorthand reporter has a continuing duty to prepare a reporter's record for proceedings conducted while serving as an official court reporter, deputy official court reporter, or freelance court reporter, even after he or she has resigned or has retired or is no longer providing court reporting services.

7  
COMPETENCY

- (a) A certified shorthand reporter must produce an accurate transcript or reporter's record.
- (b) A certified shorthand reporter must engage in the practice of shorthand reporting by using only the method for which the reporter was certified.

- (c) A certified shorthand reporter must prepare all reporter's records for use in litigation in the courts of this state in accordance with the Uniform Format Manual for Texas Court Reporters.
- (d) A certified shorthand reporter must not knowingly accept any shorthand reporting assignment that is beyond the reporter's competence.
- (e) A certified shorthand reporter and court reporting firm must meet promised delivery dates whenever possible, make timely delivery of transcripts when no date is specified, and provide immediate notification of delays.
- (f) A certified shorthand reporter providing court reporting services in a legal proceeding must not provide any other services or serve in any other capacity, including but not limited to CART and videography, during that legal proceeding.

8  
DUTY TO NOTIFY

- (a) A certified shorthand reporter has a duty to exercise professional judgment and immediately notify the parties, attorneys, or the Court if the requested court reporting duties are beyond the court reporter's expertise.
- (b) A certified shorthand reporter and court reporting firm have a duty to notify the parties, attorneys, or the Court, if the reporter is not able to meet court-imposed or reasonable client deadlines for delivery of transcripts.

9  
OBSERVANCE OF CONFIDENTIALITY

Each certified shorthand reporter and court reporting firm must preserve the confidentiality and ensure the security of information, oral or written, entrusted to the reporter or the firm by any of the parties in a proceeding. A certified shorthand reporter or a court reporting firm must not sell or otherwise provide a copy of a deposition transcript to any person or entity other than a deponent, a party to the proceeding, or a party's attorney without leave of court.

10  
MISCONDUCT

- (a) Each certified shorthand reporter and court reporting firm must not violate this Code, knowingly assist or induce another person to do so, or violate this Code through the acts of another.
- (b) A person must not engage in fraud or deceit in obtaining a certificate as a certified shorthand reporter or in obtaining registration as a court reporting firm.

- (c) A certified shorthand reporter must not misrepresent the reporter's certification, credentials, education, or professional or business titles.
- (d) Certified shorthand reporters and court reporting firms must not engage in any conduct involving dishonesty, fraud, deceit, or misrepresentation.
- (e) Certified shorthand reporters and court reporting firms must not engage in conduct constituting obstruction of justice.
- (f) The Commission may investigate and discipline a certified shorthand reporter or court reporting firm that is held in contempt by a state or federal court.
- (g) With regard to a complaint or disciplinary proceeding, a certified shorthand reporter or court reporting firm must:
  - (1) furnish to the Commission a response or other information within the timeframe requested; or
  - (2) timely assert in good faith a privilege or other legal ground for failure to do so.
- (h) Certified shorthand reporters and court reporting firms must not offer or render court reporting under the following circumstances:
  - (1) The reporter or firm is on inactive status;
  - (2) The certification or registration, respectively, to practice court reporting is suspended or terminated;
  - (3) The certification or registration, respectively, to practice court reporting is administratively suspended for failure to pay required fees; or
  - (4) The reporter's certification is suspended for failure to comply with continuing education rules adopted by the Supreme Court.
- (i) A court reporting firm must not engage the services of a certified shorthand reporter who is on inactive status or whose certification is suspended or terminated.
- (j) A certified shorthand reporter must not work for a court reporting firm that is on inactive status or that has a suspended or terminated registration.
- (k) A certified shorthand reporter or a court reporting firm that violates a Commission order or negotiated settlement with the Commission to resolve a complaint against the reporter or the firm commits a separate act of misconduct subject to additional disciplinary action, unless the Commission order or negotiated settlement was lawfully stayed at the time in question.

- (l) Certified shorthand reporters and court reporting firms are subject to disciplinary action in accordance with Sections 154.110 and 154.111 of the Texas Government Code for criminal offenses that demonstrate a lack of honesty, trustworthiness, or integrity. The Commission will evaluate criminal offenses and determine appropriate action in accordance with Rule 3.5 and the Commission's Criminal History Guidelines for certified shorthand reporters and court reporting firms. The Commission will evaluate the criminal offense for which deferred adjudication is imposed upon a certified shorthand reporter or a court reporting firm in accordance with the Criminal History Guidelines and may suspend or revoke the reporter's certification or the firm's registration in accordance with the Guidelines.
- (m) Certified shorthand reporters and court reporting firms must respond to a party's inquiry within a reasonable time. Repeated failure to respond without good cause is misconduct.
- (n) Certified shorthand reporters and court reporting firms must not misrepresent facts, qualifications, or make misleading or deceitful statements to parties.
- (o) Certified shorthand reporters and court reporting firms must not falsely swear or commit perjury in any communication regarding court reporting to the Commission or to any court or other governmental entity before which the reporter or firm renders court reporting.
- (p) Certified shorthand reporters and court reporting firms must not threaten, assault, or retaliate against parties; make libelous or slanderous statements; or make false public allegations that a party lacks mental capacity.
- (q) A certified shorthand reporter must not cause or be party to, directly or indirectly, a breach in the security of the court reporter certification examination or any court proceeding.
- (r) Certified shorthand reporters and court reporting firms must not enter into, or provide services under, a prohibited contract described by Section 154.115 of the Texas Government Code.

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AVOID CONFLICTS OF INTEREST

- (a) A certified shorthand reporter or court reporting firm must disclose to all parties or their attorneys existing or past financial, business, professional, family or social relationships, including contracts for court reporting services, that might reasonably create an appearance of partiality.
- (b) A certified shorthand reporter who works for a court reporting firm must immediately disclose to the court reporting firm existing or past financial, business, professional, family, or social relationships, including contracts for court reporting services, that might reasonably create an appearance of partiality. A court reporting firm has the same duty to immediately disclose to a certified shorthand reporter upon assignment, existing or past financial, business, professional, family, or social relationships, including contracts for court reporting services, that might reasonably create an appearance of partiality.

- (c) A court reporting firm or a certified shorthand reporter working independently from a court reporting firm must disclose a conflict within five days after the deposition or other reporting assignment is booked, but no later than three days before such deposition or other reporting assignment is held. The firm or reporter must disclose a conflict immediately if the deposition or other reporting assignment is booked less than three days before it is to be held.
- (d) A certified shorthand reporter who is to render court reporting of a legal proceeding and who is related within the second degree by affinity or consanguinity to a party or to an attorney for a party to the proceeding shall disclose the relationship in writing to all parties and to the Court as soon as practicable. The reporter must not provide court reporting of the legal proceeding, unless:
  - (1) There is no objection to using the reporter from a party or the court due to the relationship; or
  - (2) The Court enters an order finding that the relationship does not affirmatively create an apparent or actual partiality and good cause exists to permit the use of the reporter.
- (e) A certified shorthand reporter must not render court reporting of a legal proceeding in which the reporter has a financial interest. A certified shorthand reporter must not render court reporting of a legal proceeding in which a firm or entity with which the reporter is associated has a financial interest.
- (f) A certified shorthand reporter or a court reporting firm must be fair and impartial toward each participant in a legal proceeding.
- (g) A certified shorthand reporter working as an official reporter or deputy official reporter must refrain from freelance court reporting which interferes with official duties and obligations.

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#### EXPOSE CORRUPT OR DISHONEST CONDUCT OF CERTIFIED SHORTHAND REPORTERS AND COURT REPORTING FIRMS

- (a) Certified shorthand reporters and court reporting firms must report to the Commission any factual evidence or circumstances that create a reasonable belief that a certified shorthand reporter or court reporting firm violated this Code.
- (b) Certified shorthand reporters and court reporting firms must not, without good cause, attribute bad motives or unethical conduct to another reporter or firm. A reporter or a firm must not bring the profession into disrepute by making unfounded accusations of impropriety.

- (c) Certified shorthand reporters and court reporting firms must not file a frivolous complaint with the Commission.

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SUPERVISORY RESPONSIBILITIES

- (a) A certified shorthand reporter or court reporting firm who employs or supervises an unlicensed person to assist in the preparation of a transcript or reporter's record is responsible for any acts of the unlicensed person relating to court reporting.
- (b) A certified shorthand reporter must take reasonable remedial action to avoid or mitigate the consequences of a violation of the Code by a person under the reporter's direct supervisory authority. A reporter is subject to disciplinary action if the reporter knows or reasonably should have known of the supervisee's violation but fails to take reasonable remedial action.
- (c) A court reporting firm must take reasonable remedial action to avoid or mitigate the consequences of a violation of the Code by an employee or independent contractor of the firm. A firm is subject to disciplinary action if the firm knows or reasonably should have known of the employee's or independent contractor's violation but fails to take reasonable remedial action.

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CONTACT INFORMATION

- (a) Each applicant for certification as a certified shorthand reporter or registration as a court reporting firm shall record a current mailing address on the application form. Each certified shorthand reporter and court reporting firm must maintain a current mailing address on file with the Commission by recording it on the form filed for renewal of certification or registration, respectively. Each reporter and firm must also report a change of address within 30 days after the effective date of the address change.
- (b) Upon initial registration and each renewal of registration, a court reporting firm must also provide written notice to the Commission of the name, mailing address, phone number, fax number, and e-mail address of an officer, director, or managerial employee designated to receive any request for information or other correspondence from the Commission. The firm shall provide the Commission written notice of any change of this information within 30 days after the effective date of the change.
- (c) The Commission publishes the public addresses of certified shorthand reporters and court reporting firms on its website. There is a presumption that the most recent information on file with the Commission is correct for purposes of disseminating information to the public and providing renewal notices and other information to reporters and firms. The Commission is not obligated to contact reporters or firms to update contact information in certification and registration files.

## DISPLAY OF LICENSE; COMPLAINT INFORMATION AND NOTICE TO CLIENTS

- (a) A court reporting firm in good standing must display its registration certificate at each place of business in the area most frequented by the public, such as a waiting room or lobby. If the affiliate office is a virtual office, registrations must be displayed at the primary place of business. A court reporting firm must provide proof of registration upon request.
- (b) A certified shorthand reporter may display a certificate only if the reporter's certification is current and in good standing. A reporter must provide proof of certification upon request by the Court or parties to an action or assignment.
- (c) A certified shorthand reporter must provide upon request information necessary to file complaints about the reporter's services with the Commission. The information must include the current mailing address, phone number, and email address of the Commission.
- (d) A court reporting firm must provide upon request information necessary to file complaints about the firm's services with the Commission. The information must include the current mailing address, phone number, and email address of the Commission.

## ADVERTISING

- (a) Certified shorthand reporters and court reporting firms must not advertise in a manner that is false, fraudulent, misleading, or deceptive.
- (b) Certified shorthand reporters and court reporting firms must not advertise falsely or otherwise misrepresent the qualifications of a reporter or firm, including the reporter's or firm's professional designations or membership in professional organizations.

## FEES

- (a) Certified shorthand reporters and court reporting firms must not provide court reporting services on a contingent fee basis under any circumstances.
- (b) Certified shorthand reporters and court reporting firms must charge all parties to an action the same price for an original transcript or reporter's record.
- (c) Certified shorthand reporters and court reporting firms must charge all parties to an action the same price for a copy of a transcript or reporter's record or for like services performed in an action.
- (d) A certified shorthand reporter or a court reporting firm must disclose in writing to all parties or their attorneys upon request at any time an itemization of all rates and charges.

## CONTINUING EDUCATION

- (a) Certified shorthand reporters must comply with the continuing education requirements as set out in Rules 4.1, 4.2, 4.3, and 6.6 of the Rules of the Judicial Branch Certification Commission adopted by the Supreme Court of Texas.
- (b) A certified shorthand reporter must not file a document with the Commission which includes false, misleading, or deceptive statements regarding the reporter's compliance with continuing education requirements. A reporter who falsely reports compliance with continuing education requirements may be subject to disciplinary action by the Commission.
- (c) A certified shorthand reporter must not obtain or accept a certificate of completion or certificate of attendance from a continuing education provider unless the reporter completed or attended the continuing education activity. A reporter who obtains or receives an inaccurate certificate of completion or certificate of attendance is subject to disciplinary action by the Commission.
- (d) A certified shorthand reporter who cheats, uses unauthorized materials, or receives unauthorized assistance during an exam to complete continuing education requirements is subject to disciplinary action by the Commission.

## PROHIBITED DISCRIMINATORY ACTIVITIES

Certified shorthand reporters and court reporting firms must not willfully manifest bias or prejudice based on race, color, national origin, religion, disability, age, sex, or sexual orientation towards any person involved in an action or proceeding.