

**TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION**

Control _____ Department or Agency: Alabama Board of Court Reporting
Rule No.: **Chapter 257-X-5**
Rule Title: **Disciplinary Action**

_____ New Amend _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly
Harm or endanger the public health, welfare, or safety? Yes

Is there a reasonable relationship between the state's
Police power and the protection of the public health,
Safety, or welfare? Yes

Is there another, less restrictive method of regulation
Available that could adequately protect the public? No

Does the proposed rule have the effect of directly or
Indirectly increasing the costs of any goods or services
Involved and, if so, to what degree? No

Is the increase in cost, if any, more harmful to the public
Than the harm that might result from the absence of
The proposed rule? No

Are all facets of the rulemaking process designed solely
For the purpose of, and so they have, as their primary
Effect, the protection of the public? Yes

Does the proposed rule have an economic impact? No

If the proposed rule has an economic impact, the proposed rule is required to be accompanied
by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of
Alabama, 1975.

Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the
requirements of Chapter 22, Title 41, Code of Alabama, 1975, and that it conforms to all
applicable filing requirements of the Administrative Procedure Division of the Legislative
Reference Service.

Signature of certifying officer 
Paula McCaleb, Executive Director 334.215.7232

Date: February 15, 2017

(DATE FILED)
(STAMP)

APA-2
11/96

Alabama Board of Court Reporting

NOTICE OF INTENDED ACTION

AGENCY NAME:

Alabama Board of Court Reporting

RULE NO. & TITLE:

257-X-5 – Disciplinary Action

INTENDED ACTION:

To amend the Rules and Regulations

SUBSTANCE OF PROPOSED ACTION:

To amend the Rules and Regulations. Specifically, to clarify duty of licensees to keep their legal name and address current with the Board, and correct numbering.

TIME, PLACE, MANNER OF PRESENTING VIEWS:

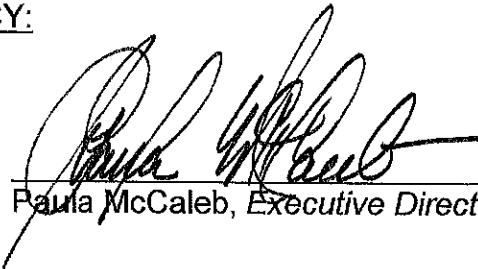
Written comments, views, or arguments will be received by the Alabama Board of Court Reporting until 4:30 p.m. on April 5, 2017. Comments should be directed to Paula McCaleb, Executive Director, at P.O. Box 241565, Montgomery, AL 36124.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:

April 5, 2017

CONTACT PERSON AT AGENCY:

Paula McCaleb
334-215-7232



Paula McCaleb, Executive Director

Chapter 257-X-5 – Disciplinary Action

257-X-5.01 Definitions

- (1) Fine: A monetary penalty up to \$1,000 imposed by the Board.
- (2) Probation: The monitored practice of court reporting which permits the court reporter to continue to practice pursuant to specified conditions as set forth by the Board.
- (3) Suspension: The temporary withdrawal of the license by Board action.
- (4) Revocation: The withdrawal of the license by Board action.
- (5) Voluntary Surrender: The voluntary relinquishment of a license that has the force and effect of revocation.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975, § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5.02 Grounds for Denial of a License

The following may be grounds for denial of a license:

- (1) Failure to meet any requirement or standard established by law or by rules and regulations adopted by the Board.
- (2) Engaging in fraud, misrepresentation, deception, or concealment of a material fact in applying for or securing licensure or taking any examination required for licensure.
- (3) Having disciplinary action pending or having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory, or country.
- (4) Having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct that would constitute grounds for discipline.
- (5) Failure to produce evidence of good moral character.
 - (a) The decision as to whether the applicant is of good moral character is within the discretion of the Board.
 - (b) Failure to show good moral character includes but is not limited to a criminal history or pattern of illegal conduct or disregard for the law.

- (6) Any other reasons authorized by law.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.03 Grounds for Discipline of a Licensee or Denial of Renewal or Reinstatement

The Board may fine, suspend, revoke, or otherwise discipline any court reporter upon proof that the person:

- (1) Is guilty of fraud or deceit in procuring or attempting to procure a license by:
 - (a) Filing false, forged, or altered documents or credentials, including required continuing education documentation;
 - (b) Misrepresenting or falsifying facts in applying for original licensure, renewal, reactivation, or reinstatement of license;
 - (c) Having another person appear for a licensing or certification examination.
- (2) Has been convicted of, or has entered a plea of guilt, regardless of court disposition, to a charged criminal act that would tend to bring reproach upon the court reporter profession. Such criminal acts include, but are not limited to, offenses involving drugs, theft, lewdness, sexual misconduct, abuse, violence, fraud, or any other conduct deemed detrimental to the public's health, safety, or welfare.
- (3) Is impaired due to the use of alcohol, or is addicted to the use of habit-forming drugs to such an extent as to render the court reporter unsafe or unreliable, which includes, but is not limited to:
 - (a) Testing positive for alcohol and/or unauthorized drugs;
 - (b) A pattern of abuse or misuse of habit-forming and/or mood-altering drugs or alcohol;
 - (c) Impairment while on duty due to the use of drugs or alcohol;
 - (d) The use of alcohol or habit-forming or mood-altering drugs to the extent that medical or psychiatric treatment, rehabilitation, or counseling is medically determined or otherwise recommended by a legally authorized practitioner.
- (4) Has been convicted of any felony offense or has been convicted of any misdemeanor which would relate to the disqualifications contained elsewhere in Section 257-X-5-.03. In the event that a plea or finding of guilt is for a lesser or different offense, the Board shall have the authority to review the factual circumstances of the initial charge, any amended charge, and/or the conviction in determining what action, if any, is appropriate.

- (5) Is guilty of unprofessional conduct of a character likely to deceive, defraud, or injure the public in matters of court reporting, which includes, but is not limited to:
- (a) Failure to comply with the Alabama Court Reporting Act and Rules and Regulations as well as federal, state, or local laws, rules, or regulations applicable to the area of court reporting practice;
 - (b) Failure to practice court reporting in accordance with the standards of practice adopted by the Board;
 - (c) Practice beyond the scope of practice as determined by, but not limited to, educational preparation, license status, state and federal statutes and regulations, state and national standards appropriate to the type of practice, and court reporting experience;
 - (d) Gross negligence in the practice of court reporting;
 - (e) Falsification of credentials;
 - (f) Falsification of employment records;
 - (g) Representing oneself as a court reporter without a license.;
 - (h) Having a license denied, conditionally issued, reprimanded, placed on probation, suspended, revoked, or voluntarily surrendered in another state, territory, or country, or having been court-martialed or administratively discharged by a branch of the United States Armed Forces for any act or conduct which would constitute grounds for disciplinary action in this state. A certified copy of the record of the agency that took such action shall be conclusive evidence of the grounds for discipline.
 - (i) Failure to keep the Board apprised of legal name change within thirty (30) days of name change.
 - (j) Failure to keep the Board apprised of change of address within thirty (30) days of address change.
- (6) Has failed to respond to official Board correspondence, including, but not limited to, requests for information, subpoenas, or notices.
- (7) Has willfully or repeatedly violated any of the provisions of a statute or rule that includes but is not limited to:
- (a) Practicing or seeking to practice court reporting without a current license;
 - (b) Impersonating an applicant for licensure or another licensed practitioner or permitting or allowing another person to use the court reporter license;
 - (c) Continued violation of statute or rule after notice by the Board;
 - (d) Failure to comply with any stipulated terms and conditions of any Board order or contract.
- (8) Failed to comply with continuing education requirements.

- (9) Submitted payment of any fees or fines to the Board with a worthless check, invalid credit card, or by any other method that is not honored by the financial institution.
- (10) Authorizing Court Reporter License number to be used on any transcript not produced through his or her personal effort or supervision, or both.
- (11) Poses a risk to public safety for any other reasons stated by law.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.04 Investigation

- (1) Upon self-disclosure or receipt of a written complaint on an ABCR Consumer Complaint Form signed by the person making the complaint, alleging that a court reporter has violated a statute or rule by committing one or more of the actions specified as grounds for disciplinary action, the Executive Director shall perform a preliminary review to determine if there is merit and sufficient evidence to warrant formal proceedings. The Consumer Complaint Form must be complete before an investigation is launched. Complaints must be submitted to the Board within sixty (60) days of the alleged occurrence.
- (2) ~~(2)~~ If a complaint is made regarding someone practicing court reporting without a valid license, it is the duty of Board counsel to investigate the complaint and to take or recommend appropriate action. This does not alter the other provisions concerning the filing of complaints, but affects only the licensing issue.
- (3) When the Executive Director determines there may be merit and sufficient evidence exists to warrant proceedings, an investigative committee shall be formed consisting of one (1) Board member, one (1) Board counsel, and the Executive Director.
 - (a) Within five (5) days of self-disclosure or receipt of a written complaint being filed against a licensee or unlicensed court reporter, the Board or its designee shall provide the court reporter against whom the complaint was made, written notification of the complaint by certified mail. A postmark date to the last known address of the licensee or unlicensed court reporter, within thirty (30) days of the receipt of the complaint, shall meet this requirement of the rules and regulations. The court reporter may submit, to the Executive Director, a written response and any supporting documentation within fifteen (15) days of the receipt of the written notification. A court reporter, in addition to submitting a written response, may request to speak to the investigative committee in person in response

to any complaint that has been filed. It is solely within the discretion of the investigative committee to grant or deny the request.

- (b) The committee shall review the complaint and other information submitted to determine if further investigation is warranted.
 - (1) If further investigation is warranted, an investigator may be retained. The investigator shall work under the direction of the Executive Director to conduct further investigation;
 - (2) At the conclusion of the investigation, the investigator shall submit an investigation report to be reviewed by the investigative committee, which has the authority to act on the report.
 - (3) The investigative committee shall send written notification to the complainant and the court reporter, against whom the complaint was made of any action it decides to take in response to the investigation report.
 - (c) If the committee determines that an investigation is not warranted, the Executive Director may close the investigative file, The Executive Director shall notify the complainant and the court reporter against whom the complaint was made that the investigation has been closed.
- (3) When a preliminary review discloses that further investigation is not warranted, the Executive Director may close the investigative file without any further action.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.05 Board Action Following Investigation

The Board or its authorized designee shall have the power to act on the report of the investigation as follows:

- (1) Dismiss the complaint.
- (2) Enter into settlement negotiations.
- (3) Commence disciplinary proceedings.
- (4) Accept voluntary surrender of a license.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-06 Administrative Procedure Act

The Board hereby adopts by reference as its rules Sections 41-22-1 et seq., Alabama Administrative Procedure Act, Code of Alabama (1975), as amended, governing contested cases, appeals, and related proceedings.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-07 Formal Disposition of Contested Cases

- (1) At least thirty (30) days prior to the administrative hearing, a notice of hearing and a copy of the charges shall be served on the applicant or court reporter personally or by registered or certified mail to the last known address shown on file with the Board.
- (2) The Board's complaint may be amended prior to the hearing, but no amendment shall be permitted which is not germane to the charge or charges or which materially alters the nature of any offense charged.
- (3) A complainant may withdraw a complaint filed with the Board up to ten (10) days after the complaint is filed with the Board.
- (4) Pleadings relating to disciplinary proceedings pending before the Board shall be filed with the Board's designee. Pleadings shall be deemed filed upon actual receipt.
- (5) Requests for subpoenas shall be filed with the Board at least fifteen (15) days prior to the hearing along with the appropriate subpoena-processing fee. Any expense for service by a sheriff, process server, or other entity shall be the responsibility of the party requesting the subpoena. Any expenses incurred relative to subpoenas requested by a respondent, either for witnesses or related to production of documents, are the responsibility of the party requesting the issuance of said subpoena.
- (6) The hearing shall be conducted by the Board or by a hearing officer appointed by the Board. All testimony shall be under oath and shall be transcribed by a court reporter scheduled by the Board.
- (7) A continuance may be granted by the Board or its designee upon the filing of a written motion detailing the reasons for the continuance. No motion for continuance shall be granted unless filed at least five (5) days prior to the hearing. This provision may be waived upon showing, by a filed affidavit, the existence of an emergency.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-08 Informal Disposition of Contested Cases

- (1) Complaints or controversies may be considered and resolved by the Board or Board designee through informal conferences, meetings, or other informal means. Such informal measures shall be held without prejudice to the right of the Board thereafter to institute formal proceedings based upon the same or related material if circumstances so warrant.
- (2) Informal dispositions may be made of any contested case by stipulation, agreed settlement, consent order or default, or by another method agreed upon by the parties in writing and as approved by the Board.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975, § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.09 Decisions of the Board

- (1) Based upon the evidence presented at the administrative hearing or pursuant to informal disposition, the Board may do one or more of the following:
 - (a) Dismiss the complaint.
 - (b) Reprimand the respondent.
 - (c) Probate the respondent's license.
 - (d) Suspend the respondent's license. A suspended license is subject to expiration during the suspension period.
 - (e) Revoke the respondent's license.
 - (f) Deny approval of the application.
 - (g) Deny renewal or reinstatement of a license.
 - (h) Impose other sanctions or restrictions.
- (2) The Board may levy a fine not to exceed one thousand dollars (\$1,000) per violation. Each incident, after Board notice of a violation of its rules and regulations or statute, may be considered as a separate violation.
- (3) The decisions of the Board shall be in writing in the form of an order, a copy of which shall be mailed or delivered to the respondent or the respondent's attorney.
- (4) The decisions of the Board shall be subject to public dissemination; i.e., mass emails, website, newsletter, newspapers, etc.
- (5) Appeals from decisions of the Board are to be made in writing to the Board office within ninety (90) days of the final order. Further appeal is then available in Circuit Court pursuant to the requirements of the Administrative Procedure Act.
- (6) All members of the Board, including the Chair, are entitled to vote and to make or second motions in disciplinary matters except for any Board Member who may

also serve on the Investigative Committee, serve as the Complainant, or have a conflict of interest in the case being decided. A majority of those members on the Board present and voting on any matter shall decide that matter before the Board.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.10 Application Following Denial of Licensure

- (1) Application for a license following denial of licensure shall:
 - (a) Include evidence of rehabilitation, or elimination or resolution of the conditions for denial.
 - (b) Re-application may occur twelve (12) months after the denial of licensure.
- (2) Board action on applications following denial of licensure may be resolved either informally or through the formal hearing process.
- (3) In considering a subsequent application for licensure, the Board may evaluate factors that include but are not limited to:
 - (a) The severity of the act(s) or omission(s) which resulted in the denial of license;
 - (b) The conduct of the applicant subsequent to the denial of license;
 - (c) The lapse of time since denial of license;
 - (d) Compliance with any conditions stipulated by the Board as a prerequisite for a subsequent application;
 - (e) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant;
 - (f) Whether the applicant is in violation of any applicable statute or rule.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012

257-X-5-.11 Reinstatement of a Revoked License

- (1) **Revocation due to violations of the statute or rules and regulations:**
 - (a) Application for reinstatement:
 - (1) May be made twelve (12) months after the effective date of revocation unless otherwise specified in Order or Agreement;
 - (2) Shall be made according to forms and guidelines provided by the Board.

- (b) Applications for reinstatement of a revoked license may be resolved informally or through the formal hearing process.
 - (c) In considering reinstatement of a revoked license, the Board may evaluate factors that include but are not limited to:
 - (1) Severity of the act(s) that resulted in revocation of the license;
 - (2) Conduct of the applicant subsequent to the revocation of license;
 - (3) Lapse of time since revocation;
 - (4) Compliance with all reinstatement requirements stipulated by the Board;
 - (5) Rehabilitation attained by the applicant as evidenced by statements provided directly to the Board from qualified individuals who have professional knowledge of the applicant;
 - (6) Whether the applicant is in violation of any applicable statute or rule;
 - (7) Directly or by implication represent in any way that the person is a licensed court reporter.
- (2) **Revocation due to a failure to renew during the grace period:**
- (a) Application for reinstatement:
 - (1) May be made at any time after the license has been revoked due to a failure to renew during the grace period;
 - (2) Shall be made according to forms and guidelines provided by the Board.
 - (b) Applications for reinstatement may be approved by the Executive Director or by a vote of the Board at a scheduled board meeting.
 - (c) In considering reinstatement of a revoked license, the Board or its Executive Director may evaluate factors that include but are not limited to:
 - (1) Whether the individual has continued to practice court reporting without a license;
 - (2) Whether the individual responded to Board correspondence;
 - (3) Whether the individual provided the Board's administrative office with updated addresses and telephone numbers.
- (3) Must pay a reinstatement fee
- (4) Must complete .5 CEUs for each renewal year the applicant has failed to renew the license.

Author: Alabama Board of Court Reporting

Statutory Authority: Code of Alabama, 1975. § 34-8B-1 thru . § 34-8B-18

Effective Date: June 19, 2012