



## Board of Certified Reporters

Arizona State Courts Building  
1501 West Washington Street  
Phoenix, Arizona 85007-3222

Conference Room 109

Date: June 8, 2010

Time: 1:00 p.m.

### Approved Regular Meeting Minutes

#### MEMBER ATTENDANCE:

##### Present:

G. Allen Sonntag, Chair  
Terri Faust, Vice Chair  
Patricia Calabro  
J. Tyrrell Taber  
Cheryl Austin

##### Telephonically Present:

Kathleen R. Montalvo

##### Absent:

Judge Peter Swann  
Judge Edward Bassett  
Patricia Seguin

#### OTHER ATTENDEES

##### AOC Staff:

Nancy Swetnam  
Linda Grau  
Debbie MacDougall  
Kimberly Siddall  
Tony Posante  
Karla Clanton  
Jennifer Greene  
Doris Leonard

##### Guests:

Erica Grund  
Tony Garcia  
Dana Smith  
Melissa Gonsalves  
Laureen Badar  
Rochelle Dobbins

Mary Meyer  
Julie Ottmar  
Cyndi Morris-Crowe  
Pamela Griffin  
Gayla Brown  
Cindy Bachman

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#### CALL TO ORDER

*Called to Order By:*

G. Allen Sonntag, Chair

*Time:*

1:15 p.m.

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1) **REVIEW AND APPROVAL OF MINUTES**

**1-A:** *Review, discuss and approval of the Regular Session Minutes for the April 13, 2010 meeting.*

**Individuals Addressing the Board:** Allen Sonntag, Chair

**Discussion:** No changes.

**Motion:** Approve minutes of April 13, 2010.

**Motion Proposals:** First Patricia Calabro

Second Terri Faust

**Motion Results:** Pass **BCCR-10-56**

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2) **PENDING COMPLAINTS**

**2-A:** *Review, discussion and possible action regarding the Division Director recommendation to dismiss complaint number NC10-C005 pursuant to Arizona Code of Judicial Administration § 7-201(H)(2)(a) and ACJA § 7-206(H)(1).*

**Individual Addressing the Board:** Nancy Swetnam

**Discussion:** Sufficient response was received from the complainant and it is recommended the Board dismiss this complaint NC10-C005.

**Motion:** Dismiss complaint NC10-C005 as recommended by the Division Director.

**Motion Proposals:** First Ty Taber

Second Cheryl Austin

**Motion Results:** Pass **BCCR-10-57**

**2-B:** *Review, discussion and possible action regarding certificate holder complaint number 09-C005 and proposed Consent Agreement involving Bethany Campbell.*

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** Staff recommended declining to enter the Amended Consent Agreement and authorized the Chair to sign Notice of Formal Statement of Charges in complaint number 09-C005 on behalf of the full Board. Ms. Campbell still has outstanding transcript requests in Arizona Court of Appeals, Division 1.

**Motion:** Defer complaint number 09-C005, Bethany Campbell, to the September 14, 2010 meeting and direct staff to contact Arizona Court of Appeals Division 1 regarding any outstanding transcripts and bring all the mentioned issues to the forefront to make certain they are in compliance.

**Motion Proposals:** First Ty Taber  
Second Patty Calabro

**Motion Results:** Pass **BCCR-10-58**

**2-C: Review, discussion and possible action regarding the following certificate holder complaints:**

***Complaint Number 09-C010 - Dana Smith***

***Complaint Number 09-C011 - Margaret Riley-Archibeque***

***Complaint Number 09-C013 - Kristin Brown***

***Complaint Number 09-C012 - Gail Ferguson***

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** ***Complaint Number 09-C010 - Dana Smith (Ms. Smith is present).***  
Staff recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) and (H)(6)(k)(2) for acts of misconduct involving ACJA § 201(F)(1) and ACJA 7-206 § (J)(4)(c) and (J)(6)(a). They further recommended the Board request Division staff contact Ms. Smith in advance of filing the Notice of Formal Statement of Charges to determine if she is willing to enter into a Consent Agreement to the proposed sanctions to resolve the matter. If Ms. Smith agrees, it is recommended the Board request Division staff prepare and deliver a draft Consent Agreement to Ms. Smith with a date certain deadline to provide the signed Consent Agreement back or if she declines the opportunity to resolve the matter by Consent Agreement, staff would then proceed with the Notice of Formal Statement of Charges.

Ms. Smith asked to address the Board. Chair Allan Sonntag, advised it was not the appropriate time. Nancy Swetnam also stated it was not the time and place to discuss Ms. Smith's view.

**Motion:** Board is entering a finding grounds for formal disciplinary action exists per the recommendation; and requests Division staff prepare and deliver a draft of the Consent Agreement with a date-certain deadline to Ms. Smith for her consideration.

**Motion Proposals:** First Ty Taber  
Second Patricia Calabro  
**Motion Results:** Pass **BCCR-10-59**

**Discussion:** **Complaint Number 09-C011 - Margaret Riley-Archibeque**  
Staff recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(k)(2), and (H)(6)(k)(12) for acts of misconduct involving ACJA § 7-201(F)(1), (F)(6), ACJA § 7-206(F)(1), (J)(4)(c), (J)(4)(c), (J)(4)(f) and (J)(6)(a).

**Motion:** Board enters a finding grounds for formal disciplinary action exists and that a Consent Agreement will be offered to Ms. Riley-Archibeque with the provisions discussed. Issue a Censure that Ms. Riley-Archibeque be placed on probation for not less than 18 months with provisions that she is to report to the Board regularly, all pending transcripts and the due dates for submission, the status of each transcript, complying with all court orders regarding transcript deadlines and appearance at hearings. She shall complete ten (10) additional hours of continuing education and pay all costs associated with the investigation and any related disciplinary proceedings.

**Motion Proposals:** First Ty Taber  
Second Cheryl Austin  
**Motion Results:** Pass **BCCR-10-60**

**Discussion:** **Complaint Number 09-C013 - Kristin Brown**  
Staff recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(c), (H)(6)(k)(2) and (H)(6)(k)(12) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-206(F)(1), (J)(4)(c), (J)(4)(f) and (J)(6)(a). It is further recommended, should the Board ultimately enter a finding this violation has occurred, the Board impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6) and issue a Censure placing Ms. Brown on probation for a period of not less than one year, pursuant to ACJA § 7-201(H)(24)(a)(6)(e). In view of the mitigating factors and the proportionality analysis, it is recommended the Board consider pursuing a proposed Consent Agreement with Ms. Brown. If the Board enters a finding the violation has occurred, the Board issue a Censure to Ms. Brown, place her on probation for one year, require the reporting of all pending transcripts, the due date for submission, the status of each transcript, any requests for extensions, any court orders for production of transcripts, requests for extensions or appearance at

hearing and Ms. Brown's compliance. During the period of probation, Ms. Brown would comply with all court orders and that she would complete ten (10) additional hours of continuing education and pay any costs associated with the investigation and related disciplinary proceedings.

***Motion:***

Issue a Censure to Ms. Brown, place her on probation for one year, require the reporting of all pending transcripts, due date for submission, status of each transcript, any requests for extensions, any court orders for production of transcripts, requests for extensions or appearance at hearing and Ms. Brown's compliance. During the period of probation, Ms. Brown would comply with all court orders and would complete ten (10) additional hours of continuing education and pay any costs associated with the investigation and related disciplinary proceedings.

***Motion Proposals:***

First: Terri Faust  
Second: Patricia Calabro  
Pass: **BCCR-10-61**

***Discussion:***

***Complaint Number 09-C012 - Gail Ferguson***

Staff recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(c), (H)(6)(k)(2) and (H)(6)(k)(12) for acts of misconduct involving ACJA § 7-201(H)(1)(c), (F)(1), ACJA § 7-206(F)(1), (J)(4)(c), (J)(4)(f) and (J)(6)(a). It is further recommended, should the Board ultimately enter a finding this violation has occurred, the Board impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6): issue a Censure to Ms. Ferguson, place Ms. Ferguson on probation for a period of not less than one year, pursuant to ACJA § 7-201(H)(24)(a)(6)(e) with the following conditions: Within 30 days of the Board's Final Order, and every 60 days thereafter through conclusion of the term of probation, Ms. Ferguson shall submit a list to the Board containing the following information: all pending transcripts, the due date for submission, the status of each transcript, any requests for extensions, any court orders for production of transcripts, requests for extensions or appearance at hearing and Ms. Ferguson's compliance. During the period of probation, Ms. Ferguson shall comply with all court orders regarding transcript deadlines and appearance at hearings; shall complete ten (10) additional hours of continuing education and pay costs associated with the investigation and related disciplinary proceedings. .

***Motion:***

Issue a Censure to Ms. Ferguson, place her on probation for one year within 30 days of the Board's Final Order and every 60 days thereafter through conclusion of the term of probation, Ms.

Ferguson shall submit a list to the Board containing the following information: all pending transcripts, the due date for submission, the status of each transcript, any requests for extensions, any court orders for production of transcripts, requests for extensions or appearance at hearing and Ms. Ferguson's compliance. During the period of probation, Ms. Ferguson shall comply with all court orders regarding transcript deadlines and appearance at hearings; shall complete ten (10) additional hours of continuing education and pay costs associated with the investigation and related disciplinary proceedings.

**Motion Proposals:** First: Terri Faust  
Second: Patricia Calabro  
Pass: **BCCR-10-62**

**2-D: Pending Complaints - Review, discussion and possible action regarding non-certificate holder complaint number NC10-C007 involving Esquire Solutions aka Esquire Deposition Services and complaint number NC10-C009 involving Liberty Mutual, Hutchings Court Reporters and Veritext Deposition and Litigation Services.**

**Individual Addressing the Board:** Linda Grau

**Discussion:** Ms. Grau reviewed the contents of the above complaint which included a copy of an electronic solicitation message from Esquire to a certified reporter with various offerings. Ms. Grau cited related portions of ACJA § 7-206(J) dealing with Code of Conduct. Staff recommended the Board issue subpoenas to Esquire, Hutchings and Veritext requesting any and all contracts entered into for reporting services in Arizona cases since September 15, 2009, pursuant to ACJA § 7-201(D)(5)(c)(2)(d) which authorizes the Board to issue subpoenas for documentary evidence.

**Motion:** Request staff to issue subpoenas to Esquire, Hutchings and Veritext requesting any and all contracts entered into for reporting services in Arizona cases since September 15, 2009, pursuant to ACJA § 7-201(D)(5)(c)(2)(d) which authorizes the Board to issue subpoenas for documentary evidence.

**Motion Proposals:** First Cheryl Austin  
Second Terri Faust  
**Motion Results:** Pass **BCCR-10-63**

3) ADMINISTRATIVE ISSUES

*3-A: Report from, discussion and possible action regarding the ACJA § 7-206(J)(1)(g) Subcommittee.*

*Individuals Addressing the Board:* Linda Grau

*Discussion:* Linda discussed this matter, in the absence of the subcommittee chairman, Judge Swann. Staff sent out copies of the codified language from the subcommittee's last discussion as well as the copy the Board has in their possession. Ms. Grau asked if someone would speak on Judge Swann's behalf or defer this matter to the September 14th meeting. Chair Allen Sonntag stated he attended this subcommittee meeting and presented some of the language which seemed to satisfy the fact of the matter as it exists today. The recommendation of this subcommittee is that these changes go forward and through the process for adoption. Chair Allen Sonntag noted there were a number of people in attendance (who are not members of the Board) to which he offered his thanks for their input.

This agenda item was scheduled for the Board to review the subcommittee's report and for possible action. The Board accepts the recommended proposed amendment as presented by the subcommittee and recommends it be forwarded through the process for consideration of adoption.

*Motion:* Accept and approve the recommended proposed amendment as presented by the subcommittee and forward it through the process to be considered for adoption.

*Motion Proposals:* First Patricia Calabro  
Second Ty Taber

*Motion Results:* Pass **BCCR-10-64**

*3-B: Review, discussion and possible action regarding ACJA § 7-201(D)(2)(b)(1) involving guidelines for ethics advisory committees.*

*Individuals Addressing the Board:* Linda Grau

*Discussion:* Ms. Grau requested this item be placed on the agenda for a couple of reasons. First and foremost, there have been a couple of items recently moved to the Board agenda regarding a long standing request that several members have made in the past regarding

requests (in some cases, ten years ago) asking for the appointment of an ethics advisory committee. Shortly after the amendment to 7-201 containing this language went into effect, there was preliminary work done on drafting the guidelines referenced in this provision. Ms. Grau is not aware that any administrative directive or Order has been entered that codifies those guidelines. She stated there is nothing that keeps this Board from requesting that occur or again forwarding the request that an ethics advisory committee be appointed. For practical purposes, in the budget and resource environment we're in, there isn't any way of knowing that such a request would result in the intended or hoped for outcome. Ms. Grau wanted to take the opportunity to inform the Board (and interested parties) of what occurred in the past on this issue and where everyone is at so the Board can discuss whether or not making a request would just be a good way to signal that it's still a relevant issue to this Board as well as others. Mr. Sonntag added that ethics are hopefully not held hostage to dollars and suggests this Board would like to proceed with the request even in light of what's been said.

***Motion:*** Staff to proceed with the request to move forward with the appointment of an ethics advisory committee and approve the drafted guidelines.

<b><i>Motion Proposals:</i></b>	First	Terri Faust
	Second	Patricia Calabro
<b><i>Motion Results:</i></b>	Pass	<b>BCCR-10-65</b>

**4) REVIEW OF CERTIFICATION APPLICATIONS**

**4-A: Review, discussion and possible action regarding pending applications for renewal of certification.**

*Gail Ferguson  
Dana Smith*

**Individuals Addressing the Board:** Kimberly Siddall

**Discussion:** Staff recommended the Board grant renewal certification to the following:

Gail Ferguson

**Motion:** Grant renewal certification to Gail Ferguson.

**Motion Proposals:** First Ty Taber  
Second Terri Faust

**Motion Results:** Pass **BCCR-10-66**

**Discussion:** Staff recommended the Board grant renewal certification to the following:

Dana Smith

**Motion:** Grant renewal certification to Dana Smith.

**Motion Proposals:** First Ty Taber  
Second Cheryl Austin

**Motion Results:** Pass **BCCR-10-67**

**Discussion:** Application renewal certifications are pending as additional information is required from the following certificate holders.

Kristen Brown  
Margaret Riley  
Yvonne De La Torre  
Rochelle Dobbins

Staff recommended deferring this item to the September 14, 2010 Board meeting.

**Motion:** Defer the renewal certification of the following applicant holders until the September 14, 2010 Board meeting:

Kristen Brown  
Margaret Riley  
Yvonne De La Torre  
Rochelle Dobbins

**Motion Proposals:** First Ty Taber  
Second Terri Faust  
**Motion Results:** Pass **BCCR-10-68**

**4-B: Review, discussion and possible action regarding applicants for standard certification.**

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** Staff recommended standard certification be granted to the following certificate holders:  
Gayla S. Brown  
Holly Larsen

**Motion:** Grant standard certification to the following certificate holders:  
Gayla S. Brown  
Holly Larsen

**Motion Proposals:** First Terri Faust  
Second Ty Taber  
**Motion Results:** Pass **BCCR-10-69**

**Discussion:** Staff recommended consideration of the following applications be deferred to the September 14, 2010 Board meeting.  
Katherine J. Brookbank  
Kimberlye A. Furr  
Alicia M. Santana  
Debra K. Upham

**Motion:** Defer recommended consideration of the following applications until the September 14, 2010 Board meeting.

**Motion Proposals:** First Ty Taber  
Second Cheryl Austin  
**Motion Results:** Pass **BCCR-10-70**

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**CALL TO THE PUBLIC**

**Rochelle Dobbins** – Requested certification information. Ms. Siddall agreed to meet with Ms. Dobbins after the meeting to provide her with that information.

**Mary Meyer** – Addressed the Esquire issue and solicitation of gift giving.

**Melissa Gonzalves** – Expressed her thanks to the Board and all the members who participated in the subcommittee.

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**ADJOURNMENT**

**Motion:** Meeting is adjourned.

**Motion Proposals:** First Ty Taber  
Second Terri Faust  
**Motion Results:** Pass **BCCR-10-71**

**Time:** 3:25 p.m.

Initials: del

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