



BOARD OF CERTIFIED REPORTERS

Arizona State Courts Building
1501 West Washington Street, Phoenix, Arizona 85007
Hearing Room 109
1:00 P.M.
June 12, 2012

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

G. Allen Sonntag
Terri Faust
Judge Peter Swann
Judge Edward Bassett
J. Tyrrell Taber
Patricia Calabro

Telephonically Present:

Patricia Seguin
Cheryl Austin

Absent:

Kathleen Montalvo

OTHER ATTENDEES:

AOC Staff:

Nancy Swetnam
Linda Grau
Anne Hunter
Debbie MacDougall
Kimberly Siddall
Annette Fields
Jennifer Green
Arnita Oliver
Rick Sczerbiki

Jodie Guhr
Mary Davis
Josie Limon
Robin Jasper
Kathy Fink
Cyndi Morris-Crowe
Jack Hirsch
Melissa Gonsalves
Pam Griffin
Julie Ottmar
Fred Cummings
Chris Green
John MacDonald
Donna De La Vina

Guests:

Mary Meyer
Marty Herder
Doreen Borgmann
Rosina Seymour
Bill Caravetta
Les Tuskai
Nancy Richmond
Nichole Rhynard
Lisa G.
Craig McCarthy
Kristen Wunsch
Jerry Coash
Lisa Lerner

CALL TO ORDER

Called to Order By: G. Allen Sonntag

Time: 1:05 P.M.

1) REVIEW AND APPROVAL OF MINUTES:

1-A: Review and approval of regular minutes for the meeting of April 10, 2012.

Individual Addressing the Board: G. Allen Sonntag

Discussion: None

Motion: Move to approve regular minutes of the April 10, 2012 meeting.

Motion Proposals: First Patricia Calabro
Second Terri Faust

Motion Results: Pass

2) PENDING COMPLAINTS:

2-A: Review, discussion and possible action regarding the following disciplinary matters:

- *Complaint Number 10-C003 – LeAnn Pappas*
- *Complaint Number 10-C011 – Shannon Stevens*

Individual Addressing the Board: Linda Grau

Discussion: Complaint Number 10-C003 – LeAnn Pappas – On March 19, 2010, the Division received this complaint alleging that Ms. Pappas conspired with another certified reporter to alter an arraignment transcript for a matter that was being handled in Superior Court in Pinal County. The investigation was conducted; documentation and information was derived from numerous resources including applicable interviews with different parties.

On May 18, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 10-C003. Therefore, it is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 10-C003.

Motion: Move to accept the recommendation of the Probable Cause Evaluator and dismiss the complaint.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

Discussion: Complaint Number 10-C011 – Shannon Stevenson - On June 24, 2010, the Division received a complaint containing three allegations:

1. Stevenson violated ACJA § 7-206(J)(1)(g) by servicing a contract involving Veritext and insurance company Gallagher Bassett.
2. Stevenson violated ethical regulations contained within ACJA § 7-206(J)(1) regarding impropriety or the appearance of impropriety, fairness and impartiality, conflicts of interest, full disclosure, and unethical and unprofessional conduct.
3. Stevenson violated ACJA § 7-206(J)(3)(b), (c) and (d) and ACJA § 7-206(J)(1)(g)(3) by failing to disclose in writing rates and charges to all parties, failing to determine fees independently and relinquishing control of transcript distribution and invoicing to Veritext.

On May 18, 2012, Probable Cause Evaluator Mike Baumstark entered a finding that probable cause does not exist in complaint number 10-C011. Therefore, it is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 10-C011.

Motion: Move to accept the recommendation of the Probable Cause Evaluator and dismiss the complaint.

Motion Proposals: First Judge Edward Bassett
Second J. Tyrrell Taber
Recused Cheryl Austin

Motion Results: Pass

Discussion: Complaint Number 10-C018 – Kimberly Gauthier – On December 3, 2010, Division staff requested that Deputy Director of Administrative Office of the Courts, Mike Baumstark initiate a complaint pursuant to ACJA § 7-201(H)(1)(b) involving Ms. Gauthier in order to conduct an investigation as to whether or not

she violated ACJA § 7-201(F)(1), ACJA § 7-206(F)(1), ACJA § 7-206(J)(1) and ACJA § 7-206(J)(3) by entering into a “prohibited contractual agreement” with Liberty Mutual, Hutching Court Reporters and/or Veritext Deposition and Litigation Services while providing deposition services in a Mohave County civil action.

On May 18, 2012, Acting Probable Cause Evaluator Dave Byers entered a finding probable cause does not exist. Therefore, it is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 10-C018.

Motion: Move to dismiss the complaint.

Motion Proposals: First Judge Peter Swann
Second Judge Edward Bassett
Recused G. Allen Sonntag

Motion Results: Pass

Discussion: Complaint Number 11-C002 – Sandra Marruffo: Complaint was received by June 2 2011. The initial complaint was received contained three allegations:

1. Marruffo violated ACJA § 7-206(F)(1), (J)(1)(h)(2) and (J)(1)(h)(5) by reporting a deposition in the case of Capko v. Tsai at the request of Esquire Deposition Services (“Esquire”) because Esquire holds a contract with insurance carrier CNA Commercial Property and Casualty Insurance (“CNA”).
2. Marruffo violated ACJA § 7-206(J)(1)(g)(5) by entering into an contract which required Ms. Marruffo to perform reporting services for Esquire at a rate of compensation that compelled, guaranteed, regulated, or controlled Ms. Marruffo providing services at Esquire’s request in other matters.
3. Marruffo violated ACJA § 7-206(J)(3)(e) by failing to be aware of and avoid impropriety or the appearance of impropriety by entering into written or verbal financial relationship with counsel, parties of interest or their intermediaries that undermines the actual or perceived impartiality of the certified reporter.

On May 18, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 11-C002. Therefore, it is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 11-

C002.

Motion: Move to dismiss complaint number 11-C002.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

Discussion: Complaint Number 11-C003 - Margaret Smith: This complaint was received by the Division on June 2, 2011, which contained three allegations:

1. Smith violated ACJA § 7-206(F)(1), (J)(1)(h)(2) and (J)(1)(h)(5) by reporting depositions in a civil matter at the request of Esquire Deposition Services because Esquire holds a contract with insurance carrier CNA Commercial Property and Casualty Insurance (“CNA”).
2. Smith violated ACJA § 7-206(J)(1)(g)(5) by entering into a contract which required Ms. Smith to perform reporting services for Esquire at a rate of compensation that compelled, guaranteed, regulated, or controlled Ms. Smith providing service at Esquire’s request in other matters.
3. Smith violated ACJA § 7-206(J)(3)(e) by failing to be aware of and failing to avoid impropriety or the appearance of impropriety by entering into a written or verbal financial relationship with counsel, parties of interest or their intermediaries that undermines the actual or perceived impartiality of the certified reporter.

On May 23, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegations (1) and (2), but does exist to Allegation (3) in complaint number 11-C003. Therefore, it is recommended that the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations (1) and (2). Regarding Allegation (3). It is recommended the Board enter a finding of grounds for informal disciplinary action exist pursuant to ACJA § 7-201(h)(6)(a) for an act of misconduct involving ACJA § 7-201(F)(1) and ACJA § 7-206(F)(1), (J)(1)(b) and (J)(3)(d); and issue a Letter of Concern.

It is further recommended the Board order additional language be added to the Letter of Concern that requests Smith reimburse attorneys Leonard Mark and Susan McLellan \$16.72, in order to achieve compliance with ACJA § 7-206(J)(3)(d).

Motion: Move to adopt the recommendation.

Motion Proposals: First Judge Peter Swann
Second Terri Faust

Motion Results: Pass

Discussion: Complaint Number 11-C004 – Ernie Ambort: - On June 7, 2011, the Division received a written complaint regarding Mr. Ambort containing three allegations:

1. Ambort violated ACJA § 7-206(J)(1)(g) by reporting a deposition for Esquire Corporate Solutions (“Esquire”) pursuant to Esquire’s contract with insurance carrier CNA Commercial Property and Casualty Insurance (“CNA”) in the case of Capko v. Tsai.
2. Ambort violated ACJA § 7-206(J)(1)(b) by entering into an employment contract to perform reporting services for Esquire in the Capko vs. Tsai case.
3. Ambort violated ACJA § 7-206(J)(3)(e) by failing to be aware of and failing to avoid impropriety or the appearance of impropriety by entering into a written or verbal financial relationship with counsel, parties of interest or their intermediaries that undermines the actual or perceived impartiality of the certified reporter.
4. Ambort violated ACJA § 7-201(F)(6) by failing to notify the Division in writing of a change in mailing or home address within 30 days of any change.

On May 18, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegations (1), (2), and (3) and does exist regarding Allegation (4). It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations (1), (2), and (3) on complaint No. 11-C004. On Allegation (4), it is recommended that the Board enter a finding that Mr. Ambort did fail to report his address. It is recommended the Board accept the written recommendation and dismiss this complaint.

Motion: Move to note that the address was not properly changed, but move to dismiss the remaining.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

Discussion: Complaint Number 11-C005 – Pamela Lohr – On June 16, 2011,

this Division received a written complaint containing five allegations:

1. Lohr violated ACJA § 7-206(J)(1)(g) by providing deposition reporting services to Esquire Corporate Solutions (“Esquire”) while Esquire holds a “prohibited agreement” with Ascension Health specific to court reporting services.
2. Lohr violated ACJA § 7-206(J)(1)(g)(2) because Ascension Health claimed the deposition services agreement between Esquire and Ascension Health provided case-by-case pricing in “restrictive contracting states” or states “with anti-contracting Legislation” but failed to provide any evidence price disclosures were made available to all parties.
3. Lohr directly or indirectly violated ACJA § 7-206(J)(1)(b) by providing deposition reporting services at Esquire’s request when Esquire may be providing benefits to Ascension counsel that are not provided to all parties in the matter.
4. Lohr may have violated ACJA § 7-206(J)(1)(g)(3) and (J)(3)(d) if Esquire’s business policies denied Lohr the ability to monitor transcript production, distribution and invoicing.
5. Lohr directly or indirectly compromised her impartiality and the appearance of impartiality and may have damaged the public’s confidence in the integrity of the Judicial System by providing deposition services to Esquire with respect to the conduct detailed in allegations, 1, 2, 3 and 4.

On May 23, 2012, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist as to Allegations (1), (2), and (5) but does exist as to Allegations (3) and (4) in complaint number 11-C005. It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss allegations (1), (2), and (5) of complaint No. 11-C005. Regarding Allegations (3) and (4), it is recommended the Board enter a finding for grounds of informal disciplinary action exist pursuant to ACJA 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1) and ACJA § 7-206(F)(1), (J)(1)(b), (J)(1)(g)(3) and (J)(3)(d) and issue a Letter of Concern.

It is also recommended the Board order additional language added to the Letter of Concern that request Ms. Lohr reimburse attorney

Scott Holden the amount of \$282.37 and Ronald Mercaldo the additional amount of \$62.62, in order to achieve compliance with ACJA 7-206(J)(3)(d).

Motion: Move to accept recommendation.

Motion Proposals: First Judge Peter Swann
Second Judge Edward Bassett

Motion Results: Pass

2-B: Review, discussion and possible action regarding the following complaints recommended for dismissal by Division Director pursuant to Arizona Code of Judicial Administration § 7-201(D)(4)(a), (H)(2)(a) and § 7-206(H)(1):

- Complaint Number NC10-C008
- Complaint Number NC10-C009
- Complaint Number NC11-C001

Individual Addressing the Board: Linda Grau

Discussion: Pursuant to ACJA §7-201(H)(1)(g)(3), complaints dismissed by the Division Director are CONFIDENTIAL and not a matter of public record. If the Board wishes to address specific details regarding this matter, it is recommended the Board enter executive session to discuss matters confidential.

Complaint Number NC10-C008 – On April 11, 2012, Division Director Nancy Swetnam recommended the Board dismiss complaint number 10-C008 with prejudice for lack of jurisdiction. Notice of the recommendation was forwarded to the complainant along with notice of the complainant’s right to request Board review. The complainant submitted a timely request for Board review. It is recommended the Board review and consider Director Swetnam’s recommendation and the complainant’s request for Board review and dismiss complaint number NC10-C008.

Motion: Move to enter into executive session to receive the advice of counsel and to discuss confidential information.

Motion Proposals: First Patricia Calabro
Second J. Tyrrell Taber

Motion Results: Pass

Board Entered Executive Session:

3:29 P.M.

Return to Regular Session:

3:44 P.M.

Motion: Move to follow Board's recommendation.

Motion Proposals: First Cheryl Austin
Second Judge Edward Bassett

Motion Results: Pass

Discussion: Complaint Number NC10-009: On April 11, 2012, Division Director Swetnam recommended the Board dismiss the complaint with prejudice for lack of jurisdiction. Notice of this recommendation was sent to the complainant along with notice of the complainant's right to request Board review. The complainant submitted a timely request for Board review. It is recommended the Board review and dismiss complaint number NC10-C009.

Motion: Move that the complaint be dismissed.

Motion Proposals: First Judge Edward Bassett
Second J. Tyrrell Taber

Motion Results: Pass

Discussion: Complaint Number NC11-C001: On April 11, 2012, Division Director Nancy Swetnam recommended the Board dismiss complaint number NC11-C011 without prejudice for lack of jurisdiction and for the complaint's failure to meet the criteria contained in § ACJA 7-201(H)(2)(a)(2)(b) and (d). Notice of the recommendation was forwarded to the complainant along with notice of the complainant's right to request Board review. The complainant did not submit a request for Board review. It is recommended the Board review and consider Director Swetnam's recommendation and dismiss complaint number NC11-C001.

Motion: Move that the complaint be dismissed.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

2-C: Report and discussion regarding the status of pending complaints.

Individual Addressing the Board: Linda Grau

Discussion: The information is similar to the last meeting...there were (18)

complaints pending; ten (10) are being processed. If the Board allows, an update will be provided at the next meeting.

2-D: Review, discussion and possible action regarding the following disciplinary matters:

- *Complaint Number 09-C008 – Yvonne De La Torre*
- *Complaint Number 09-C011 – Margaret Riley*

Individual Addressing the Board: Anne Hunter

Discussion: Ms. De La Torre is in compliance with the Consent Agreement filed September 14, 2010. It is recommended that we take Ms. De La Torre off probation and court reporter renewal be allowed.

Motion: Move to take Ms. De La Torre off probation.

Motion Proposals: First J. Tyrrell Taber
Second Terri Faust

Motion Results: Pass

Discussion: Regarding Complaint No. 09-C011, Division records reflect Ms. Riley is not in compliance with the Consent Agreement dated September 14, 2010. Ms. Riley's certification expired on February 28, 2012, when she did not seek renewal. It is recommended that the Board formally terminate her probation but issue an order reflecting her failure to comply with the Consent Agreement and that the failure to comply be considered if she seeks certification in the future.

Motion: Move to terminate Ms. Riley's probation and note that she failed to comply with the Consent Agreement if she reapplies.

Motion Proposals: First J. Tyrrell Taber
Second Patricia Calabro

Motion Results: Pass

3) ADMINISTRATIVE ISSUES:

3-A: Discussion regarding Arizona Code of Judicial Administration § 7-201(D).

Individual Addressing the Board: Nancy Swetnam/Kimberly Siddall

Discussion: Discussion was held about the proposed changes to § 7-201. They are the general requirements that apply to a number of different

professions. The goal is to have a more efficient and streamline process for initial applications and the renewal of applications.

3-B: Discussion regarding Application Process.

Individual Addressing the Board: Nancy Swetnam

Discussion: A brief overview was given on how the Division processes incoming complaints.

4) INITIAL CERTIFICATION AND ELIGIBILITY

4-A: Review, discussion and possible action regarding the following pending initial certification applications for the following applicants:

1. Charlotte Lacey
2. Jeanne Nagy
3. Mary Beth Simpkins
4. Nancy Richmond
5. Nichole Rhynard
6. Susan Seliga
7. Wendy Weiss

Individuals Addressing the Board: Kimberly Siddall

Discussion: It is recommended to grant initial certification to the following applicants:

1. Charlotte Lacey
2. Jeanne Nagy
3. Mary Beth Simpkins
5. Nancy Richmond
6. Susan Seliga

Motion: Move to grant initial certification.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

Discussion: It is recommended to defer the following applicants to the August 14th meeting:

4. Nancy Richmond
7. Wendy Weiss

Motion: Move to defer to the August 14th meeting.

Motion Proposals: First J. Tyrrell Taber
Second Cheryl Austin

Motion Results: Pass

5) CERTIFICATION AND ELIGIBILITY APPLICATION

5-A: Review, discussion and possible action regarding the request to consider a late renewal of Nancy P. Richmond.

Individual Addressing the Board: Kimberly Siddall

Discussion: Staff's recommends going into Executive Session to receive advice of counsel.

Motion: Move to go into Executive Session to receive the advice of counsel and to discuss confidential information.

Motion Proposals: First Judge Edward Bassett
Second J. Tyrrell Taber

Motion Results: Pass

Board Entered Executive Session:

2:29 P.M.

Return to Regular Session:

2:39 P.M.

Motion: Move to deny the request for initial application to be considered as a late renewal.

Motion Proposals: First Judge Edward Bassett
Second J. Tyrrell Taber

Motion Results: Pass

5-B: Review, discussion and possible action regarding reactivation request received from Linda K. Bock, certificate number 50518.

Individuals Addressing the Board: Kimberly Siddall

Discussion: It is recommended to return Ms. Bock's inactive certificate back to active.

Motion: Move to return Ms. Bock's inactive certificate back to active.

Motion Proposals: First Terri Faust
Second Judge Edward Bassett
Motion Results: Pass

6) RENEWAL CERTIFICATION APPLICATIONS

6-A: Review, discussion, and possible action regarding the following pending applications for renewal of certification:

1. *Cindy Benner*
2. *Linda Cantrell*
3. *Vicki Champion*
4. *Laurel Dunn*
5. *Deborah Hanlon*
6. *Tamara Howard*
7. *Steven King*
8. *Janell Rose*
9. *Antoinette Salazar*
10. *Wilma Weinreich*
11. *Michele Kaley*
12. *Leslie Andres*
13. *Syndie Hagardt*
14. *Ann McInnis*
15. *Deborah Wilks*

Individuals Addressing the Board: Kimberly Siddall

Discussion: It is recommended to grant renewal certification to the following applicants:

1. *Cindy Benner*
2. *Linda Cantrell*
3. *Vicki Champion*
4. *Laurel Dunn*
5. *Deborah Hanlon*
6. *Tamara Howard*
7. *Steven King*
8. *Janell Rose*
9. *Antoinette Salazar*
10. *Wilma Weinreich*
11. *Michele Kaley*
12. *Leslie Andres*

Motion: Move to grant renewal to the above applicants.

Motion Proposals: First J. Tyrrell Taber
Second Cheryl Austin

Motion Results: Pass

Discussion: It is recommended to grant renewal and assess a delinquent (CE) fee of \$100.00, to be remitted no later than June 29, 2012.

- 13. *Syndie Hagardt*
- 14. *Ann McInnis*

Motion: Move to grant renewal of certification and assess a delinquent CE fee of \$100.00, to be remitted no later than June 29, 2012.

Motion Proposals: First Judge Peter Swann
Second Judge Edward Bassett

Motion Results: Pass

Discussion: It is recommended to grant renewal to the following applicant:

- 15. *Deborah Wilks*

Motion: Move to grant renewal to the above-named applicant.

Motion Proposals: First J. Tyrrell Taber
Second Cheryl Austin

Motion Results: Pass

CALL TO THE PUBLIC

Individuals Addressing the Board:

- 1. Nancy Richmond
- 2. Melissa Gonzalez
- 3. Mary Meyer
- 4. Chris Green
- 5. Kathy Fink
- 6. Julie Ottmar
- 7. Pam Griffin

ADJOURNMENT

Motion: Move to adjourn.

Motion Proposals: First J. Tyrrell Taber
Second Judge Peter Swann

Motion Results: Pass

Time: 5:15 P.M.

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