



Arizona Supreme Court Fiduciary Board

Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3222
Conference Room 109

Date: November 18, 2010
Time: 10:30 am – 2:30 pm

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Marlin “Kip” Anderson
Pamela Johnston
Diana L. Clarke
Deborah Primock
Shari Tomlinson
Kenneth Reeves, III

Telephonically Present:

Mary Jane Baumgarten
Sherry Reed

Absent:

Diana Corry

OTHER ATTENDEES

AOC Staff:

Nancy Swetnam
Kandace French
Kitty Boots
Nina Preston
Alex Navarro
Linda Grau
Kim Siddall
Lori Braddock
Karla Clanton
Susan Hunt

Guests:

Jeanne Drabiak
Jason Cobb
Heather Buil
Robert Anglen
Eben Bull

CALL TO ORDER

Called to Order By: Marlin “Kip” Anderson

Time: 10:30 a.m.

1) REVIEW AND APPROVAL OF MINUTES

I-A: *Review, discussion, and possible action regarding the regular session minutes of the meeting held on September 9, 2010.*

Individual Addressing the Board: Marlin “Kip” Anderson

Discussion: None

Motion: Moved to approve the regular session minutes of the meeting on September 9, 2010.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: Pass

I-B: *Review, discussion, and possible action regarding the executive session minutes of the meeting held on September 9, 2010.*

Individuals Addressing the Board: Marlin “Kip” Anderson

Discussion: None

Motion: Moved to approve the executive session minutes of the meeting on September 9, 2010.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding complaint number 09-001 involving the Arizona Department of Veterans’ Services and Gary Warner.*

Individuals Addressing the Board: Nancy Swetnam

Discussion:

On March 23, 2010, pursuant to ACJA § 7-201(H)(5)(a)(3), Probable Cause Evaluator Mike Baumstark entered a finding probable cause exists ADVS and Warner committed the alleged acts of misconduct in complaint number 09-0001. On April 8, 2010, the Board entered a finding grounds for disciplinary action exists in complaint number 09-0001, pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(k)(2) and (H)(6)(k)(3) alleged misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(a), (E)(3)(c), (F)(1) and (J)(7), and Superior Court in Pima County Local Rule 9.3. On August 16, 2010, ADVS and Warner were served with the attached Notice of Formal Statement of Charges and Right to Hearing document. On April 30, 2010, ADVS and Warner filed an answer and requested a hearing. Before the matter reached hearing, ADVS and Warner withdrew their request for a hearing in complaint number 09-0001.

Therefore, it was recommended the Board adopt the Factual Allegations of Misconduct contained in the Notice of Formal Statement of Charges as the Findings of Fact and adopt the Formal Charges contained in the Notice of Formal Statement of Charges as the Conclusions of Law in this matter. It was recommended the Board enter a finding ADVS and Warner violated ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(a), (E)(3)(c), (F)(1) and (J)(7), and Superior Court in Pima County Local Rule 9.3 and impose the following disciplinary sanctions in complaint number 09-0001 pursuant to ACJA § 7-201(H)(24)(a)(6):

- a) Issue a Censure to ADVS, pursuant to ACJA § 7-201(H)(24)(a)(6)(b);
- b) Issue a Letter of Concern to Warner, pursuant to ACJA § 7-201(H)(24)(a)(6)(a); and,
- c) Assess costs associated with the investigation and related disciplinary proceedings related to complaint number 09-0001 to ADVS in the amount of \$9,297.61, to be remitted no later than 60 days following entry of the Board’s Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j). The assessed costs shall be made payable to “Arizona Supreme Court” and submitted to the Certification and Licensing Division, 1501 West Washington, Suite 104, Phoenix, Arizona 85007.

Motion:

Moved to accept the recommendation as detailed above.

Motion Proposals:

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| First | Kenneth Reeves III |
| Second | Mary Jane Baumgarten |

Motion Results:

Pass

Motion: Moved to authorize Marlin “Kip” Anderson as chair to sign the final order on behalf of the Board.

Motion Proposals: First Kenneth Reeves III
Second Mary Jane Baumgarten

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Review, discussion, and possible action regarding the status of the work performed by the Fiduciary Board Regulatory Scope Subcommittee.*

Individuals Addressing the Board: Nancy Swetnam

Discussion: Discussion regarding the work of the Regulatory Scope Subcommittee. It continues to meet regarding suggested amendments to ACJA § 7-202 and ACJA § 7-201. Staff provided a verbal report to the board regarding the status of the suggested amendments and discussed whether the subcommittee should broaden the scope of its original appointed responsibilities. ACJA § 7-201 are the general provisions that apply to the various programs and professions that are regulated. It was recommended the scope should be expanded officially by the Board.

Motion: Moved to formally allow Regulatory Scope Subcommittee to address issues on ACJA § 7-201 and ACJA § 7-202 to make necessary amendments to the code in light of its current work and consistent with the Probate Oversight Committee’s concerns.

Motion Proposals: First Diana Clarke
Second Kenneth Reeves III

Motion Results: Pass

3-B: *Review and discussion regarding the status of the work performed by the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (“Probate Committee”).*

Individuals Addressing the Board: Nancy Swetnam

Discussion: An Interim Report was presented by the Probate Committee to the Arizona Judicial Council on October 21, 2010. A copy of the Interim Report was attached for the board’s review. Staff provided a verbal report regarding the progress of the work completed by this committee. Information was provided regarding future meetings. Main concerns highlighted are the Judicial oversight, training for

Judicial officers, and issues of fees and fee disputes, including a fee shifting statute. The final Interim report is due to the Arizona Judicial Council in June 2011.

3-C: *Nomination and election of the 2011 Fiduciary Board vice chair.*

Individuals Addressing the Board: Marlin “Kip” Anderson

Discussion: Vice Chair: The board shall elect a vice chair from among the appointed members of the board. The vice chair shall serve in the capacity as vice chair for a specified term. If the vice chair resigns or ceases to be a member of the board, the board shall vote to elect a new vice chair from among the existing members. The vice chair shall act as chair in the absence of the chair.

Board member Pamela Johnston’s term as vice chair expires on December 31, 2010. It was recommended the Board nominate and elect a vice chair for the 2011 calendar year.

Motion: Moved to nominate and elect Pamela Johnston to continue serving as vice chair for the Board.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

4) INITIAL LICENSE APPLICATIONS

4A: *Review, discussion, and possible action regarding the following pending applications for individual licensure:*

Individuals Addressing the Board: Alex Navarro

Discussion: The following applicants have submitted a complete application, demonstrating they meet the minimum eligibility requirements, and no information was presented during the background investigation which was contrary to renewal of licensure being granted. It was recommended the Board grant renewal of fiduciary licensure to the following applicants:

1. Cobb, Jason
2. Dominquez, Susan
3. Drabiak, Jeanne
4. Hall Teresa
5. Harris, John

6. Suminski, Rashida
7. Wisnom, Craig

Motion: Moved to accept staff recommendation and grant renewal of licensure of the above applicants noted above and as read by staff.

Motion Proposals: First Shari Tomlinson
Second Kenneth Reeves III

Motion Results: Pass

Discussion: The following applicants have submitted a complete application, demonstrating they meet the minimum eligibility requirements, and no information was presented during the background investigation which was contrary licensure being granted. It was recommended the Board grant initial licensing to the following applicants.

8. Burnside, Benjamin
11. William Willams

Motion: Moved to accept staff recommendation and grant licensure of the above applicants noted above and as read by staff.

Motion Proposals: First Shari Tomlinson
Second Diana Clarke

Motion Results: Pass

Discussion: The following applicants remain incomplete pending receipt of fingerprint results, professional responsibility training, and/or additional information. It was recommended the following applicants be deferred to the January 13, 2011 meeting.

9. Grenier, Patricia
10. Noseworthy, Paul

Motion: Moved to accept staff recommendation and defer the above applicants to the January 13, 2011 meeting.

Motion Proposals: First Kenneth Reeves III
Second Shari Tomlinson

Motion Results: Pass

4B: *Review, discussion, and possible action regarding the following pending applications for business licensure:*

Individuals Addressing the Board: Alex Navarro

Discussion: The following business applicants have submitted a complete application, demonstrating they meet the minimum legibility requirements, and no information has been presented during the background check which is contrary to licensure being granted. It was recommended the Board grant initial business licensure to the following applicants:

1. Compass Fiduciary Group, LLC (Jason Cobb)
2. Valley Consulting, LLC (Dorothy Valley)

Motion: Moved to accept staff recommendation and grant initial business licensure to the above applicants.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

5) LICENSE AND ELIGIBILITY

5A: *Review, discussion, and possible action regarding status of Consent Agreements for the following licensed fiduciaries:*

1. Appel, Fred
2. Espinoza, Mary
3. Flores, Patricia
4. Patterson, Shawn

Individuals Addressing the Board: Alex Navarro

Discussion: The above listed licensed holders signed and returned the Consent Agreement offered by the Board on September 18, 2010. It was recommended the Board grant renewal licensure to Appel, Espinoza, Flores, and Patterson for the licensure period which ends May 31, 2012. It was also recommended the chair sign the Consent Agreements on behalf of the full board.

Motion: Moved to accept staff recommendation and grant renewal licensure to Appel, Espinoza, Flores and Patterson for the licensure period which ends May 31, 2012; additionally for the chair to sign the Consent Agreements on behalf of the full board.

Motion Proposals: First Shari Tomlinson

Motion Results: Second Pamela Johnston
Pass

Individuals Addressing the Board: Alex Navarro

Discussion: The following applications remain incomplete pending receipt of and/or additional information. It was recommended the following applicants be deferred to the January 13, 2011 Board meeting.

5. Royal, Anita
6. Frenette, Heather
7. Frenette, Peter
8. McCollum, Jennifer

Motion: Moved to defer the above applicants to the January Board meeting.

Motion Proposals: First Kenneth Reeves III
Second Diana Clarke
Recusal Shari Tomlinson & Alex Navarro

Motion Results: Pass

Motion: Moved to enter into executive session to receive advice of counsel.

EXECUTIVE SESSION Start: 11:10 End: 11:16

Motion: Motion by Kenneth Reeves III to withdraw his previous motion.

Motion: Moved to defer the above applicants Royal, Peter and Heather Frenette, and McCollum be deferred for consideration at the January Board meeting consideration with recommendation of staff.

Motion Proposals: First Diana Clarke
Second Pamela Johnston
Recusal Shari Tomlinson

Motion Results: Pass

5B: *Review, discussion, and possible action regarding the following pending renewal applications for business licensure.*

1. Pima County Public Fiduciary Office (Anita Royal)
2. The Sun Valley Group, Inc. (Peter Frenette)

Individuals Addressing the Board: Alex Navarro

Discussion: The above business applications remain incomplete pending receipt

of background and/or additional information. It was recommended the above business applicants be deferred to the January 13, 2011 Board meeting.

Motion: Moved to accept the Board's recommendation to defer the renewal of business entities for Pima County Public Fiduciary and The Sun Valley Group Inc. to the January 13, 2011 Board meeting.

Motion Proposals: First Pamela Johnston
Second Deborah Primock
Recusal Shari Tomlinson

Motion Results: Pass

5C: *Review, discussion, and possible action regarding Consent Agreement with Mildred Ellis, license number 20354.*

Individuals Addressing the Board: Alex Navarro

Discussion: Ms. Ellis was granted licensure on May 12, 2001. On September 9, 2010 the Board accepted staff's recommendation to enter into a Consent Agreement with Ms. Ellis requesting she submit quarterly reports to the Division. Division records reflect Ms. Ellis received the consent agreement on September 15, 2010.

On November 12, 2010, Division staff contacted Ms. Ellis via regular mail, and email requesting she submit the signed consent agreement by November 12, 2010. A recommendation was presented to the Board to approve the renewal of her license for this licensure period.

Motion: Moved to accept the consent agreement and approve renewal of licensure pursuant to the Consent Agreement.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

Motion: Moved to accept recommendation to allow the chair to sign off on the Consent Agreement.

Motion Proposals: First Mary Jane Baumgarten
Second Deborah Primock

Motion Results: Pass

5D: *Review, discussion, and possible action regarding the Voluntary Surrender request received from Silvia Arellano, License number 20639.*

Individuals Addressing the Board: Alex Navarro

Discussion: Ms. Arellano was granted licensure on July 8, 2010. On October 13, 2010, Ms. Arellano submitted a Voluntary Surrender request for her license effective October 15, 2010. Ms. Arellano was given the opportunity to continue her public service position as an Immigration Judge in the Federal Court.
ACJA § 7-201 (E)(7) reads:

Voluntary Surrender. A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.

It was recommended the Board defer Ms. Arellano's Voluntary Surrender request to the January 13, 2011 Board meeting. It was recommended the Board enter into Executive Session to discuss matters confidential pursuant to law and court rule.

Motion: Moved to enter into executive session to discuss confidential matters.

Motion Proposals: First Shari Tomlinson
Second Diana Clarke

Motion Results: Pass

EXECUTIVE SESSION Start: 11:20 a.m. End: 11:26 a.m.

Motion: Moved to defer Ms. Arellano's Voluntary Surrender request to the January 13, 2011 Board meeting.

Motion Proposals: First Shari Tomlinson
Second Pamela Johnston

Motion Results: Pass

CALL TO THE PUBLIC - None

ADJOURNMENT

Motion: Moved to adjourn.

Motion Proposals: First Diana Clarke
Second Kenneth Reeves III

Motion Results: Pass

Time: 11:30 a.m.

Initials: SH
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