



FIDUCIARY BOARD

Arizona State Courts Building
1501 West Washington Street, Phoenix, Arizona 85007
Hearing Room 109

January 9, 2014
10:30 a.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Deborah Primock
Emily Kile
Catherine Robbins
Gary Krcmarik

Telephonically Present:

Mark Rubin
Leonard Montanaro
Diana Corry
Hon. Jay Polk
Sherry Reed

Absent:

OTHER ATTENDEES:

AOC Staff:

Mark Wilson
Michelle Martinez
Linda Grau
Debbie MacDougall
Kimberly Siddall
Anne Hunter
Pasquale Fontana
Wendy Reiter
Arnita Oliver

Guests:

Philip DeVico
Becky Brimhall
J.D. Boren
George Bovine
Stephen Cundiff
Lori Braddock
Robert M. Barnes
Craig Sletten

CALL TO ORDER

Called to Order By: Deborah Primock, Chair

Time: 10:30 a.m.

1) REVIEW AND APPROVAL OF MINUTES:

1-A: Review, discussion and possible action regarding the regular session minutes of the meeting held on November 14, 2013.

Individual Addressing the Board: Deborah Primock

Discussion: None

Motion: Move to approve the regular session minutes for the meeting of November 14, 2013.

Motion Proposals: First Gary Krcmarik
Second Catherine Robbins

Motion Results: Pass

2) PENDING COMPLAINTS:

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

- *Complaint Number 10-0014 – Arizona Department of Veterans’ Services*
- *Complaint Number 11-0007 – Arizona Department of Veterans’ Services*
- *Complaint Number 13-0007 – Gregory DeVico and Southwest Fiduciary, Inc.*

Individual Addressing the Board: Anne Hunter

Discussion: **Complaint Number 10-0014 – Arizona Department of Veterans’ Services:** - The Division received this complaint on October 15, 2010. The complainant offered five (5) allegations:

1. ADVS failed to meet reporting deadlines in several cases.
2. ADVS failed to provide Inventory and Appraisal to the heirs of the decedent with 90 days as required by court rule in several cases.
3. ADVS acted as fiduciary on two occasions before the letters of appointment was issued.

4. ADVS failed to include its name and license number on court as required by code.
5. ADVS's principal, failed to actively and directly supervise staff to ensure compliance with laws and court orders.

The matter was investigated and submitted for probable cause evaluation.

On December 5, 2013, Probable Cause Evaluator Mike Baumstark entered a finding probable cause *does exist* in complaint number 10-0014.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for informal disciplinary action exists for acts of misconduct involving Arizona Rules of Probate Procedure 25(C), 26, 30(A)(1), 30(B)(2), 30(B)(5), Arizona revised Statutes § 14-3706(A) and (B), ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(f)(1), (F)(3), (J)(2)(e) and (J)(7).

It is recommended the Board issue a Letter of Concern.

Motion: Move to accept staff's recommendation.

Motion Proposals: First Emily Kile
Second Gary Krcmarik
Recused Mark Rubin

Motion Results: Pass

Individual Addressing the Board: Anne Hunter

Discussion: Complaint Number 11-0007 – Arizona Department of Veterans' Services: -The Division received this complaint on May 23, 2011.

The complainant submitted eight (8) allegations:

1. ADVS submitted a fraudulent report to the Probate Court in Maricopa County.
2. ADVS billed the ward's estate regarding services despite the ward being his own guardian.
3. ADVS did not provide the ward with his 2010 tax return and may not have filed his 2010 tax return.
4. ADVS did not provide the ward a copy of the inventory of his assets.
5. ADVS did not provide complainant and the ward access to review ADVS file despite complainant being named agent

- for the Ward under a signed Power of Attorney documents.
6. ADVS did not visit the ward on a regular basis.
 7. ADVS did not reimburse the ward for late fees, and disconnect/reconnect fees when the ward's power was shut off, even though it appears that the power shut off was due to ADVS not paying the bill timely.
 8. ADVS did not file a complete inventory.

The matter was investigated and submitted for probable cause review.

On December 5, 2013, Probable Cause Evaluator Mike Baumstark entered a finding probable cause *does not exist* as to Allegations 2, 3, 4 and 5 but *does exist* as to Allegations 1, 6, 7 and 8 in complaint number 11-0007.

Therefore, it is recommended the Board enter a finding grounds for disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (J)(1), (J)(2)(a), (J)(4)(b) and (J)(2)(f) and Arizona Rules of Probate Procedure, Rule 30(A)(1).

Motion: Move to accept staff's recommendation to move forward with filing the Notice of Formal Statement of Charges issuing a censure sanction as to *Allegation 1* of Complaint Number 11-0007.

Motion Proposals: First Emily Kile
 Second Leonard Montanaro
 Recused Mark Rubin

Motion Results: Pass

Individual Addressing the Board: Anne Hunter

Motion: Move to issue Letter of Concern instead of Censure regarding *Allegation 6* of Complaint Number 11-0007.

Motion Proposals: First Emily Kile
 Second Leonard Montanaro
 Recused Mark Rubin

Motion Results: Pass

Individual Addressing the Board: Anne Hunter

Motion: Move to issue Letter of Concern instead of Censure regarding *Allegation 7* of Complaint Number 11-0007.

Amended Motion: Move to issue Letter of Concern with recommended affirmation the fees incurred for the late charges be fully reimbursed with 10% interest regarding *Allegation 7* of Complaint Number 11-0007.

Motion Proposals: First Catherine Robbins
Second Emily Kile
Recused Mark Rubin; Hon. Jay Polk

Motion Results: Pass

Individual Addressing the Board: Anne Hunter

Motion: Move to issue Letter of Concern instead of Censure regarding *Allegation 8* of Complaint Number 11-0007.

Motion Proposals: First Emily Kile
Second Gary Krcmarik
Recused Hon. Jay Polk

Motion Results: Pass

Individual Addressing the Board: Anne Hunter

Motion: Move to accept staff's recommendation to dismiss Allegations 2, 3, 4, and 5 of Complaint Number 11-0007.

Motion Proposals: First Emily Kile
Second Catherine Robbins

Motion Results: Pass

Individual Addressing the Board: Linda Grau

Discussion: **Complaint Number 13-0007 – Gregory DeVico and Southwest Fiduciary, Inc.:** - The Division received this complaint on May 16, 2013. The complainant offered four (4) allegations plus two (2) additional allegations:

1. The complainant alleges that SFI failed to make her health a priority when she was placed in a care facility without her required medication and SFI did not make medical appointments.
2. The complainant alleges that SFI did not discharge her from the assisted living facility despite her doctors allowing her to return home.
3. The complainant alleges SFI while filing a restraining order, included inaccurate dates and false information and restricted her ability to leave the facility and see her son.
4. The complainant alleges SFI did not pay all of her bills and

was not truthful with the accounting and statements.

5. Mr. DoVico did not secure the income of the protected person in a timely manner, in violation of several provision of the ACJA.
6. Mr. DoVico as designated principal of SFI, failed to remedy the Court's erroneous depiction of Philip DoVico, as a licensed fiduciary, in violation several provision of the ACJA.

The matter was investigated and submitted for probable cause evaluation.

On December 9, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause *does not exist* as to Allegations 1, 2, 3 and 4 but *does exist* as to Allegations 5 and 6 in complaint number 13-0007.

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations 1, 2, 3 and 4. Regarding Allegations 5 and 6, it is recommended the Board enter a finding grounds for formal disciplinary action exists for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(f)(1)(a), (E)(3)(f)(1)(b), (E)(3)(f)(1)(c), (F)(1), (F)(8)(b)(1), (F)(8)(b)(3), (F)(8)(c), (J)(5) and (J)(5)(c).

Considering the mitigating and aggravating factors, should the Board ultimately find misconduct occurred, it is recommended the Board issue a Censure to Mr. DoVico and Southwest Fiduciary, Inc., pursuant to ACJA § 7-201(H)(24)(a)(6)(b), and assess costs of the investigation and any related disciplinary proceedings, pursuant to ACJA § 7-201(H)(24)(a)(6)(j) totaling \$545.27 be assessed.

Motion: Move to accept staff's recommendation.

Motion Proposals: First Emily Kile
Second Catherine Robbins
Recused Deborah Primock; Hon. Jay Polk

Motion Results: Pass

3) ADMINISTRATIVE ISSUES:

3-A: *Update regarding complaints processed by diversion pursuant to Administrative Order 2012-83.*

Individual Addressing the Board: Debbie MacDougall

Discussion: No complaints processed by diversion to report at this time.

3-B: Nomination and election of the 2014 Fiduciary Board Vice Chair.

Individual Addressing the Board: Debbie MacDougall

Discussion: It is recommended to defer nomination and election of the Fiduciary Board Vice Chair until the next meeting of March 13, 2014.

Motion: Move to defer nomination for the next meeting in March.

Motion Proposals: First Mark Rubin
Second Hon. Jay Polk

Motion Results: Pass

4) Initial License Applications:

4-A: Interview with and possible action regarding pending application for applicant Philip DoVico.

Individual Addressing the Board: Wendy Reiter

Discussion: It is recommended the Board grant fiduciary licensure to Philip DoVico.

Motion: Move to grant fiduciary licensure. In granting Mr. Dovico's license, it is recommended that the Board also instruct Division staff to draft a letter expressing the Board's concern with regards to the applicant's acts of engaging in a conflict of interest or self-dealing and lack of candor with the court as a trainee. The language should emphasize that had Mr. DoVico been licensed, been supervising a trainee and had the trainee performed those acts, or had been subject to the code provisions effective since 2009 with regards to trainees, these violations may have resulted in disciplinary action.

Motion Proposals: First Emily Kile
Second Gary Krcmarik
Recused Deborah Primock; Hon. Jay Polk

Motion Results: Pass

4-B: Review, discussion, and possible action regarding the following pending applications for individual and/or business entity licensure.

1. *Jacqueline Mingle*
2. *Claudia Ramirez*
3. *Stephen Cundiff*
4. *Judy (Jude)Nicholson*
5. *Devin Price*
6. *Becky Brimhall*

Individual Addressing the Board: Kimberly Siddall

Discussion: It is recommended the Board grant initial licensure to:

1. *Jacqueline Mingle*
2. *Claudia Ramirez*

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins
Second Emily Kile

Motion Results: Pass

Individual Addressing the Board: Wendy Reiter

Discussion: It is recommended the Board grant initial licensure to:

3. *Stephen Cundiff*

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins
Second Emily Kile

Motion Results: Pass

Discussion: It is recommended the Board grant initial licensure to:

4. *Judy (Jude)Nicholson*

Motion: Move to accept staff's recommendation.

Motion Proposals: First Gary Krcmarik
Second Emily Kile

Motion Results: Pass

Discussion: It is recommended the Board defer the application of:

5. *Devin Price*

Motion: Move to accept staff's recommendation.

Motion Proposals: First Gary Krcmarik
Second Emily Kile

Motion Results: Pass

Discussion: It is recommended the Board deny application for licensure to:

6. *Becky Brimhall*

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins
Second Hon. Jay Polk

Motion Results: Pass

Additional Motion for Agenda Item 2A: Move to accept staff's recommendation to authorize the Chair to sign the Notice of Formal Statement of Charges on behalf of the full Board.

Motion Proposals: First Gary Krcmarik
Second Catherine Robbins

Motion Results: Pass

CALL TO THE PUBLIC

Individuals Addressing the Board: Becky Brimhall

ADJOURNMENT

Motion: Move to adjourn.

Motion Proposals: First Catherine Robbins
Second Emily Kile

Motion Results: Pass

Time: 12:22 p.m.