

FIDUCIARY BOARD

Meeting Agenda – Thursday, January 8, 2015

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 109

General Inquiries Call: 602-452-3378 (Certification and Licensing Division Line)

Members of the Public May Attend Meeting in Person

For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

CALL TO ORDER *Deborah Primock, Chair*

1) REVIEW AND APPROVAL OF MINUTES *Deborah Primock, Chair*

1-A: Review, discussion, and possible action regarding the regular session minutes of the meeting held on November 13, 2014.

2) PENDING COMPLAINTS *Division Staff*

2-A: Review, discussion and possible action regarding Denice Shepherd concerning complaint number 14-0009.

2-B: Review, discussion, interview and possible action regarding Stephanie McCollum concerning complaint number 09-0007.

3) INITIAL LICENSURE AND ELIGIBILITY..... *Wendy Reiter*

3-A: Review, discussion and possible action regarding the following applications for initial licensure:

1. Jared Holland
2. Debra Eazer
3. Nicole Arrow
4. Donovan Curley
5. Pamela Phillips

4) **RENEWAL OF LICENSE APPLICATIONS.....Kimberly Siddall**

4-A: *Review, discussion, and possible action regarding the following pending applications for renewal of individual and business licensed fiduciaries:*

1. Yolanda Kennedy
2. Ravie Cundiff
3. Debra Bailey
4. Katherine B. Bair
5. Warner Bair
6. Rena Steele
7. Lisa Drutz
8. Mile High Fiduciaries, LLC (Lisa Drutz)
9. Donal D. Childers
10. Childers & Berg, LLC (Donal D. Childers)
11. Thomas Curti
12. Robert Fleming
13. Fleming & Curti, PLC (Robert Fleming)
14. Joan M. Sacramento
15. Jeffrey Manley
16. Cathy E. Simons
17. John Harris
18. Kathleen Moriarity
19. Phyllis Cornell
20. Leigh Bernstein
21. Annette Jones
22. Patricia Grenier
23. Iris V. Crawford Bush
24. Stephanie M. Soumis
25. Diana M. Serna
26. Tamarah L. Fitzsimmons
27. Susan Cooper
28. Diane B. Prescott
29. Patricia Espinoza
30. Pinal County Public Fiduciary (Patricia Espinoza)
31. Mark D. Rubin
32. Mesch, Clark & Rothschild (Mark D. Rubin)
33. Barbara J. Ficker
34. Stewardship Association (Barbara J. Ficker)
35. Nancy Mueller
36. Coconino County Public Fiduciary (Nancy Mueller)
37. Candy M. Wheeler-Ruby
38. Yuma County Public Fiduciary (Candy M. Wheeler-Ruby)
39. Daniel E. Bull
40. Estate Management Services, LLC (Daniel E. Bull)
41. Audrey A. Hanks
42. Professional Community Services, Inc. (Audrey A. Hanks)

- 43. Rashida K. Suminski
- 44. Mohave County Public Fiduciary (Rashida K. Suminski)
- 45. Shari Tomlinson
- 46. Yavapai County Public Fiduciary (Shari Tomlinson)
- 47. Jason Cobb
- 48. Compass Fiduciary Group, LLC (Jason Cobb)
- 49. Mario Gonzales
- 50. Sierra Huachuca Arc, Inc. (Mario Gonzales)
- 51. Donna M. Benjamin
- 52. D.M. Benjamin CPA, PC (Donna M. Benjamin)
- 53. Philip Grant
- 54. Pima County Public Fiduciary (Philip Grant)
- 55. Patricia D. Hall
- 56. Apache County Public Fiduciary (Patricia D. Hall)
- 57. Peggy Dovico
- 58. Statewide Community Services, LLC (Peggy Dovico)
- 59. Lori Braddock
- 60. Arizona Department of Veterans Services (Lori Braddock)

5) LICENSURE AND ELIGIBILITY..... *Kimberly Siddall*

5-A: Review, discussion, and possible action regarding request for placement on inactive status received from Linda Bohnet, license number 20751.

6) ADMINISTRATIVE ISSUES *Division Staff*

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

CALL TO THE PUBLIC..... *Deborah Primock, Chair*

ADJOURN..... *Deborah Primock, Chair*

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1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion, and possible action regarding the regular session minutes of the meeting held on November 13, 2014.

A draft of the regular session minutes for the meeting of November 13, 2014, is attached for the Board's review and consideration.

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2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding Denice Shepherd concerning complaint number 14-0009.

Sharon Butler alleges Denise Shepherd breached her fiduciary duty to Sally Valentine by making it possible for Sally to get her driver's license renewed, believing Ms. Valentine's medical history caused her to be unfit to drive.

While the division has not made a determination regarding Ms. Valentine's fitness to drive, the division did review Ms. Shepard's activities in assisting Ms. Valentine to receive her license. Ms. Shepherd had Ms. Valentine take a neurological exam and checked with the doctor to determine her mental diagnosis. Ms. Valentine also attended a driving school, which she passed, before getting her license. Ms. Shepherd checked on Ms. Valentines capabilities with the driving instructor.

Investigation of this allegation shows no breach of fiduciary duty. The division recommends the complaint be dismissed against Denice Shepherd.

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2) PENDING COMPLAINTS

2-B: Review, discussion, interview and possible action regarding Stephanie McCollum concerning complaint number 09-0007.

This matter was presented to the Board on May 8, 2014, at which time the Board moved to have further investigation conducted and requested Ms. McCollum to be in attendance when this matter was again brought before the Board.

The additional investigation has been completed and the Supplemental Investigation has been submitted to the Board for review.

The Division will make a recommendation at the Board meeting.

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3) INITIAL LICENSURE AND ELIGIBILITY

3-A: Review, discussion and possible action regarding the following application for initial licensure:

- 1. Jared Holland*
- 2. Debra Eazer*
- 3. Nicole Arrow*
- 4. Donovan Curley*
- 5. Pamela Phillips*

The following applicants for individual or business entity fiduciary licensure have submitted complete applications demonstrating that they meet the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which precludes licensure and all applicants have completed the required fiduciary professional training. It is recommended the Board grant initial fiduciary licensure to:

1. Jared Holland
2. Debra Eazer
3. Nicole Arrow

The following applications have been processed for Board review and consideration. All applicants have been determined to meet the minimum eligibility requirements for fiduciary licensure:

4. Donovan Curley – On his application for fiduciary licensure, Mr. Curley failed to disclose a 2005 bankruptcy filing and a 1998 misdemeanor conviction. The applicant apologized for the failure to disclose the bankruptcy and stated that it was an oversight in completing the application and that the omission was not intended to withhold information from the Board. Mr. Curley also failed to disclose that he was convicted of prostitution in 1998. The applicant stated that he was sentenced to diversion classes for the charge and possibly ordered to pay a fine and that he was of the belief that having completed the diversion his record would not reflect a conviction, which he explained was the reason for his failure to disclose. Staff interviewed the applicant regarding the 1998 conviction and his failures to disclose. In reviewing Mr. Curley's application and making this recommendation staff considered the nature of the 1998 conviction, the relevance of the conviction to the practice of the fiduciary profession, and the applicant's age at the time of the conviction, as well as the significance of the 2005 bankruptcy filing for a fiduciary and the applicant's failure to disclose the two items of concern. Staff also considered the length of time since the conviction, and the fact that there has been no other criminal activity since the conviction. Further, during the interview the applicant indicated that he believed that his lifestyle since the conviction was evidence of his rehabilitation. Specifically, the applicant stated he has a history of stable

employment, and has obtained his real estate license. Therefore, based on all of the factors considered in this case, staff's recommendation is to grant applicant Donovan Curley fiduciary licensure but include the following language regarding the applicant's failure to disclose in his notification of licensure:

The Board has concluded its review of your application and determined you have satisfied the eligibility requirements for licensure. Although the Board is granting you licensure, the Board members have concerns regarding your failure to disclose your misdemeanor conviction and bankruptcy filing. Lack of diligence is not a quality embraced by the Fiduciary Board or your colleagues in the profession, and may jeopardize your success. The Board and the Division place the highest priority on honesty and candor. Your failure to disclose information on future applications may result in denial of your renewal of certification or disciplinary action.

5. Pamela Phillips – Ms. Phillips initially applied for and was denied fiduciary licensure in August of 2010. The Board's 2010 denial was based on the applicant's failure to disclose misdemeanor convictions for petty theft in 1976 and production of marijuana in 1995, the commission of material misrepresentation, etc. on the application through the failure to disclose those misdemeanor convictions and for having a conviction by final judgment of a misdemeanor with a reasonable relationship to the practice of the profession. In Ms. Phillips' current application, she disclosed the items of concern that were previously omitted in her 2010 application in addition to the 2010 denial of a professional license and the Board's finding of dishonesty, omission or material representation in that application. As the applicant's misdemeanor convictions were previously revealed and considered by the Board in 2010, the focus of staff's investigation in reviewing this current application was Ms. Phillip's candor and honesty both in the current application in the performance of her duties as the Estate Manager for the Navajo County Public Fiduciary, a position which she has held since 2008.

Staff interviewed both the applicant and her employer, Sherry Reed, in an effort to discern if evidence of rehabilitation and positive social contributions exists that may allay concerns about the applicant's failure to disclose. Ms. Reed provided several examples of roles and responsibilities entrusted to Ms. Phillips at the Navajo County Public Fiduciary's office, in which honesty is inherent, that have been performed faithfully by the applicant over the course of her 6 year employment, conveyed a sincere belief that Ms. Phillips genuinely forgot the misdemeanor convictions and never intended to mislead the Board, and expressed "unwavering faith" in Ms. Phillips' honesty as a person and as a professional. In staff's interview with the applicant, many of the same examples of professional responsibility provided in Ms. Reed's interview were reiterated. In addition, Ms. Phillips provided further examples of her efforts at improving herself personally and professionally to include extensive continuing education activities, conferences, volunteer work and religious affiliation.

In reviewing Ms. Phillips' 2014 application, staff again considered the nature of the 1995 conviction and its relationship to the practice of the profession as a foundation of the 2010 denial and staff feels that the conviction no longer rises to the level of denial of licensure based on the length of time that has passed since the conviction, the lack of any subsequent arrests or convictions for similar crimes and the applicant's professed efforts at self-improvement that

resulted from the crime which may be seen as evidence of rehabilitation. Consideration of Ms. Phillips' honesty or trustworthiness was a greater struggle for staff as the quality is paramount to the practice of the fiduciary profession but the existence of that quality within an individual is difficult to prove. However, staff found Ms. Reed's testimony regarding the level of honesty she has personally witnessed in the applicant compelling and Ms. Phillips' purported efforts at rehabilitation credible. Therefore, staff's recommendation is to grant initial licensure to applicant, Pamela Phillips.

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4) RENEWAL OF LICENSE APPLICATIONS

4-A: *Review, discussion, and possible action regarding the following pending applications for renewal of individual and business licensed fiduciaries:*

The following license holders have submitted applications for renewal of licensure. These license holders disclosed information required in the background information section of the application. In the opinion of staff, the license holders have demonstrated they meet the minimum eligibility requirements for renewal of licensure. It is recommended the Board grant renewal of licensure to the following:

1. Yolanda Kennedy – Disclosed on July 2013 filed a Chapter 13 bankruptcy.
2. Ravie Cundiff – Disclosed pleading guilty to a DUI to the slightest degree. Certificate holder provided documentation regarding the incident. She was assessed fines, classes, jail time, and interlock device.
3. Debra Bailey – Disclosed being the defendant in a divorce action.
4. Katherine B. Bair - Disclosed being involved in a civil action with her husband and his law firm regarding legal malpractice regarding improperly drafting a trust amendment. Court dismissed all the Plaintiff's claims with prejudice on April 24, 2014.
5. Warner Bair – Disclosed being involved in a civil action regarding legal malpractice regarding improperly drafting a trust amendment. Court dismissed all the Plaintiff's claims with prejudice on April 24, 2014.
6. Rena Steele – Failed to disclose civil action filed against her and several other defendants. License holder stated she was not served with the complaint and to date, the court docket indicates that she has not been served. The action involves her actions while she was an employee of the Maricopa County Public Fiduciary. License holder's involvement was a result of Phoenix Police Department investigation regarding potential financial exploitation on an elderly women. As a result of the investigation, license holder filed a report of investigation concerning the need for guardianship and/or conservatorship.
7. Lisa Drutz – Disclosed being defendants in a civil action regarding a motor vehicle accident involving certificate holders daughter. Case is pending. In addition, certificate holder disclosed a judgment in favor of her and her

husband and his law firm for a 2011 action regarding abuse of process which was disclosed on her 2012-2014 renewal application and disclosed to the Board in June 2012.

8. Mile High Fiduciaries, LLC (Lisa Drutz)
9. Donal D. Childers
10. Childers & Berg, LLC (Donal D. Childers) – Disclosed being named as defendants in two different civil actions. First action the license holder is the conservator. In a one sentence allegation against license holder, complainant, without asserting facts, alleged that the wards monthly expenditure from the trust has not been audited and is extensive. Case is pending. Second action license holder was named as a nominal defendant as trustee of an Incentive Trust.
11. Thomas Curti – Disclosed being a plaintiff in an action regarding an easement issue at his firm's office.
12. Robert Fleming - Disclosed being a plaintiff in an action regarding an easement issue at his firm's office.
13. Fleming & Curti, PLC (Robert Fleming)

The following renewal applications were received and processed for Board review:

14. Joan M. Sacramento – On May 28, June 16, and December 16, 2014 staff requested certificate holder to comply with the bonding requirement or request to have her license placed on inactive status, or provide a voluntary surrender request. To date, certificate holder has not responded to those request or requested additional time. Pursuant to A.R.S. § 14-5651(A)(2) a fiduciary is required to post a cash deposit or surety bond with the supreme court. It is recommended the Board deny renewal of licensure pursuant to ACJA § 7-201(E)(2)(c)(1) the applicant does not meet the eligibility requirements at the time of the application as described in ACJA § 7-202(E)(4)(b), has not posted a cash deposit or surety bond.
15. Jeffrey Manley – Failed to disclose a December 17, 2012, DUI conviction. The following is the background of the conviction; 1) On December 17, 2011, Manley was given a citation for DUI and DUI w/BAC .08 or more, 2) Manley hired an attorney and an evidentiary hearing was held on October 4, 2012, in Scottsdale City Court, 3) Court determined that the police officer's reason for stopping Manley was not justified and therefore dismissed the case, 4) State of Arizona appealed the decision of the Scottsdale City Court and the Maricopa County Superior Court overturned Scottsdale City Court's dismissal, 5) On January 28, 2014, Manley pled guilty to DUI Liquor/Drugs/Vapors/Combo and

the DUI w/BAC .08 or more and extreme DUI BAC 12-19 1st were dismissed. Manley spent three days in jail, 12 days home detention and paid fines.

Manley stated that he did not need to disclose this on the renewal application as it was a civil traffic violations and the renewal application stated that if he only had civil traffic violations he did not need to answer "yes". Manley was adamant with staff stating on three different occasions that this is a civil traffic matter and he did not need to disclose. Once staff inquired a fourth time, Manley stated that he did contact the court and determined that it was indeed a criminal matter and he was not trying to hide anything from staff or the Board.

Manley is a licensed attorney practicing in the area of probate and has been a licensed attorney since 1984. Division staff has grave concerns regarding Manley's lack of understanding and/or inaccurate portrayal of the matter as being simply civil traffic as opposed to criminal traffic, given that he spent time in jail, home detention was ordered, and court documents list it as a criminal complaint. Therefore, it is recommended to deny certification pursuant to ACJA § 7-201(E)(2)(c)(2)(b)(xiv) *has made a false or misleading oral or written statement to division staff or the board*; for stating, on three different occasions, that he received a civil traffic violation and pursuant to ACJA § 7-201(E)(2)(c)(2)(b)(xv) *failed to disclose information on the certification application subsequently revealed through the background check*; for failure to disclose the DUI conviction.

In the alternative, the Board may invite Manley to the next meeting for an informal interview.

The following license holders have submitted applications for renewal of licensure. In the opinion of staff, the applications are complete, no information has been presented during a background review which is contrary to renewal of licensure being granted and the license holders have demonstrated they meet the minimum eligibility requirements. It is recommended renewal of licensure be granted to the following individuals and businesses:

16. Cathy E. Simons
17. John Harris
18. Kathleen Moriarity
19. Phyllis Cornell
20. Leigh Bernstein
21. Annette Jones
22. Patricia Grenier
23. Iris V. Crawford Bush
24. Stephanie M. Soumis
25. Diana M. Serna
26. Tamarah L. Fitzsimmons
27. Susan Cooper

28. Diane B. Prescott
29. Patricia Espinoza
30. Pinal County Public Fiduciary (Patricia Espinoza)
31. Mark D. Rubin
32. Mesch, Clark & Rothschild (Mark D. Rubin)
33. Barbara J. Ficker
34. Stewardship Association (Barbara J. Ficker)
35. Nancy Mueller
36. Coconino County Public Fiduciary (Nancy Mueller)
37. Candy M. Wheeler-Ruby
38. Yuma County Public Fiduciary (Candy M. Wheeler-Ruby)
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42. Professional Community Services, Inc. (Audrey A. Hanks)
43. Rashida K. Suminski
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45. Shari Tomlinson
46. Yavapai County Public Fiduciary (Shari Tomlinson)
47. Jason Cobb
48. Compass Fiduciary Group, LLC (Jason Cobb)
49. Mario Gonzales
50. Sierra Huachuca Arc, Inc. (Mario Gonzales)
51. Donna M. Benjamin
52. D.M. Benjamin CPA, PC (Donna M. Benjamin)
53. Philip Grant
54. Pima County Public Fiduciary (Philip Grant)
55. Patricia D. Hall
56. Apache County Public Fiduciary (Patricia D. Hall)
57. Peggy Dovico
58. Statewide Community Services, LLC (Peggy Dovico)
59. Lori Braddock
60. Arizona Department of Veterans Services (Lori Braddock)

*These individuals were audited for Continuing Education Credits.

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5) LICENSE AND ELIGIBILITY

5-A: Review, discussion, and possible action regarding request for placement on inactive status received from Linda Bohnet, license number 20751.

Linda Bohnet was granted licensure on November 13, 2014. On December 1, 2014 the Division received Ms. Bohnet's request for her license to be placed on inactive status.

ACJA § 7-201 (E)(8)(a) reads:

A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder is on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.

Ms. Bohnet has confirmed that she is not assigned to any cases and Division records indicate that there are no pending complaints.

It is recommended the Board accept the requests of Ms. Bohnet to be placed on inactive status.

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6) ADMINISTRATIVE ISSUES

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

Division staff will provide an update on the diversion report.