



## **Supreme Court Fiduciary Board**

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

Date: November 13, 2008  
Time: 10:30 a.m. - 2:30 p.m.

### **Approved Regular Meeting Minutes**

#### **MEMBER ATTENDANCE:**

##### **Present:**

Shari J. Tomlinson  
Marlin "Kip" Anderson  
Diana L. Clarke  
Honorable Dean Fink  
Mary Jane Baumgarten  
Pamela Johnston  
Sherry Reed  
Diana M. Corry

##### **Telephonic:**

Mary E. Carlton (until 12:30)

#### **OTHER ATTENDEES**

##### **AOC Staff:**

Linda Grau  
Nancy Swetnam  
Kitty Boots  
Maria Lopez  
Nina Preston  
Kimberly Siddall  
Tony Posante  
Alex Navarro  
Karla Clanton

##### **Guests:**

Gary B. Strickland  
Richard T. Vanderheiden  
Roger T. Coventry  
Lisa Price  
Peter Frentte  
Cathy Yoshida-Corella  
David Alan Karr  
Brian Kimber  
Michelle Lee

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#### **CALL TO ORDER**

*Called to Order By:*

Shari J. Tomlinson

**Time:**

10:37 a.m.

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**1) REVIEW AND APPROVAL OF MINUTES**

**I-A:** Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on September 11, 2008.

**Individual Addressing the Board:** Linda Grau

**Discussion:** The Board considered the draft of the Regular Session Minutes of the meeting held on September 11, 2008

**Motion:** Board moved to approve the September 11, 2008 Regular Session Minutes.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Pamela Johnston

**Motion Results:** Pass

**I-B:** Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on October 9, 2008.

**Individual Addressing the Board:** Linda Grau

**Discussion:** Staff recommended the Board defer consideration of the Regular Session Minutes of October 9, 2008 to the December meeting.

**Motion:** Board moved to accept staff's recommendation.

**Motion Proposals:** First Mary E. Carlton  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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**2) PENDING COMPLAINTS**

**2-A:** Review, discussion and possible action regarding the Superior Court Special Action ruling [case number LC2007-000748-001-DT] involving complaint number 03-0010 and certificate holders Richard Vanderheiden and the Maricopa

County Public Fiduciary Office.

**Individual Addressing the Board:** Nancy Swetnam

**Discussion:** Review, discussion and possible action regarding the Superior Court special action ruling Involving Complaint Number 03-0010 and certificate holders Richard Vanderheiden and the Maricopa County Public Fiduciary Office.

**Motion:** Board moved to affirm the Superior Court Special Action Ruling pertaining to complaint number 03-0010 as to the Maricopa County Public Fiduciary Office and require the assessed costs be paid within sixty days from November 13, 2008.

**Motion Proposals:** First Diana L. Clarke  
Second Mary Jane Baumgarten  
Recusal Shari J. Tomlinson

**Individual Addressing the Board:** Nancy Swetnam

**Discussion:** Staff offered options for the Board for proceeding with complaint number 03-0010 in light of Judge McMurdie's Ruling to remand the matter as it pertains to Mr. Vanderheiden's individual certification.

**Motion:** Board moved to return to the complaint 03-0010, as it pertains to Mr. Vanderheiden's individual certification back for probable cause review.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Pamela Johnston

**Motion Results:** Pass  
Recusal Shari J. Tomlinson

**2-B:** Formal Interview with certified fiduciaries Richard Vanderheiden and the Maricopa County Public Fiduciary Office and possible action regarding complaint number 07-0004.

**Individuals Addressing the Board:** Nancy Swetnam, Gary Strickland

**Discussion:** The Board having received a proposed Consent Agreement from the certificate holders, staff recommended the Board discuss the adoption date of the proposed policies submitted by the certificate

holders and possible methods and means for compliance reporting if the Board enters the proposed Consent Agreement. The Board discussed the proposed Consent Agreement and requested additional language be added to the Consent Agreement specifically noting the disposition of the complaint will not be considered or referenced in future complaint matters with respect to proportionality. Ms. Swetnam agreed to forward language to Mr. Strickland. Mr. Strickland agreed to amend the proposed Consent Agreement to include the language.

**Motion:** Board moved to enter Executive Session to receive advice of counsel.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Mary E. Carlton

**Motion Results:** Pass

**EXECUTIVE SESSION** started 11:15 a.m.

**EXECUTIVE SESSION** ended 12:03 p.m.

**Motion:** Board moved to defer consideration of this Agenda item to the December meeting to provide Division staff and Counsel to redraft the proposed Consent Agreement.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Mary E. Carlton  
Recusal Shari J. Tomlinson and Diana L. Clarke

**Motion Results:** Pass

**Discussion:** Staff recommended the Board review and approve an Amended Order involving complaint number 07-0004 to include a reference to an alleged act of misconduct involving ACJA § 7-201 (E)(4)(a) as cited in the Allegation Analysis and Probable Cause Determination report and authorize a member of the Board to sign the Amended Order on behalf of the full Board.

**Motion:** Board moved adopt the Amended Order as recommended and authorized Judge Fink to the sign the Amended Order on behalf of the full Board.

**Motion Proposals:** First Marlin “Kip” Anderson  
Second Mary Jane Baumgarten  
Recusal Shari J. Tomlinson and Diana L. Clarke

**Motion Results:** Pass

**2-C:** Report, discussion, and possible action regarding complaints dismissed by the Division Director pursuant to Arizona Code of Judicial Administration § 7-201 (D)(4)(a) and (H)(2)(b):

Complaint Number 08-0013  
Complaint Number NC08-0015  
Complaint Number NC08-0024  
Complaint Number 08-0026  
Complaint Number 08-0027  
Complaint Number NC08-0028

**Individual Addressing the Board:** Nancy Swetnam

**Discussion:** Division Director Swetnam dismissed complaint number 08-0013 with prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on October 9, 2008. No request for Board review was received from the complainant. Staff recommended the Board affirm the dismissal of complaint number 08-0013.

**Motion:** Board moves to affirm the dismissal of complaint number 08-0013.

**Motion Proposals:** First Marlin "Kip" Anderson  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**Discussion:** Division Director Swetnam dismissed complaint number NC08-0015 with prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on October 9, 2008. No request for Board review was received from the complainant. Staff recommended the Board affirm the dismissal of complaint number NC08-0015.

**Motion:** Board moved to affirm the dismissal of complaint number NC08-0015.

**Motion Proposals:** First Pamela Johnston  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**Discussion:** Division Director Swetnam dismissed complaint number NC08-0024 with prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on October 9, 2008. The complainant submitted a request for Board review. Staff recommended the Board affirm the dismissal of complaint number NC08-0024. The Board discussed the complainant's request for Board review of the dismissal and whether this matter could be referred to another entity or agency.

**Motion:** Board moved to affirm the dismissal of complaint number NC08-0024.

**Motion Proposals:** First Marlin "Kip" Anderson  
Second Mary Jane Baumgarten  
Recusal Judge Dean Fink

**Motion Results:** Pass

**Discussion:** Director Swetnam dismissed complaint number 08-0026 with prejudice for lack of jurisdiction. No request for Board review was received from the complaint. Staff recommended the Board affirm the dismissal of complaint number 08-0026.

**Motion:** Board moved to affirm the dismissal of complaint number 08-0026.

**Motion Proposals:** First Pamela Johnston  
Second Judge Dean Fink

**Motion Results:** Pass

**Discussion:** Director Swetnam dismissed complaint number 08-0027 with prejudice for lack of jurisdiction. No request for Board review was received from the complaint. Staff recommended the Board affirm the dismissal of complaint number 08-0027.

**Motion:** Board moved to affirm the dismissal of complaint number 08-0027.

**Motion Proposals:** First Pamela Johnston  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**Discussion:** Director Swetnam dismissed complaint number NC08-0028 with

prejudice for lack of jurisdiction. No request for Board review was received from the complaint. Staff recommended the Board affirm the dismissal of complaint number NC08-0028.

**Motion:** Board moved to affirm the dismissal of complaint number NC08-0028.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Marlin “Kip” Anderson

**Motion Results:** Pass

**2-D:** Review, discussion and possible action regarding complaint numbers:

06-0021 – Jane Anne Geisler and Managed Protective Services  
07-0011 - Jane Anne Geisler and Managed Protective Services  
08-0007 – Pamela Johnston and Certified Fiduciary Services

**Individual Addressing the Board:** Nancy Swetnam, Linda Grau, Nina Preston

**Discussion:** Regarding complaint number 06-0021, staff recommended the Board accept the findings of probable cause evaluator and dismiss Allegations 1, 2, 3, 4, 6 and 8 of complaint number 06-0021 involving Jane Anne Geisler and Managed Protective Services. Regarding Allegations 5 and 7, staff recommended the Board enter a finding grounds for informal disciplinary action exists and issue a Letter of Concern.

**Motion:** Board moved to accept staff’s recommendations.

**Motion Proposals:** First Judge Dean Fink  
Second Marlin “Kip” Anderson

**Motion Results:** Pass

**Discussion:** Regarding complaint number 07-0011, staff recommended the Board accept the findings of probable cause evaluator and dismiss Allegations 1, 2, 3 and 4 of complaint number 07-011 involving Jane Anne Geisler and Managed Protective Services. Regarding Allegation 5, staff recommended the Board enter a finding grounds for informal disciplinary action exists and issue a Letter of Concern. Staff and Board discussed whether Ms. Geisler and Managed Protective Services should be required to reimburse ward Mildred Hurly for Fiduciary and Attorney fees.

**Motion:** Board moved to defer action regarding complaint number 07-0011 to the December meeting and requested Board Counsel and staff to provide additional information at the December meeting.

**Motion Proposals:** First Judge Dean Fink  
Second May Jane Baumgarten

**Motion Results:** Pass

**Discussion:** Regarding complaint number 08-0007, staff recommended the Board accept the findings of probable cause evaluator and dismiss Allegations 1, and 2 of complaint number 08-0007 involving Pamela Johnston and Certified Fiduciary Services.

**Motion:** Board moved to accepts staff's recommendations.

**Motion Proposals:** First May Jane Baumgarten  
Second Diana L. Clarke  
Recusal Pamela Johnston

**Motion Results:** Pass

**2-E:** Discussion regarding Arizona Fiduciary Association request for documentation of calculable dollar value damages/harm in disciplinary matters.

**Individuals Addressing the Board:** Nancy Swetnam, Linda Grau

**Discussion:** Staff noted the Board was provided with a copy of an August 28, 2008 letter from Arizona Fiduciary Association President Lisa Price. The letter requests the Board begin documenting calculable dollar value damage of harm to the public related to disciplinary matters. Staff reminded the Board not all found harm is easily or feasibly translated into calculable dollar amount. Staff reported stated that when calculable harm is documented by evidence, recommendations for remedy of the calculable harm are included in the recommendations the Board receives regarding disciplinary matters.

**Motion:** No action taken.

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### 3) CERTIFICATION AND ELIGIBILITY

**3-A:** Review, discussion, and possible action regarding pending renewal application of

Candace Bow.

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** Staff reminded the Board Ms. Bow has a pending request to voluntarily surrender her certification. Staff reported Ms. Bow's attorney advised Ms. Bow is still court appointed in a fiduciary capacity in several cases and Ms. Bow has not provided documentation she has been relieved of these appointments. Staff recommended the Board defer consideration of Ms. Bow renewal application to December 11, 2008 meeting.

**Motion:** Board moved to accept staff's recommendation.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Marlin "Kip" Anderson  
Recusals Judge Dean Fink and Pamela Johnston

**Motion Results:** Pass

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**3-B:** Review, discussion, and possible action regarding pending renewal application of Clare Guthrie.

**Individual Addressing the Board:** Kimberly Siddall, Linda Grau

**Discussion:** Staff reported a letter was received from Ms. Guthrie's attorney indicating Ms. Guthrie has changed her mind and does not wish to have the Board consider her prior request to withdraw her application for renewal. The letter provides Ms. Guthrie is willing to complete 5 additional hours of continued education, half of the 10 additional hours the Board offered in the Consent Agreement discussed at the July 10, 2008 meeting. Staff recommended the Board vacate the request to withdrawal Ms. Guthrie's renewal application and offer Ms. Guthrie an opportunity to accept the July 10, 2008 Consent Agreement.

**Motion:** Board moved to vacate Ms. Guthrie's request to withdraw her renewal application.

**Motion Proposals:** First Marlin "Kip" Anderson  
Second Mary Jane Baumgarten  
Recusals Judge Dean Fink and Pamela Johnston

**Motion Results:** Pass

**Motion:** Board moved to offer Ms. Guthrie the original Consent Agreement discussed entering at the July 10, 2008 meeting.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Marlin “Kip” Anderson  
Recusals Judge Dean Fink and Pamela Johnston

**Motion Results:** Pass

**Discussion:** Staff requested the Board to include a specific date Ms. Guthrie needs to complete continued education credits.

**Amended Motion:** Board amended the motion to offer Ms. Guthrie the original Consent Agreement discussed entering at the July 10, 2008 meeting and require Ms. Guthrie complete the additional continuing education hours within 1 year of Board’s acceptance of the Consent Agreement.

**3-C:** Review, discussion, and possible action regarding pending applications for certification:

Stephanie Walker  
Constance Olsen  
Integrated Care Management & Services, Inc. (Elizabeth Crosby)

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** Staff recommended the Board defer consideration of the applications for Stephanie Walker and Constance Olsen to the December 11, 2008 agenda.

**Motion:** Board moved to accept staff’s recommendation.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Judge Dean Fink  
Pass

**Motion Results:**

**Discussion:** Staff reported applicant Integrated Care Management & Services, Inc. (Elizabeth Crosby) failed to disclose a civil action on the certification application. Staff recommended the Board grant certification with language added to the notification letter that provides future failures to disclose information on certification applications may result in a denial of renewal or disciplinary action.

**Motion:** Board moved to accept staff's recommendation.

**Motion Proposals:** First Judge Dean Fink  
Second Pamela Johnston

**3-D:** Review, discussion, and possible action regarding Inactive Status request received from certified fiduciary Harvey Van Sciver, certificate number 20583.

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** Staff reported Mr. Van Sciver is in good standing and recommended the Board grant his request for Inactive Status.

**Motion:** Board moved to accept staff's recommendation.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Marlin "Kip" Anderson

**Motion Results:** Pass

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#### **4) ADMINISTRATIVE ISSUES**

**4-A:** Review, discussion, and possible action regarding proposed amendments to Arizona Code of Judicial Administration § 7-202.

**Individuals Addressing the Board:** Linda Grau

**Discussion:** Staff reported the proposed amendments were presented to the Committee on Superior Court on November 7, 2008. The Committee moved to oppose the proposed amendments. The Arizona Judicial Council was scheduled to review the proposed amendments at their December meeting. The AJC review of the amendments has been postponed to the AJC's March 2009 meeting. Staff noted the specific date and location of the AJC meeting will be posted to the Program website.

**Motion:** No action taken

**4-B:** Discussion regarding formation of an Ethics Advisory Committee.

**Individual Addressing the Board:** Linda Grau

**Discussion:** Staff noted Arizona Fiduciary Association President Lisa Price suggested the formation of an Ethics Advisory Committee to assist certified fiduciaries. Staff reminded the Board this suggestion has been made and explored previously in regards to several Programs, including fiduciary, but the Division is not in a position to recommend formation of an ethics committee at this time. Formation of a committee would require resources and staff which are not presently available. Ms. Grau noted there is nothing in the statute, ACJA or court rules which would prevent the AFA from providing ethics support to the profession.

**Motion:** No action taken.

**4-C:** Nomination and election of the 2009 Fiduciary Board Vice Chair.

**Individual Addressing the Board:** Linda Grau

**Discussion:** Ms. Grau recommended the Board nominate and elect a Vice Chair from among appointed members for the 2009 calendar year.

**Motion:** Board moved to elect Mary Carlton as Vice Chair for the 2009 calendar year, contingent upon her agreement to serve.

**Motion Proposals:** First Marlin "Kip" Anderson  
Second Diane L. Clarke

**Motion Results:** Pass

**4-D:** Review, discussion and possible action regarding the 2009 Fiduciary Board meeting schedule.

**Individual Addressing the Board:** Linda Grau

**Discussion:** Staff recommended the Board modify the previously approved 2009 meeting schedule to every other month meetings in an effort to reduce expenditures related to staff time and Board Member travel. Staff recommended the Board revise the previously approved 2009 schedule to meet at 10:30am on the following dates:

January 8, 2009  
March 12, 2009  
May 14, 2009  
July 9, 2009  
September 10, 2009  
November 12, 2009

**Motion:** Board moved to accept the 2009 meeting dates as listed.

**Motion Proposals:** First Marlin ‘Kip’ Anderson  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**4-E:** Report from the Regulatory Scope Subcommittee.

**Individual Addressing the Board:** Judge Dean Fink, Amy Love

**Discussion:** Judge Fink reported the Regulatory Scope Subcommittee meet on November 18, 2008 and discussed the legislative proposal regarding the audit record confidentiality issues raised by members of the profession. The subcommittee recommended no changes to the proposal. Judge Fink noted amendments to ACJA could address this and other concerns if the proposal is passed by the Legislature.

**Motion:** No action taken.

**4-F:** Review discussion and possible action regarding the Board’s recommendation to the Chief Justice pertaining to the appointment of new Board members.

**Individual Addressing the Board:** Linda Grau

**Discussion:** The Board was provided with a list of candidates for the available seats on the Board. Staff noted the terms of Marlin “Kip” Anderson and Diana Clarke expire on December 31, 2008 and both have expressed a desire to be reappointed for another three year term. The Board discussed the candidates for the Fiduciary in Private Practice and Attorney Member.

**Motion:** No action taken

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## CALL TO THE PUBLIC

**Individual Addressing the Board:** David Karr

**Discussion:** Mr. Karr addressed the Board regarding complaint number 06-0021 involving Jane Anne Geisler and Management Protective Services. Mr. Karr asked the Board to amend the motions made earlier in the meeting and re-examination each allegation.

**Individual Addressing the Board:** Brian Kimber

**Discussion:** Mr. Kimber reiterated Mr. Karr request for the Board to reopen complaint number 06-0021 involving Jane Anne Geisler and Management Protective Services.

**Individual Addressing the Board:** Michelle Stump

**Discussion:** Ms. Stump thanked the Board for having a call to the public, expressed her concerns regarding complaint 06-0021, and requested the matter be investigated further.

**Individual Addressing the Board:** Peter Frenette

**Discussion:** Mr. Frenette expressed to the Board how impressed he was with the recent version of the proposed amendments to ACJA § 7-202. Mr. Ferntree also commented on the candidates for the vacant positions and inquired about his application submitted for the Fiduciary in Private Practice position.

**Individual Addressing the Board:** Lisa Price

**Discussion:** Ms. Price expressed her appreciation to the Board for the discussion and consideration regarding the Ethics Advisory Committee. Ms. Price said she willing to assist and facilitate a creation of a committee to enhance the Fiduciary community.

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## ADJOURNMENT

**Motion:** Adjourn the meeting.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Pamela Johnston

**Motion Results:** Pass Motion Carries

**Time:** 3:08 p.m.

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ML/EL