



## Arizona Supreme Court Fiduciary Board

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

Date: July 9, 2009  
Time: 10:30 a.m. – 2:30 p.m.

### Approved Regular Meeting Minutes

#### MEMBER ATTENDANCE:

##### Present:

Shari Tomlinson  
Diana L. Clarke  
Judge Dean Fink  
Kenneth Reeves, III  
Mary Jane Baumgarten  
Pamela Johnston  
Deborah Primock

##### Telephonically Present:

Mary E. Carlton  
Marlin "Kip" Anderson  
Sherry Reed

##### Absent:

Diana M. Corry

#### OTHER ATTENDEES

##### AOC Staff:

Linda Grau  
Nancy Swetnam  
Kitty Boots  
Nina Preston  
Kimberly Siddall  
Kandace French  
Bonnie Toms  
Lori Braddock  
Karla Clanton  
Tony Posante

##### Guests:

Lisa Price  
Devin Price  
Gary Warner  
Brenda Panthe  
Jeff Lake  
Valerie Mills  
Lori Lashley  
Janet Cowley

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**CALL TO ORDER**

***Called to Order By:*** Shari Tomlinson

***Time:*** 10:31 a.m.

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**1) REVIEW AND APPROVAL OF MINUTES**

***1-A: Review and discuss approval of the Regular Session Minutes of the meeting held on May 14, 2009.***

***Discussion:*** Member attendance should show Diana L. Clarke as present telephonically.

***Motion:*** Move to accept Regular Session Minutes of May 14, 2009 with above amendment.

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

***Motion Results:*** Pass

***1-B: Review and discuss approval of the Executive Session Minutes of the meeting held on October 9, 2008.***

***Discussion:*** There were no changes or corrections.

***Motion:*** Move to accept Executive Session Minutes of October 9, 2008.

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

***Motion Results:*** Pass

***1-C: Review and discuss approval of the Executive Session Minutes of the meeting held on November 9, 2008.***

***Discussion:*** There were no changes or corrections.

***Motion:*** Move to accept Executive Session Minutes of November 9, 2008.

***Motion Proposals:*** First Diana L. Clarke  
Second Judge Dean Fink

***Motion Results:*** Pass

**1-D: Review and discuss approval of the Executive Session Minutes of the meeting held on December 11, 2008.**

**Discussion:** Spelling correction for Board member name.

**Motion:** Move to accept Executive Session Minutes of December 11, 2008 with above amendment.

**Motion Proposals:** First Diana L. Clarke  
Second Judge Dean Fink

**Motion Results:** Pass

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**2) PENDING COMPLAINTS**

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

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

***Complaint Number 08-0014 – Milly Ann Brigg***

**Discussion:** On May 21, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0014. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0014.

**Motion:** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 08-0014.

**Motion Proposals:** First Mary E. Carlton  
Second Marlin “Kip” Anderson

**Motion Results:** Pass

***Complaint Number 08-0021 – Sandra Paz***

**Discussion:** On May 21, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0021. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0021.

**Motion:** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 08-0021.

**Motion Proposals:** First Mary Jane Baumgarten

**Motion Results:** Second Deborah Primock  
Pass

***Complaint Number 07-0015 – Mohave Estate Management Office***

**Discussion:** On May 21, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist as to Allegations 1, 2, 3 and 4 and does exist as to Allegation 5. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations 1, 2, 3 and 4. Regarding Allegation 5, it was recommended the Board consider the mitigating factors of the age of the complaint (filed in 2007) and the absence of any prior or subsequent discipline regarding the fiduciary. It was further recommended the Board consider that the violation by MEMO of failing to place the certificate number on court documents did not result in any actual or potential harm to the ward or the public and thereby constitutes a technical violation. Recommendation to dismiss Allegation 5.

**Motion:** Move to go into Executive Session to receive advice of counsel.

**Motion Proposals:** First Judge Dean Fink  
Second Kenneth Reeves, III

**Motion Results:** Pass

**Executive Session: 10:43 a.m. to 10:49 a.m.**

**Discussion:** There was no further discussion.

**Motion:** Move that all references in the written materials to ACJA § 7-202 (F)(8) be modified so as to read ACJA § 7-202 (F)(3) and with that correction, accept the recommendation of staff to dismiss complaint number 07-0015.

**Motion Proposals:** First Judge Dean Fink  
Second Kenneth Reeves, III

**Motion Results:** Pass

***Complaint Number 08-0025 – Jeffery Lake***

**Discussion:**

On May 21, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does exist in complaint number 08-0025. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists for acts of misconduct involving ACJA § 7-201 (F)(1), ACJA § 7-202(F)(1), (J)(2), (J)(4), (J)(4)(b), (J)(4)(g), and (J)(7). Further discussion included the very complex investigation, the unusual situation of the complaint, if Lake had posted the required bond, mitigating factors, aggravating factors and proportionality analysis. Recommendation the Board impose the following sanctions pursuant to ACJA § 7-201 (H)(24)(a)(6):

- a) Issue a Censure to Lake, pursuant to ACJA § 7-201(H)(24)(a)(6)(b);
- b) Place Lake on probation until May 31, 2010 pursuant to ACJA § 7-201(H)(24)(6)(e) with the following conditions:
  - 1. Within 30 days of being placed on Probation Lake will provide a report to the Division that lists any court appointments and any other clients he is serving in any capacity, including those where he is serving as an agent under a power of attorney. This report will also provide information on the status of any required reports to the court, including inventories, annual guardianship and/or annual conservatorship report;
  - 2. Every 60 days after the initial report, Lake will provide a report to the Division updating the list of appointments and clients and the status;
  - 3. Lake's compliance with the probation terms and the other terms of the Board's Order in this complaint case will be a factor the Board will consider when reviewing any application for renewal of certification in May 2010.
- c) Mandate Lake to participate in 5 additional hours of continuing education in addition to the hours required for renewal, pursuant to ACJA § 7-201 (H)(24)(a)(6)(f); and,
- d) Assess costs associated with the investigation and related disciplinary proceedings to be remitted no later than sixty (60) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j);
- e) Require Lake to comply with all certification requirements including providing proof of bond within 30 days.

**Motion:**

Move to accept the findings of the Probable Cause Evaluator, enter a finding grounds for formal disciplinary action exists for acts of misconduct, and impose sanctions as recommended by staff.

**Motion Proposals:**

First                    Kenneth Reeves, III  
Second                Marlin "Kip" Anderson

**Motion Results:**

Pass

***Complaint Number 08-0022 – Southwest Fiduciary, Inc.***

***Discussion:*** On June 16, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0022. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0022.

***Motion:*** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 08-0022.

***Motion Proposals:*** First Kenneth Reeves, III  
Second Mary Jane Baumgarten  
Recusal Deborah Primock

***Motion Results:*** Pass

***Complaint Number 08-0010 – Southwest Fiduciary, Inc.***

***Discussion:*** On June 5, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0010. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0010.

***Executive Session: 11:28 a.m. – 11:33 a.m.***

***Motion:*** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 08-0011.

***Motion Proposals:*** First Diana L. Clarke  
Second Mary Jane Baumgarten  
Recusal Deborah Primock

***Motion Results:*** Pass

***Complaint Number 07-0024  
Anita Royal and Pima County Public Fiduciary Office***

***Discussion:*** On June 5, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 07-0024. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 07-0024.

***Motion:*** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 07-0024.

**Motion Proposals:** First Kenneth Reeves, III  
Second Pamela Johnston  
**Motion Results:** Pass

***Complaint Number 08-0009 –  
Carla Jones and Northern Arizona Fiduciaries, Inc.***

**Discussion:** On June 5, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0009. Recommendation the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0009.

**Motion:** Move to accept findings of Probable Cause Evaluator and dismiss complaint number 08-0009.

**Motion Proposals:** First Kenneth Reeves, III  
Second Pamela Johnston  
**Motion Results:** Pass

***Complaint Number 07-0027 –  
AZ Department of Veterans' Services***

**Discussion:** On May 21, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does exist in complaint number 07-0027. Recommendation the Board enter a finding grounds for formal disciplinary action exists for acts of misconduct involving Superior Court in Pima County Local Rule 9.2(e), Arizona Revised Statutes § 14-5312(A)(2), § 14-5424(C)(8), § 32-1151 and ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (F)(3), (J)(1), (J)(2), (J)(2)(a), (J)(2)(d), (J)(2)(e), (J)(3), (J)(3)(b), (J)(3)(c), (J)(3)(d), (J)(3)(g), (J)(3)(p), (J)(4), (J)(4)(b), (J)(4)(d), (J)(4)(h), (J)(4)(i), (J)(4)(l), (J)(4)(j), and (J)(7). It was further recommended the Board impose the following sanctions 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) Pursuant to ACJA § 7-201(H)(24)(a)(6)(e), place ADVS on probation for a period of no less than two years, with the following conditions:
  1. Require ADVS to provide a complete list of all court appointments and the status of each appointment within 30 days of entry of the Board's Final Order including due dates for required court filing deadline dates;
  2. Require ADVS to file quarterly written reports with the Board detailing the case status for each appointment, verification of compliance with filing

deadlines, and confirmation of compliance with the visitation requirements for all applicable wards and protected persons;

3. Require ADVS to conduct a review and accounting of all records and accounts related to William Finefrock and William Finefrock's estate within 60 days of the Board's Final Order and submit a report to the Board, demonstrating the procedures ADVS utilized to conduct the review and reconcile the accounts; and,
  4. Require ADVS to remit the total of \$3,161.45 to the Finefrock estate within 90 days of the Board's Final Order. This total represents the difference between the amount approved by the Court for the attorney's fees and what ADVS paid in attorney fees;
- c) Assess costs associated with the investigation and related disciplinary proceedings to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j); and,
  - d) Impose civil penalties in the amount of \$250.00 per found violation, to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(k).

Further discussion and recommendation included changing written report requirement to quarterly rather than monthly and the specific content the reports should include.

**Motion:** Move to accept findings of Probable Cause Evaluator, enter a finding grounds for formal disciplinary action exists, and impose sanctions as recommended by staff with noted conditions.

**Motion Proposals:** First Kenneth Reeves, III  
Second Deborah Primock

**Motion Results:** Pass

**2-B: Review, 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):**

Note: Pursuant to ACJA § 7-201(H)(1)(g)(3), complainants dismissed by the Division Director are confidential and not a matter of public record.

**Individuals Addressing the Board:** Nancy Swetnam

**Complaint Number 09-0011**

**Discussion:** On May 27, 2009, Division Director Swetnam dismissed complaint number 09-0011 with prejudice for lack of jurisdiction and referred the matter to the entity with jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on May 27, 2009. No request for Board review has been received from the complainant. Recommendation the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201(H)(2)(d).

**Motion:** Move to affirm Division Director's dismissal of complaint number 09-0011.

**Motion Proposals:** First Kenneth Reeves, III  
Second Mary Jane Baumgarten

**Motion Results:** Pass

### ***Complaint Number 09-0013***

**Discussion:** On May 30, 2009, Division Director Swetnam dismissed complaint number 09-0013 with prejudice for lack of jurisdiction and referred the matter to the entity with jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on June 3, 2009. No request for Board review has been received from the complainant. Recommendation the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201(H)(2)(d).

**Motion:** Move to affirm Division Director's dismissal of complaint number 09-0013.

**Motion Proposals:** First Judge Dean Fink  
Second Kenneth Reeves, III

**Motion Results:** Pass

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### **3) CERTIFICATION AND ELIGIBILITY**

**3-A: *Review, discussion, and possible action regarding pending renewal application for certification.***

**Individuals Addressing the Board:** Kimberly Siddall

***Jeannean Sabatina  
Richard Kruger  
Janet Crowley  
Sherri Schamel***

**Discussion:** The above listed applicants have submitted applications for initial certification. The applications are complete and no information was presented during the background investigation which is contrary to certification being granted. The applicants have demonstrated they meet the minimum eligibility requirements of certification. Recommendation certification be granted.

**Motion:** Move to grant initial certification to the above listed applicants.

**Motion Proposals:** First Mary Jane Baumgarten

Second Kenneth Reeves, III

**Motion Results:** Pass

*Susan Cooper*

*Kathleen Moriarity*

**Discussion:** The above listed applicants have submitted applications for initial certification. The applications are complete and no information was presented during the background investigation which is contrary to certification being granted. The applicants fingerprint results were returned by the FBI for “unable to read the prints”. Pursuant to ACJA § 7-201 (E)(1)(d)(2):

“If after two attempts, the FBI determines the fingerprints provided are not readable, the applicant shall submit a written statement, under oath, the applicant has not been arrested, charged, indicted, convicted of or pled guilty to any felony or misdemeanor, other than as disclosed on the application.”

Applicants have filed the written statements and demonstrated they meet the minimum eligibility requirements of certification. Recommendation initial certification be granted.

**Motion:** Move to grant initial certification to the above listed applicants.

**Motion Proposals:** First Mary Jane Baumgarten

Second Kenneth Reeves, III

**Motion Results:** Pass

*Gregory Sulzer*

*Diana Clarke*

**Discussion:** The applications for the above listed applicants remain incomplete pending receipt of fingerprint results, professional responsibility, and/or additional information. Recommendation to defer consideration of applications to the September 10, 2009 meeting.

**Motion:** Move to defer consideration of applications for the above listed applicants to the meeting of September 10, 2009.

**Motion Proposals:** First Mary Jane Baumgarten  
Second Kenneth Reeves, III  
Recusal Diana L. Clarke

**Motion Results:** Pass

***Mesch Clark & Rothschild***

**Discussion:** The above listed applicant has submitted an application for initial certification. The application is complete and no information was presented during the background investigation which is contrary to certification being granted. The applicant has demonstrated they meet the minimum eligibility requirements of certification. Recommendation certification be granted.

**Motion:** Move to grant initial certification to the above listed applicant.

**Motion Proposals:** First Kenneth Reeves, III  
Second Mary Jane Baumgarten

**Motion Results:** Pass

***Vivian Hartless***

**Discussion:** On September 11, 2008, the Board reviewed, considered and granted a request from Ms. Hartless to waive the eligibility requirements in order to participate in the Fiduciary examination. On October 8, 2008, Ms. Hartless took and passed the exam. She completed and submitted the remaining requirements to be considered for certification and her application was presented to the Board at the December 11, 2008 meeting. The application reflected Ms. Hartless did not meet the minimum eligibility requirements for fiduciary certification and the application was denied. Ms. Hartless requested a hearing on the denial. At the March 12, 2009 meeting the Board vacated the earlier denial from December 11, 2008 and deferred consideration of Ms. Hartless' application to the July 9<sup>th</sup> Board Meeting at which time Ms. Hartless would qualify for certification with the minimum experience required pursuant to ACJA § 7-205(3)(b)(6). Applicant now meets the minimum eligibility requirements of certification. Recommendation the Board grant initial certification.

**Motion:** Move to grant initial certification to the above listed applicant.

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

**Motion Results:** Pass

**3-B:** *Review, discussion, and possible action regarding Voluntary Surrender request received from certified fiduciary Stephan J. McCaffrey.*

**Individuals Addressing the Board:** Kimberly Siddall

**Discussion:** Mr. McCaffery was granted certification on August 31, 2006. On June 15, 2009, McCaffery submitted a request to voluntarily surrender his certification.

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.

Staff reviewed court records and confirmed Mr. McCaffery is not assigned to any case. Division records confirm there are no pending complaints involving Mr. McCaffery. Staff recommended the Board accept the voluntary surrender.

**Motion:** Move to accept the voluntary surrender request of Stephan J. McCaffrey.

**Motion Proposals:** First Pamela Johnston  
Second Deborah Primock

**Motion Results:** Pass

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**4) ADMINISTRATIVE ISSUES**

**4-A:** *Update regarding legislation.*

**Individuals Addressing the Board:** Kandace French, Linda Grau, Kitty Boots

**Discussion:** Ms. French gave a verbal update on pending legislation HB2317, HB2347, and HB2344 stating that the bills have moved forward and are ready to be forwarded to the Governor. Staff will advise the Board when they are signed. Linda Grau clarified that HB2317 is dead in committee. HB2347, and HB2344 have passed and are expected to be signed by the Governor.

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**CALL TO THE PUBLIC**

Lisa Price asked the Board to clarify the issue of attorney's fees paid by fiduciaries and the need for court approval referenced in one of the complaints. The Board advised her it is unable to address matters not on the agenda or requiring legal opinion. Staff advised Ms. Price they would meet with her after the Board meeting to clarify the complaint and recommendation in question.

Janet Cowley requested a technical correction to the spelling of her name in today's Agenda Item 3-A.

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**ADJOURNMENT**

**Motion:** Adjourn the meeting.

**Motion Proposals:** First Kenneth Reeves, III  
Second

**Motion Results:** Pass

**Time:** 12:40 p.m.

Initials: BT

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