



Supreme Court Fiduciary Board

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

Date: October 9, 2008
Time: 10:30 a.m. – 1:30 p.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Mary E. Carlton
Diana L. Clarke
Honorable Dean Fink
Mary Jane Baumgarten
Pamela Johnston
Sherry Reed
Diana M. Corry

Absent:

Shari J. Tomlinson
Marlin “Kip” Anderson

OTHER ATTENDEES

AOC Staff:

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

Guests:

Gary Strickland
Rich Vanderheiden
Lisa Price
Donal D. Childer
Peter Frenette

CALL TO ORDER

Called to Order By: Honorable Dean Fink

Time: 10:38 a.m.

1) REVIEW AND APPROVAL OF MINUTES

I-A: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on July 10, 2008.

Individual Addressing the Board: Linda Grau

Discussion: Staff recommended the Board review and approve the Regular Session Minutes of the meeting held on July 10, 2008.

Motion: Board moved to approve the July 10, 2008 Regular Session Minutes.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

I-B: 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: Staff recommended the Board defer consideration of the September 11, 2008 Regular Session Minutes to the November meeting.

Motion: Board moved to accept staff's recommendation.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

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, Nina Preston, Linda Grau

Discussion: Staff recommended the Board formally acknowledge Judge McMurdie's Ruling, reassert the MCPF sanction order assessing costs in the amount of \$2,223.80, and authorize a Board member to sign the Censure. The Board discussed procedural options for addressing Judge McMurdie's remand of the Board's Final Order as it pertains to Mr. Vanderheiden's individual certification. Staff recommended the Board seek advice of counsel regarding the remand issue.

Motion: Moved to enter into Executive Session.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

Executive Session: 10:50 – 11:15 a.m.

Motion: Board moved to defer to action involving the MCPF Office and Judge McMurdie's ruling of September 22, 2008 to the November 13, 2008 meeting to afford counsel and opportunity to determine whether MCPF's time to appeal Judge McMurdie's ruling has passed. Further, the Board moved request staff return to the November meeting with a recommendation on proceeding with the remanded action involving Mr. Vanderheiden's individual certification.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

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, Richard Vanderheiden, Linda Grau

Note: Diane Corry leaves the meeting. The Board was without a quorum as Board Member Dianna Clark recused from this matter.

Discussion: The Board heard statements from Mr. Strickland and Mr. Vanderheiden and the discussed the options for resolving the matter by Consent Agreement. Mr. Strickland and Mr. Vanderheiden agreed to forward a draft proposal consistent with the discussions to the Board for review and consideration at the November meeting.

2-C: Review discussion and possible action regarding complaint number 08-0001 involving certificate holder Candace Bow.

Individuals Addressing the Board: Linda Grau

Discussion: Staff reported the Board's Order issued on September 11, 2008 failed to specifically cite the alleged acts of misconduct. Staff recommended the Board review and approve the draft Supplemental Order and authorize a member of the Board to sign the Supplemental Order and the Notice of Formal Statement of Charges.

Motion: Moved to adopt the Supplemental Order and authorize Judge Fink to sign the Supplemental Order and the Notice of Formal Statement of Charges on behalf of the full Board.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

3) CERTIFICATION AND ELIGIBILITY

3-A: Review, discussion, and possible action regarding pending renewal application of Candace Bow.

Individual Addressing the Board: Karla Clanton

Discussion: Staff recommended to defer request withdraw renewal application for applicant Candace Bow.

Motion: Moved to defer to November 13, 2008 Board meeting.

Motion Proposals: First Mary Jane Baumgarten

Second Mary E. Carlton

Motion Results: Pass

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

Individual Addressing the Board: Karla Clanton

Discussion: Staff recommended to defer request withdraw renewal application, for applicant Clare Guthrie.

Motion: Moved to defer to November 13, 2008 Board meeting.

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

Motion Results: Pass

3-C: *Review, discussion, and possible action regarding pending applications for 2008-2010 certification renewal:*

*Janice Kulp
Fiduciary Services, LLC (Janice Kulp)*

Individuals Addressing the Board: Karla Clanton

Discussion: Staff reported Ms. Kulp previously appeared before the Board to discuss application related disclosure matters. Staff reported Ms. Kulp returned the signed Consent Agreement and recommended the Board enter the agreement granting Ms. Kulp and her business entity, Fiduciary Services, LLC certification.

Motion: Moved to enter the Consent Agreement and authorize Judge Fink to sign the Consent Agreement on behalf of the full Board.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

3-D: Review, discussion, and possible action regarding Voluntary Surrender request received from inactive certified fiduciary Barbara Middleton, certificate number 20505.

Individual Addressing the Board: Karla Clanton

Discussion: Staff recommended the Board accept Ms. Middleton’s voluntarily surrender her certification.

Motion: Accept the voluntary surrender of certificate number 20505 from Barbara Middleton.

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

Motion Results: Pass

3-E: Review, discussion, and possible action regarding Voluntary Surrender request received from inactive certified fiduciary Barbara Gomez, certificate number 20537.

Individual Addressing the Board: Karla Clanton

Discussion: Staff recommended the Board accept Ms. Gomez’s voluntarily surrender her certification.

Motion: Accept the voluntary surrender of certificate number 20537 from Barbara Gomez.

Motion Proposals: First Pamela Johnston
Second Mary E. Carlton

Motion Results: Pass

4) ADMINISTRATIVE ISSUES

4-A: Update regarding status of recruitment for vacant Board positions.

Individuals Addressing the Board: Linda Grau

Discussion: Staff reported the recruitment for new members to fill the existing vacancies are underway.

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

Individual Addressing the Board: Linda Grau

Discussion: Staff reported receiving no proposals of alternative language and

noted the Board received a copy of the correspondence received from the Arizona Fiduciaries Association requesting the proposal be stricken in its entirety. Staff presented alternative language derived from the work and efforts of the Subcommittee and Board and recommended the Board recommend adoption of the alternative language. The Board opened the floor for a limited call to the public on this agenda item. Lisa Price, Peter Frenette, and Donal Childers addressed the Board regarding the proposed amendments.

Motion: Accept the proposed alternative language presented, including subsection ACJA § 7-202 (F)(6), and recommend the Supreme Court adopt the proposed amendments.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

CALL TO THE PUBLIC

Individuals Addressing the Board: Lisa Price addressed the Board and suggested the Board consider appointing an ethics advisory committee to assist certificate holders.

ADJOURNMENT

Motion: Adjourn the meeting.

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

Motion Results: Pass

Time: 1:38 p.m.