



Arizona Supreme Court Defensive Driving Board

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

Date: August 19, 2009
Time: 10:00 a.m. – 2:00 p.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Judge Gary J. LaFleur
Robert G. A. Hall
Virginia Davis
Leonard Montanaro
Rolland (Ron) E. DeLong
Pamela K. Najera
Steven Soldis
Elaine Acosta Sweet

Telephonically Present:

Judge Daniel S. Jurkowitz
Lynette Rudow

Absent:

Cecile T. Woodward

OTHER ATTENDEES

AOC Staff:

Kitty Boots
Nancy Swetnam
Kandace French
Kimberly Siddall
Linda Grau
Jennifer Greene
Bonnie Toms
Chris DeWitt
Lori Braddock
Becky Sorenson
Karla Clanton
Alex Navarro
Tony Posante
Cynthia Thomas

Guests:

Debbie Grado
Greg Harris
Rick Hernandez

CALL TO ORDER

Called to Order By: Judge Gary J. LaFleur

Time: 10:00 a.m.

1) REVIEW AND APPROVAL OF MINUTES

1-A: *Review, discussion and possible approval of the Regular Session Minutes for the meeting of June 17, 2009.*

Individuals Addressing the Board: Judge Gary J. LaFleur

Discussion: No discussion.

Motion: Move to approve the Regular Session Minutes for the meeting of June 17, 2009.

Motion Proposals: First Leonard Montanaro
Second Robert G. A. Hall

Motion Results: **Pass**

1-B: *Review, discussion and possible approval of the Executive Session Minutes for the meeting of June 17, 2009.*

Individuals Addressing the Board: Judge Gary J. LaFleur

Discussion: No discussion.

Motion: Move to approve the Executive Session Minutes for the meeting of June 17, 2009.

Motion Proposals: First Elaine Acosta Sweet
Second Pamela K. Najera

Motion Results: **Pass**

2) ADMINISTRATIVE ISSUES

2-A: *Review and discussion regarding proposed 2009 Regular Session legislation.*

Individuals Addressing the Board: Kandace French

Discussion: Staff provided a verbal report regarding the status of proposed 2009 Regular Session legislation which included implementation of changes to A.R.S. § 28-3392, prohibiting a driver of a commercial vehicle that requires a commercial vehicle license from being defensive driving school eligible. The change to Title 28 will go into effect September 30, 2009. No other legislative actions moved forward in this session and there were no other issues to report.

2-B: Report, discussion and possible action regarding proposed amendments of ACJA § 7-205.

Individuals Addressing the Board: Kandace French

Discussion: Staff provided a verbal report to the Board regarding proposed amendments of ACJA § 7-205. The Defensive Driving Subcommittee is currently reviewing the suggested draft to ACJA § 7-205. It is anticipated the draft will go out for public comment from September 4, 2009 to October 5, 2009 and will be presented for Board review at the October 21st board meeting.

2-C: Review and discussion regarding alternative process for confirming identity of online student by Arizonadriver.com.

Individuals Addressing the Board: Kandace French, Chris DeWitt, Nancy Swetnam

Discussion: Discussion regarding ArizonaDriver.com's proposed method of student identity confirmation utilizing Experian Authentication Services in which students must answer questions which are gleaned from their credit history online by a third-party database. The verification process would have no impact on the student's credit history. Upon successful verification, the student would be able to proceed to the final exam, eliminating the need to go to a separate test site. Further discussion included the process used for identifying the student, the fact that there is no 100% fool proof system, and additional costs involved. The method was thoroughly reviewed and rigorously tested by staff and was recommended for approval by the Board.

Motion: Move to accept staff recommendation to approve the new method of identity confirmation.

Motion Proposals:

First	Judge Daniel S. Jurkowitz
Second	Robert G. A. Hall
No	Rolland (Ron) E. DeLong

Motion Results: **Pass**

3) REVIEW OF PENDING COMPLAINTS

3-A: *Formal Interview with certificate holder I Drive Safely regarding pending formal disciplinary action in complaint number 08-D001.*

Individuals Addressing the Board: Rick Hernandez, Gregory Harris, Nancy Swetnam, Jennifer Greene

Discussion: On June 17, 2009, the Board accepted the finding of the Probable Cause Evaluator in complaint number 08-D001, entered a finding grounds for formal disciplinary action exists for acts of misconduct and moved to invite I Drive Safely to participate in a Formal Interview. Rick Hernandez, managing partner, and attorney Gregory Harris appeared on behalf of I Drive Safely to address the Board regarding the resolution of the formal disciplinary matter. Staff received a letter dated August 14, 2009 from Mr. Harris, copies of which were passed out to the Board. The letter concerned additional elements to which IDS would consent. The company's response to the investigation was discussed during the interview as well as mitigating factors, aggravating factors, and proportionality analysis. I Drive Safely agreed to a proposed Consent Agreement to include recommendation the Board impose the following sanctions pursuant to ACJA § 7-201 (H)(24)(a)(6):

- a) Issue of Letter of Concern;
- b) Place IDS on probation for a period of not less than 6 months and require IDS to develop and implement the processes, policies and procedures necessary to meet the reporting accuracy standard within 60 days of entry of the Board's order;
- c) Mandate as a condition of probation IDS provide written verification that all outstanding required reporting has been completed and fees have been paid in full and reconciled with the court system;
- d) Access costs associated with the investigation and related administrative proceedings involving complaint number 08-D001 and;
- e) Impose a civil penalty in the amount of \$500 total for all five violations.

The proposed Consent Agreement would contain language acknowledging the violations described in Allegations 1, 2, 3, 4, and 5 of complaint number 08-D001 and agreement to the above sanctions. If in the event IDS does not accept the proposed Consent Agreement, it was recommended the Board proceed with filing and service of Notice of Formal Charges in complaint number 08-D001.

Motion: Move to have staff draft a Consent Agreement as described above which, if agreed to by IDS, would be signed by Judge LaFleur on behalf of the board.

Motion Proposals: First Judge Daniel S. Jurkowitz
Second Pamela K. Najera

Motion Results: Pass

3-B: Review, discussion, and possible action regarding Hearing Officer Andrew Marshall's recommendation report involving instructor Yves Pierre and complaint number 08-D006.

Individuals Addressing the Board: Linda Grau, Jennifer Greene

Discussion: On July 31, 2009, Hearing Officer Andrew Marshall filed an Amended Hearing Officer's Report regarding Mr. Pierre and complaint number 08-D006. Request for a re-hearing was not received from Mr. Pierre by the deadline of August 13, 2009. Recommendation the Board adopt Hearing Officer Marshall's proposed disciplinary sanctions as a Final Order in this matter and in doing so, adopt the Findings of Fact and Conclusions of Law offered in the Amended Hearing Officer's Report. The disciplinary sanctions proposed include issuance of a Censure, mandating Mr. Pierre to participate in no less than 5 additional hours of continuing education in the curriculum areas of ethics, professional responsibility and sensitivity training within ninety (90) days of entry of the Board's Final Order, and assess costs related to the investigation and disciplinary proceedings in the amount of \$1,472.01, to be made payable no later than sixty (60) days of entry of the Board's Final Order.

Motion: Move to accept staff recommendation.

Motion Proposals: First Leonard Montanaro
Second Robert G. A. Hall
Recusal Virginia Davis

Motion Results: Pass

4) CERTIFICATION AND ELIGIBILITY

4-A: Review, consideration and possible action regarding pending initial certification applications of the following defensive driving instructors:

Individuals Addressing the Board: Kimberly Siddall

Scott E. Smyth
Daniel J. Richard

David A. Havel
William E. Schuck

Discussion: The above applications remain incomplete pending receipt of additional information or proof of passing the examination. It was recommended to defer consideration to the October 21, 2009 board meeting.

Motion: Move to accept staff recommendation to defer consideration of the above applications.

Motion Proposals: First Robert G. A. Hall
Second Leonard Montanaro

Motion Results: Pass

Donald A. Gagnon

Discussion: The above listed application is complete. It was recommended initial certification be granted.

Motion: Move to accept staff recommendation to grant certification.

Motion Proposals: First Rolland (Ron) E. DeLong
Second Robert G. A. Hall

Motion Results: Pass

Peter Rimasch

Discussion: It was recommended the Board deny initial certification pursuant to ACJA § 7-201 (E)(2)(c)(1) as applicant does not meet the eligibility requirements and has not submitted a completed application with all deficiencies corrected.

Motion: Move to accept staff recommendation to deny initial certification.

Motion Proposals: First Robert G. A. Hall
Second Lynette Rudow

Motion Results: Pass

4-B: *Review, discussion and possible action regarding online testing module for National Safety Council.*

Individuals Addressing the Board: Chris DeWitt

Discussion: Mr. DeWitt presented a verbal report to the Board which included staffs' review and testing of the online testing module. The module meets program standards. Recommendation to approve Arizona Chapter National Safety Council's proposed test module for online students.

Motion: Move to accept staff recommendation.

Note: Judge LaFleur stepped out of the room, Leonard Montanaro presiding.

Motion Proposals: First Judge Daniel S. Jurkowitz
Second Steven Soldis
Recusal Pamela K. Najera
Motion Results: Pass

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Motion: Adjourn the meeting.

Motion Proposals: First Robert G. A. Hall
Second Pamela K. Najera
Motion Results: Pass

Time: 11:20 a.m.

Initials: BT