

FIDUCIARY BOARD

Amended Meeting Agenda – Thursday, November 16, 2017

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 ORDERDeborah 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 September 7, 2017.

1-B: Review, discussion and possible action regarding the regular session minutes of the interim meeting held on September 20, 2017.

1-C: Review, discussion and possible action regarding the executive session minutes of the interim meeting held on October 3, 2017.

2) PENDING COMPLAINTS..... Division Staff

2-A: Review, discussion and possible action regarding complaint number 16-0006, involving licensee, Beverly Gloden.

2-B: Review, discussion and possible action regarding complaint number 16-0018, involving licensee, Patricia Flores.

2-C: Review, discussion and possible action regarding complaint numbers 17-0012, involving licensee Maureen Edwards.

3) INITIAL LICENSURE AND ELIGIBILITY.....*Division Staff*

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

1. Emily Kile
2. Anita Mackowiak
3. Loren Ungar
4. Southern Arizona Fiduciary Services, LLC -
(Designated Principal Mark Rubin)
5. Sterling Case Management and Fiduciaries of Arizona, LLC
(Designated Principal Martelle Olsen)
6. Tammy Rauschenbach
7. Adelina Tanner
8. Theresa Eells

4) RENEWAL OF LICENSURE APPLICATIONS..... *Division Staff*

4-A: Review, discussion and possible action regarding the following applications for renewal of individual licensure:

1. Norman Turley
2. Patricia Hall

5) ADMINISTRATIVE ISSUES *Division Staff*

5-A: Review and discussion regarding November 2017 Arizona Attorney magazine article.

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 September 7, 2017.

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1) REVIEW AND APPROVAL OF MINUTES

1-B: Review, discussion and possible action regarding the regular session minutes of the interim meeting held on September 20, 2017.

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1) REVIEW AND APPROVAL OF MINUTES

1-C: Review, discussion and possible action regarding the executive session minutes of the interim meeting held on October 3, 2017.

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2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding complaint number 16-0006, involving licensee, Beverly Gloden.*

This complaint was initially presented to the Board on September 23, 2016, at which time the Board voted to suspend by consent agreement, the fiduciary license of Beverly Gloden (“Gloden”) pursuant to ACJA § 7-201(H)(9)(d) for act(s) of misconduct involving ACJA §§ 7-201(F)(1), (H)(6)(a), (k)(6), (7) and (8) and 7-202(F)(1), (J)(1)(a), (2) and (3)(d), (e) and (f) and A.R.S. § 13-3407(A)(5) and (B)(5), for intentionally giving a ward in her care a prescription medication that had not been medically prescribed to the ward.

On September 7, 2017, the Board voted to revoke Gloden’s license for the aforementioned violations. On September 27, 2017, the Board filed the Notice of Formal Statement of Charges in complaint number 16-0006, involving Gloden. Division records reflect Gloden was served on September 27, 2017.

No answer or request for hearing was filed by Gloden. Staff recommends that the Board find Beverly Gloden in default and enter a Final Order revoking the certification of Beverly Gloden.

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2) PENDING COMPLAINTS

2-B: Review, discussion and possible action regarding complaint number 16-0018, involving licensee, Patricia Flores.

By way of background, following litigation between Complainant, Patricia Bartholomew (“Bartholomew”) and her siblings, Warren Bartholomew, Russell Bartholomew, and Gerald Bartholomew (“Brothers”), the parties stipulated to a Settlement Agreement (“Agreement”) executed on or about January 22, 2016, and filed in Superior Court on or about February 12, 2016.

Per the terms of the Agreement, licensed fiduciary, Patricia Flores (“Flores”) was appointed Successor Trustee of the Dorothy Roberson Revocable Living Trust (“Roberson Trust”) on February 12, 2016, succeeding Bartholomew as Trustee.

Bartholomew and the Brothers are the entitled beneficiaries of the Roberson Trust, per the terms of the Agreement, which super-ceded any terms of the Roberson Trust should any conflict exist between the two documents.

On November 7, 2016, the Certification and Licensing Division (“Division”) received a written Complaint against Patricia Flores, containing the following allegations:

1. Patricia Flores did not timely administer the Roberson Trust despite the executed Settlement Agreement.
2. Patricia Flores was not truthful because she denied having knowledge of information she had been provided.
3. Patricia Flores refused to provide her fiduciary license number or the State Bar license number of her attorney when requested to do so by Complainant.

Please review the Investigation Summary and Allegation Analysis Report for full details on the facts of the investigation. As detailed in the afore-mentioned report, the Division’s investigation determined that Flores did not timely administer the Trust, evidenced by a review and analysis of the following distribution of assets:

1. Mercedes Automobile
2. San Carlos Place Property
3. Alvernon Way Property
4. U-Haul Storage and contents
5. Annual Accounting

In the above-referenced partial distribution of assets, Flores protracted the process by not acting expeditiously. The following is a brief synopsis:

1. Transferring title/ownership of the Mercedes was an easy and straightforward process. Nothing precluded Flores from transferring title/ownership to the entitled beneficiary, yet it took over five months for her to do so, from the time of Flores' appointment on February 12, 2016, to when she completed the transfer of the vehicle on or about August 3, 2016.
2. Regarding transfer of title of the real properties, San Carlos Place and Alvernon Way, Flores did not initiate contact with a title company until on or about June 14, 2016, and Flores did not get the title company the required documentation until on or about July 26, 2016. The referenced properties were transferred to the entitled beneficiaries on or about October 4, 2016.

In addition, it is questionable whether title searches were even necessary in this matter. Flores, per the terms of the Agreement, was required to transfer title of the real properties from the Roberson Trust to the entitled beneficiaries. None of the transactions involved a sale of the properties.

3. The U-Haul storage unit contained numerous pieces of artwork that were entitled to the Brothers. Flores completed this distribution of assets on or about September 27, 2017. Her primary responsibility, in addition to initially securing the keys to the storage unit from Bartholomew's attorneys and paying the monthly rental fee, was to timely surrender the keys of the storage unit to the Brothers and/or their attorneys. Flores completed an inventory of the artwork on or about May 20, 2016, and she submitted the pictures of her inventory to the Brother's legal counsel on or about August 24, 2017. Sometime afterward, the Brothers raised concerns because it appeared to them that two pieces of art were missing, based on the inventory that they had previously completed. On September 24, 2016, Flores returned to the storage unit and retook pictures of all contents thereby redoing her inventory. After doing so, it was determined that nothing was missing.
4. Regarding the annual Roberson Trust accounting, Flores was required provide, "at least annually," an accounting to the entitled beneficiaries, pursuant to Arizona Revised Statutes § 14-10813(C). Therefore, Flores was obligated to provide the accounting on or about February 12, 2017, one year after she was appointed Successor Trustee. On or about August 3, 2017, Division staff requested a copy of the Roberson Trust accounting for review. Around that time, Flores, per her attorney, indicated that she had not completed her annual accounting and she submitted the requested documentation to the Division on or about August 29, 2017.

The accounting provided by Flores covered the period from May 1, 2016, through July 31, 2017. However, Flores failed to provide accounting from February 12, 2016, when she was appointed, to April 30, 2016.

Flores told Division staff that she did not have access to the Roberson Trust assets until after May 26, 2016, and that former Trustee, Bartholomew, continued to negotiate checks on behalf of the Roberson Trust until May 26, 2016. Therefore, Flores did not timely marshal and protect the bank accounts associated with the Roberson Trust.

In summary, the afore-mentioned transactions revealed that Flores generally failed to take timely action delaying expeditious administration of the Roberson Trust.

Presently, the Roberson Trust has not been closed because Flores is still addressing the issue of trust taxes.

Recommendations:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Patricia Flores has committed the alleged act(s) of misconduct as detailed in Allegation 1 of the Investigation Summary and Allegation Analysis Report in complaint number 16-0018.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Patricia Flores has not committed the alleged act(s) of misconduct as detailed in Allegation 2 and 3 of the Investigation Summary and Allegation Analysis Report in complaint number 16-0018.

It is recommended that the Board dismiss without prejudice Allegations 2 and 3.

It is further recommended the Board enter a finding grounds for formal disciplinary action exists as to Allegation 1 pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) and (k)(7) and (8) for act(s) of misconduct involving failure to timely administer the trust as described in the Investigation Summary and Allegation Analysis Report in complaint number 16-0018.

It is further recommended the Board issue a Censure concerning Allegation 1.

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2) PENDING COMPLAINTS

2-C: Review, discussion and possible action regarding complaint numbers 17-0012, involving licensee Maureen Edwards.

On May 22, 2017, Division received a written complaint against Maureen Edwards. Complainant is one of two beneficiaries of a trust in which Edwards is the Successor Trustee and alleged Edwards is taking an inordinate amount of time to close the estate. As a result of the delays the estate was subject to an escalating tax burden and fiduciary fees which could ultimately impact the beneficiaries.

The matter was investigated and on October 18, 2017 Probable Cause Evaluator Mike Baumstark determined probable cause does not exist as to the allegation.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Maureen Edwards has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 17-0012.

It is further recommended the Board dismiss complaint number 17-0012

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3) INITIAL LICENSURE AND ELIGIBILITY

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

The following applicants have applied for initial fiduciary licensure. The applicants successfully passed the program examination and have submitted completed applications demonstrating that they meet the minimum education and experience requirements and all applicants have completed the required fiduciary professional training.

The Division recommends approval of initial fiduciary licensure for the following applicants:

1. Emily Kile
2. Anita Mackowiak
3. Loren Ungar
4. Southern Arizona Fiduciary Services, LLC -
(Designated Principal Mark Rubin)
5. Sterling Case Management and Fiduciaries of Arizona, LLC
(Designated Principal Martelle Olsen)

6. Tammy Rauschenbach applied for initial fiduciary licensure. The applicant successfully passed the fiduciary program's examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training. Ms. Rauschenbach disclosed her Arizona State Bar license was suspended for non-payment of dues for two years. Ms. Rauschenbach paid all her dues and remained current until her resignation from the State Bar. Ms. Raushenbach stated, "I was repaying student loan debt from graduate school and was not practicing nor planning to practice law." A subsequent review of Ms. Rauschenbach's Arizona State Bar License indicates her status as being resigned with no prior discipline.

Division recommends initial fiduciary licensure for Tammy Rauschenbach.

7. Adelina Tanner applied for initial fiduciary licensure. The applicant successfully passed the fiduciary program's examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training. Ms. Tanner disclosed five civil matters to which Division views as matters that would not preclude licensure.

Division recommends initial fiduciary licensure for Adelina Tanner.

8. Theresa Eells – Staff will present information at the meeting.

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4) RENEWAL OF LICENSURE APPLICATIONS

4-A: Review, discussion and possible action regarding the following applications for renewal of individual licensure:

The following individual license holder has submitted an application for renewal of licensure. The application is complete and the applicant meets the minimum eligibility requirements. It is recommended renewal of licensure be granted to the following:

1. Norman Turley

2. Patricia Hall applied for renewal of her individual fiduciary license. On May 23, 2016 Ms. Hall submitted an incomplete application to the Certification and Licensing Division. Ms. Hall failed to provide answers to multiple questions on the application including to whether she had completed the required hours of continuing education (CE) credits. Ms. Hall did initially respond to the deficient questions and stated that she did not complete the required continuing education “due to a very limited budget” and “I was preparing to retire.” Based on her responses, Division could not accurately gauge the CE deficiency for Ms. Hall and sent her a CE audit request. Division made numerous attempts requesting the CE audit. Emails requesting the information were sent by Division Staff on June 19, 2017 and July 3, 2017. Division also sent a letter by mail on August 28, 2017. Ms. Hall has failed to properly respond to any of these communication requests from Division Staff.

Pursuant to ACJA § 7-201(H)(6)(c), Division recommends the Board require Ms. Hall appear at the next Board meeting for a Board interview to address with the Board the status of her application, failures to provide information and the current status of the Apache County Public Fiduciary Office of which Ms. Hall is currently identified as the Public Fiduciary.

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5) ADMINISTRATIVE ISSUES

5-A: *Review and discussion regarding November 2017 Arizona Attorney magazine article.*

Staff will present information at the meeting.