

BOARD OF CERTIFIED REPORTERS

Meeting Agenda - Tuesday, December 13, 2016

Arizona Supreme Court - 1501 West Washington Street

Phoenix, Arizona 85007 - 1:00 P.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 ORDER *G. Allen Sonntag, Chair*

1) REVIEW AND APPROVAL OF MINUTES *G. Allen Sonntag, Chair*

1-A: *Review and approval of the regular session minutes for the meeting of October 11, 2016.*

1-B: *Review and approval of the executive session minutes for the meeting of October 11, 2016.*

2) PENDING COMPLAINTS.....*Division Staff*

2-A: *Review, discussion and possible action regarding complaint number 16-C003, involving registered court reporting firm, Litigation Services.*

2-B: *Review, discussion and possible action regarding complaint number 16-C004, involving certificate holder, Karen Dawson.*

2-C: *Update regarding the status of pending complaints.*

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

3-A: *Review, discussion and possible action regarding pending initial certification applications for the following applicants:*

1. Annie Bryan
2. Kristin DeCasas
3. Danielle C. Griffin

4) RENEWAL CERTIFICATION APPLICATIONS.....Division Staff

4-A: Review, discussion and possible action regarding pending application for renewal of certification for the following certificate holders:

1. Howard Dropkin
2. David Lee
3. Cynthia McDevitt
4. Christopher White

4-B: Review, discussion and possible action regarding the application for renewal of certification for Inactive Status for Marilou Kohut.

5) ADMINISTRATIVE ISSUES.....Division Staff

5-A: Review, discussion, and possible action regarding the establishment of the 2017 Board meeting schedule.

CALL TO THE PUBLIC G. Allen Sonntag, Chair

ADJOURNMENT G. Allen Sonntag, Chair

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1) REVIEW AND APPROVAL OF MINUTES

I-A: Review and approval of regular session minutes for the meeting of October 11, 2016.

Attached for the Board's review are the regular session minutes from the board meeting of October 11, 2016.

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1) REVIEW AND APPROVAL OF MINUTES

1-B: Review and approval of executive session minutes for the meeting of October 11, 2016.

Attached for the Board's review are the executive session minutes from the board meeting of October 11, 2016.

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2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding complaint number 16-C003, involving registered court reporting firm, Litigation Services.

Complainant was counsel for Plaintiff in a civil matter involving defendant, Liberty Mutual Insurance Company. He alleged court reporting firm, Litigation Services had a continuing contractual relationship with Liberty Mutual. No evidence of a continuing contractual relationship was provided to the Division. Complainant acknowledged that Litigation Services had a preferred vendor arrangement with Liberty Mutual which formed the basis for his allegation.

Complainant further claimed that the assigned court reporter, independently contracted by Litigation Services, failed to provide a rate sheet prior to the deposition but that she did issue a rate sheet immediately following the deposition. Complainant said because the rate sheet was provided after the deposition his client was unable to review the transcript copy rates prior to the deposition.

Complainant stated that immediately after his client's deposition, the court reporter asked Complainant to sign a disclosure statement for Litigation Services containing language, that by signing the statement, Complainant had been advised of any business relationship the reporting firm made with any other parties and that parties had been given the opportunity to review Litigation Services' the rate schedule. Complainant refused to sign the disclosure statement because he had not been advised of any relationship between entities nor was Complainant provided a rate sheet to review prior to the deposition. Complainant said that if Litigation Services had disclosed of any business relationship with Liberty Mutual, Complainant's client would have objected to using Litigation Services and the court reporter for the deposition.

The language contained in the referenced disclosure statement provided at the time of the subject deposition, read: [italics added]:

Disclosure Statement: By signing here, I am confirming that I have been advised of any business agreements the reporting firm has made with any other counsel in the case, and that I have been given an opportunity to review the rate schedule for Litigation Services – Arizona.

Complainant also accused Litigation Services of charging his client a billing rate in excess of what it charged Liberty Mutual for services rendered.

Litigation Services disputed the allegations contained in the Complaint. The reporting firm denied having any continuing contract relationship with Liberty Mutual but acknowledged that a preferred vendor status exists and that every party in the matter benefitted from those preferred

vendor rates. Litigation Services denied that it billed Complainant's client rates in excess of what it billed Liberty Mutual and said it adhered to the 60% rule set out in the Arizona Code of Judicial Administration. Litigation Services stated that all parties were charged a uniform copy rate and charged the same for ancillary items.

Litigation Services maintained that its court reporters were provided rate sheets at the time of the deposition.

The Division's investigation discovered that the assigned court reporter, despite indicating that her customary practice was to issue rate sheets prior to depositions, did not provide a rate sheet prior to the deposition in this matter, as she is required to do so pursuant to ACJA §7-206(J)(3)(b). Given the court reporter's customary practice, it must be determined what, if any, responsibility Litigation Services has for the court reporter's failure to follow that practice.

Division staff has found no evidence to support an allegation that Litigation Services' practice is other than to provide a rate sheet before the commencement of a deposition. Additionally, Division staff has found no evidence that would support an allegation that Litigation Services knew or should have known that the court reporter would deviate from her normal practice. As such, while the court reporter's failure to provide the rate sheet may be a violation of her professional responsibilities, Division staff does not believe that Litigation Services is strictly liable for that failure and instead, should be held to a known or should have known standard.

As to the issue of Litigation Services failing to provide a rate sheet disclosing the copy rate for transcripts, the Division's investigation found that Litigation Services was not in compliance with issuing a rate sheet which displayed the copy rate for transcripts.

Division staff reviewed pertinent invoices and found no evidence that Litigation Services billed Complainant's client a rate in excess of what it charged Liberty Mutual. Further, invoices showed that Litigation Services billed in accordance with the 60% rule, pursuant to ACJA § 7-206(J)(3)(e).

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Litigation Services, LLC has not committed the alleged act(s) of misconduct as detailed in Allegations 1, 2 and 3(a) of the Investigation Summary and Allegation Analysis Report in complaint number 16-C003.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Litigation Services, LLC has committed the alleged act(s) of misconduct as detailed in Allegation 3(b) of the Investigation Summary and Allegation Analysis Report in complaint number 16-C003.

It is recommended that the Board dismiss Allegations 1, 2 and 3(a).

It is further recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA § 7-206(J)(3)(b) by failing to provide both parties with a rate sheet that was current and included a description of all of the costs as further described in the Investigation Summary and Allegation Analysis Report.

It is further recommended the Board issue a Letter of Concern.

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2) PENDING COMPLAINTS

2-B: Review, discussion and possible action regarding complaint number 16-C004, involving certificate holder, Karen Dawson.

Complainant alleged court reporter, Karen Dawson willfully violated the Arizona Supreme Court's order to file 14 (fourteen) transcripts in a capital case.

Karen Dawson has not provided a written response to the complaint.

The Division's investigation determined that Karen Dawson failed to file the 14 (fourteen) transcripts in the capital case identified by the Complainant as alleged. The Division's investigation further determined the following:

- The Court of Appeals issued three (3) Civil Arrest Warrants for Karen Dawson because she failed to comply with the Court of Appeal's orders and failed to file transcripts of the proceedings in State v. Villalobos; State v. Long; State v. Buzani.
- Karen Dawson, in violation of Superior Court orders, failed to file transcripts in criminal cases and failed to appear at Order to Show Cause Hearings.
- Karen Dawson failed to provide a written response to the Complaint, within 30 days of notification of the Complaint.

As detailed in the Investigation Summary and Allegation Analysis Report, Karen Dawson had an extensive number of transcripts that she failed to timely prepare and produce in the Arizona Supreme Court capital case, not less than three (3) Court of Appeals cases, and approximately 21 (twenty-one) Superior Court cases. Karen Dawson failed to appear at the Order to Show Cause Hearings involving those cases.

The Division notes the Court of Appeals set numerous Order to Show Cause Hearings requiring Karen Dawson to attend those hearings and for Karen Dawson to file the outstanding transcripts and to surrender immediately all court reporter notes (paper-electronic), dictionary, any audio sync with name of software used, diskettes, CDs, and any other pertinent material to Lori Dennison, Court Reporting Department Administrator, Superior Court, Maricopa County.

The Court of Appeals found Karen Dawson in civil contempt and issued financial sanctions for repeatedly failing to comply with the Court of Appeal's orders, without cause; failing to file

transcripts of proceedings in the referenced cases; and failing to appear for scheduled Order to Show Cause Hearings.

On June 29, 2016, Karen Dawson was arrested, pursuant to the civil arrest warrant, previously issued by the Court of Appeals and was brought before the Court to appear at an Order to Show Cause Hearing.

After a series of Order to Show Cause Hearings scheduled in July and August, the Court of Appeals issued a final Order on August 22, 2016. The Court found Karen Dawson in civil contempt for failing to comply with the Court's Orders, without cause, to timely provide materials as Ordered; and to pay a total of \$2,400.00, with payments of no less than \$200.00 per month starting October 3, 2016 until paid in full.

Due to Karen Dawson's failure to prepare and file the transcripts for the Court of Appeals, additional court reporters were assigned by Court Reporter Administrator, Lori Dennison, in an effort to complete the outstanding transcripts, expending considerable effort, time and cost in excess of 233 labor hours and \$6,100.00 in labor costs, respectively.

Karen Dawson was terminated as an employee of the Superior Court effective May 17, 2016.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Karen Dawson has committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 16-C004.

It is recommended the Board enter a finding grounds for formal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving (i) ACJA §§ 7-206(J)(1)(a), 7-206(J)(2)(c), 7-201(E)(2)(c)(2)(b)(xii), 7-201(H)(6)(k)(2),(7),(8) and (12) and Arizona Rules of Criminal Procedure Rule 31.8(d)(3) by failing to timely file transcripts in a capital case; (ii) ACJA §§ 7-206(J)(1)(a), 7-206(J)(2)(c), 7-201(E)(2)(c)(2)(b)(xii), 7-201(H)(6)(k)(2),(7),(8) and (12) and Arizona Rules of Criminal Procedure Rule 31.8(d)(3) by failing to timely file transcripts in Court of Appeals cases; (iii) ACJA §§ 7-206(J)(1)(a), 7-206(J)(2)(c), 7-201(E)(2)(c)(2)(b)(xii), 7-201(H)(6)(k)(2),(7),(8) and (12) and Arizona Rules of Criminal Procedure Rule 31.8(d)(3) by failing to timely file transcripts in Superior Court cases and failing to appear at Orders to Show Cause Hearings; and (iv) ACJA §§ 7-201(F)(4), 7-201(H)(3)(c)(1), 7-201(H)(6)(a) and (c) for failing to provide a written response to the complaint.

It is further recommended the Board revoke Karen Dawson's certification.

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2) PENDING COMPLAINTS

2-C: Update regarding the status of pending complaints.

As of December 6, 2016, there are currently six open complaints, two of which has been presented on this agenda with a dispositive recommendations under agenda item 2-A and 2-B.

CERTIFIED REPORTER COMPLAINTS
COURTOOLS MEASURE 4
AGE OF PENDING CASELOAD
Shaded Areas Represent Cases within Time Standard of 22 Months

Age (Months)	Number Cases	Percent	Cumulative Percent
0-4	1	17%	17%
5-9	2	33%	50%
10-14	0	0%	50%
15-19	3	50%	100%
20-22			
23-35			
36-50			
Over 50			
Total	6	100%	100%

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3) INITIAL CERTIFICATION AND ELIGIBILITY

3-A: Review, discussion, and possible action regarding pending initial certification applications for the following applicants:

1. Anni Bryan has applied for certified reporter initial standard certification and meets the minimum eligibility requirements for standard certification. No information has been presented during the background review which is contrary to standard certification being granted.

Staff recommends approval of certified reporter initial standard certification to Anni Bryan.

2. Kristin DeCasas applied for certified reporter initial standard certification. Ms. DeCasas has passed the exam, and met the minimum requirements under code as well as supplied a certified NCRA record. Ms. DeCasas was a court reporter in Michigan and California prior to applying with Arizona.

Ms. DeCasas disclosed the following:

- a 1986 altercation when she was a minor which ended up in a civil suit that was settled;
- a 1994 termination of employment;
- a 1995 DUI;
- a 2002 divorce; and
- a 2012 property foreclosure.

Staff recommends approval of certified reporter initial standard certification to Kristin DeCasas.

3. Danielle C. Griffin applied for certified reporter initial standard certification. Ms. Griffin has passed the exam and met the minimum requirements under code as well as supplied her certified NCRA record. Ms. Griffin disclosed a Petition for Injunction Against Harassment case where she was the plaintiff, a second protective order in which she is named as the protected person and a divorce.

Staff recommends approval of certified reporter initial standard certification to Danielle C. Griffin.

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4) RENEWAL CERTIFICATION APPLICATIONS

4-A: Review, discussion, and possible action regarding pending applications for renewal of certification:

The following certificate holders have submitted applications for renewal of certification. The applications are complete, no information has been presented during the background review which is contrary to certification being granted and the certificate holders have demonstrated they meet the minimum eligibility requirement for renewal. Therefore, it is recommended to grant renewal of certified reporter certification to the following:

1. Howard Dropkin
2. David Lee
3. Cynthia McDevitt
4. Christopher White

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4) RENEWAL CERTIFICATION APPLICATIONS

4-B: Review, discussion and possible action regarding the application for renewal of certification for Inactive Status for Marilou Kohut.

Marilou Kohut applied for renewal of her certified reporter individual inactive status certification. Ms. Kohut has met the minimum standards for renewal of her certification. Ms. Kohut did not disclose that she received a speeding ticket conviction. Ms. Kohut said she didn't disclose the conviction because,

“First off, it slipped my mind that I had even had a speeding ticket. Secondly, I was unaware that a speeding ticket was considered a criminal offense. For that, I apologize.”

Staff recommends approval of Marilou Kohut's certified reporter inactive status certification with non-disclosure language.

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5) **ADMINISTRATIVE ISSUES**

5-A: Review, discussion, and possible action regarding the establishment of the 2017 Board meeting schedule.

This agenda item was deferred from the October 11, 2016 meeting so that staff could provide the Board with alternative dates.

After evaluating alternate dates against Board member availability, staff determined that the dates presented at the October 11, 2016 meeting afford the best availability. Therefore, the Board is asked to consider and approve the 2017 meeting calendar as follows:

February 7, 2017
April 11, 2017
June 6, 2017
August 8, 2017
October 10, 2017
December 5, 2017