

BOARD OF CERTIFIED REPORTERS

Meeting Agenda – Thursday, December 6, 2018

Arizona Supreme Court - 1501 West Washington Street

Phoenix, Arizona 85007 - 10:00 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 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, 2018.

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

2-A Review, discussion and possible action regarding complaint number 17-C001, involving certified court reporter, Kimberly Bata.

2-B Review, discussion and possible action regarding complaint numbers 18-C001 and 18-C002, involving registered reporting firm, Verbatim Professional Reporting and certified court reporter, Patricia Gerson.

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. Penny Segundo-Grammer*
- 2. Sheila Fish*
- 3. Amy Richardson*

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

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

1. Anderson, Lisa
2. Gauthier, Kimberly
3. Manning, Mary
4. Monarrez, Lilia
5. Dzwonkoski, Diane
6. Edwards, Clark

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

1. Braley, Kathleen
2. Johnston, Kathleen
3. Pessagno, Diane
4. Sesta Nicole
5. Chari, Bernadette

5) ADMINISTRATIVE ISSUES..... Division Staff

5-A: Review, discussion and possible action regarding recommendation for code change regarding certification requirements

5-B: Discussion regarding update of Arizona program exam

CALL TO THE PUBLIC G. Allen Sonntag, Chair

ADJOURNMENT G. Allen Sonntag, Chair

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1) REVIEW AND APPROVAL OF MINUTES

1-A: Review and approval of the regular session minutes for the meeting of October 11, 2018

Attached for the Board's review are the regular session minutes from the Board meeting of October 11, 2018.

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2) PENDING COMPLAINTS

2-A *Review, discussion and possible action regarding complaint number 17-C001, involving certified court reporter, Kimberly Bata.*

On May 31, 2017, the Division received a complaint against certificate holder Kimberly Bata alleging inappropriate and unprofessional conduct while transcribing a deposition. The complainant alleged he overheard Bata, during a break in the proceedings, says to opposing council that she wanted to catch him in a “lie today.” The comment was not only corroborated by the videographer in attendance, but also expanded upon by him.

The videographer added that in his opinion Bata made numerous unprofessional snide remarks implying untruthfulness about the witness throughout the deposition. Further credence of the allegation was not only Bata’s sarcastic reference to the complainant’s use of “Spanglish,” but also her accusations of his untruthfulness both in her written response and interview. The case was investigated and on January 22, 2018, Probable Cause Evaluator, Mike Baumstark determined that probable cause does exist for the allegation.

On April 12, 2018, the matter was presented to the Board. At that time, the Board directed staff to obtain formal transcription of audio recordings presented at the meeting. The Board also requested legal advice concerning Board’s role in the disciplinary review process. Counsel for the Board appeared at the June 7, 2018 meeting and provided that advice in executive session.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Kim Bata has committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 17-C001.

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 violation of ACJA § 7-206(J)(1)(a) as described in the Investigation Summary and Allegation Analysis Report.

It is further recommended the Board issue a censure to Kim Bata.

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2) PENDING COMPLAINTS

2-B Review, discussion and possible action regarding complaint numbers 18-C001 and 18-C002, involving registered reporting firm, Verbatim Professional Reporting and certified court reporter, Patricia Gerson.

On August 31, 2018, the Division received a complaint against registered reporting firm Verbatim Professional Reporting and certificate holder Patricia Gerson in which complainant alleged that Gerson omitted a question related to medical records from a transcript. Complainant further alleged that Verbatim Professional Recording refused consider his request to re-examine his testimony. Complainant has no evidence to substantiate his claims other than his memory of what he insists transpired.

According to Verbatim Professional Recording, it contacted Ms. Gerson the actual reporter, to investigate. Verbatim Professional Recording, said the transcript and audio were checked and no discrepancies were found.

Division spoke with Ms. Gerson who admitted taking the deposition and remembered double checking her records at the request of Verbatim Professional Recording. Ms. Gerson vaguely remembered the deposition but could not remember specific details. Ms. Gerson stands by her work and said there is no reason for her to omit anything and speculated the comments in question may have been made “off the record.”

Division examined both the transcript and audio submitted by Verbatim Professional Recording. Division noted no discrepancies.

Recommendation:

Staff recommends that the Board adopt the determination of the Probable Cause Evaluator and dismiss complaints numbered 18-C001 and 18-C002.

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2) PENDING COMPLAINTS

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

As of December 3, 2018, there are currently three open complaints, all of which have been presented on this agenda with dispositive recommendations under agenda items 2A and 2B.

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	2	67%	67%
5-9	0	0%	67%
10-14	0	0%	67%
15-19	1	33%	100%
20-22	0		
23-35			
36-50			
Over 50			
Total	3	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:

The following applicants have applied for initial certified reporter certification. The applicants successfully passed the program examination and have submitted completed applications demonstrating that they meet the minimum education requirements and have provided proof of passing the RPR or the CVR.

The Division recommends approval of initial certified reporter certification for the following applicants:

1. Penny Segundo-Grammer
2. Sheila Fish

3. Amy Richardson submitted an application for certified reporter certification which was presented to the Board at the October meeting. Certification was granted effective upon receipt of fingerprint results and contingent upon those results revealing no issues. On October 16, 2018, the results were returned as rejected for print quality. A second set of prints was obtained and forwarded for processing on November 8, 2018. In the event the second set is returned as rejected for print quality, the applicant would be required to complete and return a signed and notarized Affidavit in Lieu of Fingerprints.

If an Affidavit is required, the Division recommends approval of initial certified reporter certification for Amy Richardson effective upon receipt of a completed, signed and notarized Affidavit in Lieu of Fingerprints from Ms. Richardson.

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4) RENEWAL CERTIFICATION APPLICATIONS

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

The following individual certificate holders have submitted applications for renewal of standard certification. The applications are complete, no information has been presented during a background review which is contrary to renewal of standard certification being granted and the certificate holders have demonstrated they meet the minimum eligibility requirements for renewal of standard certification. It is recommended renewal of standard certification be granted to the following individuals:

1. Anderson, Lisa
2. Gauthier, Kimberly
3. Manning, Mary
4. Monarrez, Lilia

6. Diane Dzwonkoski submitted her renewal application for the last two renewal periods. Her 2016-2018 application was not acted upon because of a software malfunction in the submission process. Ms. Dzwonkoski notified staff of the malfunction and staff obtained her 2016-2018 application. Staff did not bring the 2016-2018 application to the Board prior to the December 2018 Board meeting. Ms. Dzwonkoski having timely filed her 2016-2018 application was certified during the 2016-2018 period.

Ms. Dzwonkoski timely filed her 2018-2020 renewal application. Staff completed its investigation for the 2016-2018 and 2018-2020 reporting periods.

Division recommends renewal of standard certification be granted to Diane Dzwonkoski.

7. Clark Edwards applied for renewal of standard certification and meets the minimum eligibility requirements for renewal as a certified reporter. Mr. Edwards failed to disclose a 2016 Class C Misdemeanor conviction that occurred in Salt Lake City, Utah. Mr. Edwards was initially charged for “failure to register or expired vehicle registration infraction.” During the proceedings on two occasions Mr. Clark failed to appear and the charge of “Willfully Failing to Appear” was entered of which he was found guilty and sentenced to a fine of \$300.00. Mr. Edwards stated that he had paid the fine in its entirety. Mr. Edwards further stated, “It was wrong for me not to appear and provide evidence that the car had now been registered and pay the fines resulting from the citation.” I allowed fears of having to pay the fine and other feelings to prevent me from taking care of the matter timely.”

During a subsequent review of Mr. Edwards’ application, it was further discovered that he had been charged with a traffic infraction/misdemeanor on December 24, 2015. A plea of no contest

was entered by Mr. Edwards and it was dismissed with prejudice in December 8, 2016. What Division finds troubling and of concern is that, in this specific case, Mr. Edwards also failed to appear. Mr. Edwards was not formally charged for failing to appear in this case but is demonstrating a pattern of not complying with court orders.

Clark Edwards 2016-2018 renewal application was presented to the Board on October 12, 2017, with Staff's recommendation to grant renewal of the certificate with the standard non-disclosure language and additional cautionary language that emphasizes the importance of complying with court orders. The Board considered but did not accept Staff's recommendation and directed Staff to consider another appropriate sanction.

Mr. Edwards has since submitted his 2018-2020 application for renewal with no noted issues. Mr. Edwards has acknowledged his wrongful behavior regarding his 2016-2018 renewal application and has expressed remorse for those occurrences reiterating that they will not occur again and that he will not let his emotions get the best of him. Furthermore, Division staff believes Mr. Edwards has agreed to enter into a Consent Agreement, the terms of which are that he accept a letter of concern from the Board regarding Mr. Edwards' failures to comply with court orders and failures to disclose information in applications for certification.

Pursuant to ACJA § 7-201(H)(24)(b)(2), A letter of concern is a written informal discipline sanction.

Division recommends renewal of standard certification be granted to Clark Edwards for his 2016-2018 and 2018-2020 applications with the stipulation that Mr. Edwards enter into the proposed Consent Agreement, resulting in a letter of concern.

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4) RENEWAL CERTIFICATION APPLICATIONS

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

The following individual certificate holders have submitted applications for renewal of inactive status certification. The applications are complete, no information has been presented during a background review which is contrary to renewal of inactive status certification being granted and the certificate holders have demonstrated they meet the minimum eligibility requirements. It is recommended renewal of inactive status certification be granted to the following individuals:

1. Braley, Kathleen
2. Johnston, Kathleen
3. Pessagno, Diane
4. Sesta Nicole

5. Bernadette Chari submitted an application for renewal of inactive status certification. The application is complete. The applicant answered “Yes” to the last question in the background history and supplied an affidavit.

Ms. Chari disclosed a number of civil lawsuits related to her husband’s dental practice and an automobile accident.

Division recommends renewal of inactive status certification be granted to Bernadette Chari.

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5) ADMINISTRATIVE ISSUES

5-A: Review, discussion and possible action regarding Recommendation for code change regarding certification requirements.

Staff will present information at the meeting.

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5) ADMINISTRATIVE ISSUES

5-B: Discussion regarding update of Arizona program exam.

Staff will present information at the meeting.