



BOARD OF CERTIFIED REPORTERS

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

October 7, 2013
1:00 P.M.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

G. Allen Sonntag, Chair
Hon. Peter Swann
J. Tyrrell Taber
Melissa Gonsalves

Telephonically Present:

Patricia Sequin
Terri Faust, Vice Chair
Cheryl Cummings
Kathleen Montalvo

Absent:

Hon. Edward Bassett

OTHER ATTENDEES:

AOC Staff:

Mark Wilson
Michelle Martinez
Linda Grau
Debbie MacDougall
Anne Hunter
Pasquale Fontana
Arnita Oliver

Guests:

CALL TO ORDER

Called to Order By: **G. Allen Sonntag, Chair**

Time: 1:03 P.M.

1) REVIEW AND APPROVAL OF MINUTES:

1-A: *Review and approval of regular session minutes for the meeting of August 12, 2013.*

Individual Addressing the Board: G. Allen Sonntag

Discussion: None

Motion: Move to approve the regular session minutes for the meeting of August 12, 2013.

Motion Proposals: First J. Tyrrell Taber
Second Patricia Seguin

Motion Results: Pass

2) PENDING COMPLAINTS:

2-A: *Review, discussion and possible action regarding the following certificate holder complaints:*

- Complaint Number 13-C005 – Kimberly McAndrews
- Complaint Number 13-C001 – Olivia Armenta

Individual Addressing the Board: Linda Grau

Discussion: **Complaint Number 13-C005** – Kimberly McAndrews: - The Division received this complaint from the Honorable Diane Johnsen, Court of Appeals on April 23, 2013. The complainant alleged that:

- Ms. McAndrews filed incomplete transcripts with false certifications of completeness in (4) Court of Appeals cases: CA-CR 120456, CA-CR 11-0750, CA-CR 12-0528, and CA-CR 12-0298.

The matter was investigated and submitted for probable cause determination.

Ms. McAndrews acknowledged to the Court of Appeals and the Division that she certified and filed transcripts as “full, true and accurate” records of court proceedings knowing they were not.

On July 29, 2013, Probable Cause Evaluator Mike Baumstark entered a finding probable cause *does exist* in complaint number 13-C005.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(k)(2), (H)(6)(k)(6), (H)(6)(k)(7), (H)(6)(k)(11) and (H)(6)(k)(12) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-206(F)(1), (J)(1)(a), (J)(1)(f), (J)(2)(b), (J)(2)(c), (J)(4)(b), (J)(5)(f) and (J)(6)(a).

In considering that formal disciplinary action exists, it is recommended the Board recognizes:

Mitigating Factors:

- Absence of prior discipline.
- Personal or emotional problems.

Aggravating Factors:

- Multiple offenses-Ms. McAndrews acknowledges she knowingly falsely certified transcripts filed with the Court of Appeals as being accurate and complete.
- Substantial experience in the profession. Ms. McAndrews has held active certification since 2002.

Proportionality Analysis: (in part)

- The certification of a transcript as true, accurate and complete is a fundamental responsibility of each certified reporter. Falsely certifying a transcript undermines the judicial process and poses a risk to “property, freedom and life.”

Should the Board ultimately enter a finding these violations have occurred, it is recommended the Board impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6):

- a) Revoke McAndrews' reporter certification, pursuant to ACJA § 7-201(H)(24)(a)(6)(i) and Arizona Revised Statutes ("ARS") § 32-4041(A)(4);
- b) Issue a cease and desist order enjoining McAndrews from providing any and all reporting services that require active Arizona Supreme Court certification pursuant to ARS and/or AJCA and may not produce transcripts except for those proceedings that took place while McAndrews' certificate was valid and active;
- c) Assess costs associated with the investigation and related disciplinary proceedings, as a disciplinary sanction and a condition of reinstatement, to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j); and,
- d) Impose civil penalties, as a disciplinary sanction, in the amount of \$250.00 per found violation to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(k).

Motion: Move to accept staff's recommendation.

Motion Proposals: First Hon. Peter Swann
Second Patricia Seguin

Motion Results: Pass

Individual Addressing the Board: Linda Grau

Motion: The Board is asked to consider a motion authorizing the chair to sign a notice of formal charges on behalf of the Board.

Motion Proposals: First J. Tyrrell Taber
Second Hon. Peter Swann

Motion Results: Pass

Discussion: **Complaint Number 13-C001 – Olivia Armenta:**

The Division received this complaint on January 2, 2013. The complainant submitted four (4) allegations:

1. Ms. Armenta refused to give the complainant the audio tape and electronic file of the examination under oath.
2. Ms. Armenta altered, deleted, and modified the transcript of the examination under oath from the original.

3. The exhibits he received, two years later, were also altered, deleted and modified.
4. Ms. Armenta allowed another individual to engage in the unauthorized practice of law.

The matter was investigated and submitted for probable cause determination.

On August 15, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause *does not exist* as to this complaint.

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 13-C001.

Motion: Move to accept staff's recommendation.

Motion Proposals: First J. Tyrrell Taber
Second Kathleen Montalvo

Motion Results: Pass

2-B: Review, discussion and possible action regarding the Division Director dismissal recommendation in complaint number 13-C006.

Individual Addressing the Board: Linda Grau

Discussion: Pursuant to ACJA § 7-201(H)(1)(g)(3), complaints recommended for dismissal by the Division Director are CONFIDENTIAL and not a matter of public record. If the Board wishes to address specific details regarding this matter, it is recommended the Board enter Executive Session to discuss matters confidential.

Complaint Number 13-C006:

On August 16, 2013, Division Director Mark Wilson recommended the Board dismiss complaint number 13-C006 without prejudice. Notice of the dismissal recommendation was forwarded to the complainant on August 19, 2013, along with notice of the complainant's right to request Board review. To date, no request for review has been received from the complainant. It is recommended the Board dismiss complaint number 13-C006.

Motion: Move to accept staff's recommendation and dismiss complaint number 12-C006.

Motion Proposals: First J. Tyrrell Taber
Second Hon. Peter Swann

Motion Results: Pass

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

Individual Addressing the Board: Linda Grau

Discussion: As of September 26, 2013, there were 12 open complaints; based on the Board's actions, there are now a total of ten (10) open complaints. Four (4) are 5-to-9 months old and the remaining are in the 10-to-14 month time frame.

3) ADMINISTRATIVE ISSUES:

3-A: Review, discussion, and possible action regarding the establishment of the 2014 Board meeting schedule

Individual Addressing the Board: Debbie MacDougall

Discussion: The Board of Certified Reporters is asked to consider and approve a 2014 meeting calendar. It is recommended the Board meet on the second Monday of the applicable month at 1:00 P.M. as follows:

- February 10, 2014
- April 14, 2014
- June 9, 2014
- August 11, 2014
- October 20, 2014
- December 8, 2014

The Board of Certified Reporters decided to proposed new dates that would be applicable to all the members and present those dates at the next meeting.

3-B: Review, discussion and possible action regarding the certification renewal application deadline pursuant to Arizona Code of Judicial Administration § 7-201(G)(2).

Individual Addressing the Board: Linda Grau

Discussion: Staff recommends the Board establish the 2014-2016 renewal application deadline as February 2, 2014.

Motion: Move to accept staff's recommendation.

Motion Proposals: First J. Tyrrell Taber
Second Terri Faust
Motion Results: Pass

3-C: *Discussion and possible action concerning random audits of continuing education compliance for renewal.*

Individual Addressing the Board: Linda Grau

Discussion: It is recommended the Board request staff to sample audit 20% of the certified reporter pool for continuing education compliance. (Please Note: There are 458 certified reporters at this time, 20% would be 92.)

Motion: Motion to request staff to sample audit 10% of the certified reporter pool for continuing education compliance.

Motion Proposals: First Hon. Peter Swann
Second J. Tyrrell Taber
Motion Results: Pass

4) INITIAL CERTIFICATION AND ELIGIBILITY

4-A: *No applications to be considered by the Board at this meeting.*

Individual Addressing the Board: Linda Grau

5) OTHER BUSINESS:

5-A: *Review, discussion, and possible action regarding proposed revisions to Arizona Code of Judicial Administration § 7-206.*

Individual Addressing the Board: Mark Wilson

Discussion: Discussion is held among the Board members regarding the proposed revisions of ACJA § 7-206. The Board requested that an additional meeting be scheduled within the week so that further discussion can be held regarding this issue.

CALL TO THE PUBLIC

G. Allen Sonntag, Chair

Individuals Addressing the Board: Scott Rhodes
Doreen Sutton
Marty Herder
Pam Griffin
Haley Westra
John MacDonald
Kathy Fink
Mary Meyer
Julie Ottmar
Donna DeLavina

[NOTE: During call to the public, a recess was taken at 2:40 P.M. and the meeting reconvened at 2:58 P.M.]

ADJOURNMENT

G. Allen Sonntag, Chair

Motion: Move to adjourn.

Motion Proposals: First J. Tyrrell Taber
Second

Motion Results: Pass

Time: 3:20 P.M.

Initials: AO