

# BOARD OF LEGAL DOCUMENT PREPARERS

## Meeting Agenda – Monday, November 20, 2017

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

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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).

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**CALL TO ORDER.....Mary Carlton, Chair**

**1) REVIEW AND APPROVAL OF MEETING MINUTES.....Mary Carlton, Chair**

*1-A: Review, discussion, and possible action regarding approval of the regular session minutes of the meeting of September 25, 2017.*

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

*2-A: Review, discussion and possible action regarding complaint number 17-L007 involving certificate holder Cherie Koch.*

*2-B: Review, discussion and possible action regarding complaint number 16-L033 involving certificate holder Carlos Galindo.*

*2-C: Review, discussion and possible action regarding complaint number 17-L014 involving certificate holder Carlos Galindo.*

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

*3-A: Review, discussion and possible action regarding the following applications for initial individual and business entity legal document preparer certification and business entity exemption requests:*

1. Robert Lindinger
2. Susan Simmons
3. Shauna Farago
4. Michelle Pachter
5. Accusearch, Inc. (Designated Principal Michelle Pachter)
6. Mohave Outpost, Inc. (Designated Principal Debra Adams)

- 7. James Kellersman
- 8. Angela Arellano
- 9. DiAnne Nivin
- 10. Steven Wyner

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

*4-A: Review, discussion and possible action regarding the application for renewal of individual legal document preparer certification for Alan Ariav.*

**5) CERTIFICATION AND ELIGIBILITY .....Division Staff**

*5-A: Review, discussion and possible action regarding request for Inactive Status from Cheri Smith.*

**6) ADMINISTRATIVE ISSUES.....Division Staff**

*6-A: Review, discussion and possible action regarding proposed revisions to ACJA § 7-208.*

**CALL TO THE PUBLIC.....Mary Carlton, Chair**

**ADJOURN.....Mary Carlton, Chair**

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**1) REVIEW AND APPROVAL OF MEETING MINUTES**

*1-A: Review, discussion, and possible action regarding approval of the regular session minutes of the meeting of September 25, 2017.*

A draft of the regular session minutes for the meeting of September 25, 2017, is attached for the Board's review and consideration.

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### 2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding complaint number 17-L007 involving certificate holder Cherie Koch.*

On April 27, 2017, Division received a written complaint against Cherie Koch. Complainant contracted and communicated with Ms. Koch via email and telephone for divorce document preparation around the end of March 2017. After several email exchanges Complainant understood the documents would be completed by the first week of April and, when that deadline passed, he inquired to Ms. Koch about the status. Complainant claims he phoned and emailed Ms. Koch throughout April and, when the documents still were not completed by mid-April, demanded a refund. Ms. Koch admits the delays and says they were due to a family emergency coinciding with Complainant's document preparation. Ms. Koch did not provide an explanation as to why the Complainant was not updated as to the delay and status of his documents. Ms. Koch refunded the money paid by Complainant.

#### **Recommendation:**

It is recommended that the Board accept the findings of the Probable Cause Evaluator and enter a finding that Ms. Koch violated ACJA §7-208(J)(4)(a) by failing to complete the documents within the timeframe agreed to and by failing to timely communicate with the Complainant concerning the delay.

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-L033 involving certificate holder Carlos Galindo.*

On December 2, 2016, Division received a written complaint against Carlos Galindo. Complainant requested Mr. Galindo assist in preparing a guardianship petition for her soon to be adult son. The petition Mr. Galindo prepared did not include physician information or identify Complainant's husband as a co-guardian. Mr. Galindo stated that he met with Complainant in his office and went over a questionnaire which mirrors the guardianship petition. Galindo insists he asked all the pertinent information which he ultimately placed on all the court forms. Galindo stated Complainant never mentioned her husband as a co-guardian nor did she include any reference to any physician's information. All of the documents submitted/prepared by Galindo appear to be properly prepared with the exception of the missing physician information.

#### **Recommendation:**

It is recommended that the Board accept the findings of the Probable Cause Evaluator and enter a finding that Mr. Galindo has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 16-L033.

It is further recommended the Board dismiss complaint number 16-L033.

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### 2) PENDING COMPLAINTS

*2-C: Review, discussion and possible action regarding complaint number 17-L014 involving certificate holder Carlos Galindo.*

On June 23, 2017, Division received a written complaint against Carlos Galindo. In early March 2017, Complainant met with Mr. Galindo to prepare a guardianship petition for two of their grandchildren. Complainant alleged that Mr. Galindo prepared the wrong documentation resulting in the guardianship request being dismissed. In his written response and subsequent interview, Galindo denied the allegation and pointed out the petition was not denied for failure to file an appropriate petition form and, in fact, the Complainant was assigned a court hearing date. The Division's investigation supported Mr. Galindo's representation as to the facts.

#### **Recommendation:**

It is recommended that the Board accept the findings of the Probable Cause Evaluator and enter a finding that Mr. Galindo has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 17-L014.

It is further recommended the Board dismiss complaint number 17-L014.

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### 3) INITIAL CERTIFICATION AND ELIGIBILITY

*3-A: Review, discussion and possible action regarding the following applications for initial individual and business entity legal document preparer certification and business entity exemption requests:*

The following applicants have applied for initial individual legal document preparer certification. The applicants have successfully passed the program examination and have submitted complete applications demonstrating that they meet the minimum education and experience requirements.

The Division recommends approval of initial legal document preparer certification for the following applicants:

1. Robert Lindinger
2. Susan Simmons

3. Shauna Farago applied for initial legal document preparer (LDP) certification. The applicant successfully passed the LDP program's examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. Ms. Farago disclosed two civil matters and a 2012 bankruptcy that contained no adversarial proceedings.

Division recommends that initial LDP certification be granted to Shauna Farago.

4. Michelle Patcher has applied for both initial individual and business certifications. Ms. Patcher has submitted a complete application and demonstrated she meets the minimum education and experience requirements. Ms. Patcher disclosed two misdemeanors involving a 1996 Possession of Marijuana and 2007 D.U.I. Ms. Patcher also disclosed a 2004 dissolution of marriage.

Division recommends that initial LDP certification be granted to Michelle Patcher.

5. Accusearch, Inc. applied for initial business legal document preparer certification. Michelle Patcher is listed as the company's designated principal. The company is in good standing with the Arizona Corporate Commission.

Division recommends granting certification for Accusearch, Inc..

6. Mohave Outpost, Inc. applied for business legal document preparer certification. Debra Adams is listed as the designated principal. Mohave Outpost, LLC has also applied for a business entity exemption. The company is in good standing with the Arizona Corporation Commission and has no other legal document preparers or trainees listed on the application.

Division recommends granting certification for Mohave Outpost, LLC and recommends approval of a Business Entity Exemption.

7. James Kellersman applied for initial individual legal document preparer certification. The applicant has successfully passed the program examination and submitted a complete application demonstrating that he meets the minimum education and experience requirements.

Mr. Kellersman provided an affidavit, which is included in the Board materials, disclosing a 2017 EEOC suit and two 2014 Injunction Against Harassment civil matters, where applicant was the Plaintiff. Applicant also disclosed that in 2010 Mr. Kellersman received a misdemeanor citation for being “Under Possession of Marijuana” which was dismissed.

Division recommends approval of initial legal document preparer certification for James L. Kellersman.

8. Angela Arellano applied for initial legal document preparer (LDP) certification. The applicant successfully passed the LDP program’s examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. Ms. Arellano disclosed a 2016 work termination due to conflicting work schedule and asserted that it was not related to her work performance. Ms. Arellano failed to disclose a 2006 dissolution of marriage and a 2011 tort motor vehicle case in which Ms. Arellano was listed as the defendant. Ms. Arellano stated that she did not disclose the dissolution of marriage because she thought the question pertained to criminal matters and as for the tort case, she was unaware that the case existed since it was being handled by her insurance company. Ms. Arellano also failed to put her former legal last name on the application. Ms. Arellano stated, “I do recall the application asking for any alias, but honestly I did not remember that I had used Garcia in the past.”

Division recommends that initial LDP certification be granted to Angela Arellano with standard non-disclosure language.

9. DiAnne Nivin applied for initial legal document preparer (LDP) certification. The applicant successfully passed the LDP program’s examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. Ms. Nivin disclosed a 2006 dissolution of marriage and a 2008 bankruptcy that contained no adversarial proceedings. Ms. Nivin also disclosed a recent termination in which she was working as a medical manager for three weeks and stated she was terminated because “I did not appear to like my job because I was not smiling.” She further stated, “it was the worst 3 weeks of my life so it was ok.”

The applicant failed to disclose five civil matters as well as a disciplinary matter that was a result of her being previously certified as an LDP and resulted in a Letter of Concern being issued. The five civil matters that were not disclosed included a 1998 and a 2003 bankruptcy that contained no adversarial proceedings. When questioned by Division Staff on why the bankruptcies were not disclosed, Ms. Nivin stated, “the reason she did not disclose the debt because she didn’t

consider the bankruptcies to be hers and more related to her ex-husbands. She stated, "it was his debt my name is only on them because of marriage." Ms. Nivin also failed to disclose a 2010 dissolution of marriage and stated, "I thought you were looking to see if I was divorced" and "I didn't realize you needed to know why I married him twice." Ms. Nivin also failed to disclose a 2011 Apache County Superior Court case in which she was listed as a defendant. Ms. Nivin stated the case was in reference to a property foreclosure and it was dismissed and did not get disclosed on her application due to its dismissal and for her not remembering it. The fifth civil matter Ms. Nivin did not disclose on her application was a 2007 Maricopa County Superior Court case in which Ms. Nivin was listed as a defendant and had a judgment of \$31,465.29 entered against her for breaching a contract. Ms. Nivin stated that the case was related to her ex-husband hand ran up a huge bill and they went after her. Ms. Nivin stated that she was served in the case but appeared in the federal court to file her bankruptcy and did not have any wages garnished. Ms. Nivin stated the case was already disclosed as part of disclosing her 2008 bankruptcy that had included the matter.

On her application Ms. Nivin checked "No" on if she had ever had a profession or occupation license denied, revoked, suspended or any disciplinary action taken. During the background investigation, it was revealed that Ms. Nivin was involved in a 2006 Complaint with Division regarding her practice as a certified LDP. Ms. Nivin stated that did not remember ever being involved in a complaint or even submitting a 2 ½ page signed response to Division.

Division has serious concerns on Ms. Nivin's material omissions. Ms. Nivin had the responsibility and duty to report nine disclosures in her application to the Board and Division and only disclosed three. During the scope of the investigation, Ms. Nivin repeatedly questioned Division Staff on why these matters had to be disclosed and stated, "I was not clear what you were digging for" and "I didn't disclose things because I figured you needed to know that yes, I filed for bankruptcy and yes, I had been divorced I am not sure what you were looking for." It is also further concerning to Division that Ms. Nivin is unable to recall a disciplinary matter involving the same certification to which she is reapplying for.

Based on the foregoing, Division recommends denial of legal document preparer certification for applicant, DiAnne Nivin, pursuant to ACJA § 7-201 (E)(2)(c)(2)(b)(xv), for her failure to disclose information on the certification application subsequently revealed through the background check.

10. Steven Wyner has applied for initial legal document preparer (LDP) certification. The applicant successfully passed the program examination and has submitted a complete application demonstrating that he meets the minimum education and experience requirements. Mr. Wyner was previously revoked by the LDP Board on September 1, 2007, in reference to several complaints that were compounded and that had multiple substantiated allegations of unauthorized practice of law and multiple ACJA violations. Mr. Wyner disclosed several cases since his revocation including a 2008 dissolution of marriage, 2012 D.U.I and a 2010 case in which the Board of Legal Document Preparers filed a complaint in the Maricopa County Superior Court for a Verified Petition for Cease and Desist Order stemming from a written complaint in which Mr. Wyner, after revocation, was operating a legal document preparer business called Family Metro which was also not certified. Mr. Wyner had prepared a child

support modification and the complainant alleged that Mr. Wyner did not answer her communications for two months and did not receive a refund and forwarded the matter to the State Bar of Arizona. It was further noted that Mr. Wyner engaged in the unauthorized practice of law for having prepared documents under a revoked individual certification and an uncertified business and was issued a cease and desist from providing legal document preparation services and pay his former customer \$782.00. The satisfaction of judgement was recently paid on September 15, 2017.

Mr. Wyner has been involved in 16 complaints with the Legal Document Preparer Program of which, nine were substantiated. Fifteen of the complaints fell in between the years of 2004 and 2006, with only one being filed after his revocation. Out of the nine complaints that were substantiated, three complaints were substantiated based on the sole fact that Mr. Wyner did not respond to Division Staff within 10 days of being noticed for the complaints. There were three instances in which Mr. Wyner was found to have committed unauthorized practice of law including two substantiated complaints; Complaint 05-L055 and Complaint 05-L071 which led to his revocation and the Superior Court case mentioned above regarding his continued practice of preparing legal documents after being revoked. When Mr. Wyner was revoked he was also imposed a fine of \$2,634.31 that had to be paid by September 1, 2007. As of this date, Mr. Wyner has not paid that fine.

Mr. Wyner has stated that many past extenuating circumstances were the main reasons for the multiple complaints. Mr. Wyner stated that the lack of money, taking on cases he should not have (due to his personal financial status), taking care of his elderly mother, being in a toxic personal relationship and acquiring a failing legal document preparer business were the main attributing factors that led to many complaints being filed. He has since changed his lifestyle and business practices. Mr. Wyner also stated that, since his revocation, he has stayed in the legal field working as a contracted paralegal for two attorneys and, should he regain certification, he would model his LDP practice in such a way that he would not get behind in work and not have to undertake unauthorized work.

With the exception of two complaints, Mr. Wyner's complaints occurred over 10 years ago and he has expressed remorse from his past behavior and actions. Mr. Wyner has stated that while working under the supervision of several attorneys, he has gained legal experience and practice methods that should preclude past issues from reoccurring.

Division recommends that Mr. Wyner be reinstated and be granted initial individual legal document preparer certification.

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### 4) RENEWAL CERTIFICATION APPLICATIONS

4-A: *Review, discussion and possible action regarding the application for renewal of individual legal document preparer certification for Alan Ariav.*

Alan Ariav was initially certified on June 27, 2011 and has remained certified since that time. Mr. Ariav filed a timely renewal application for the 2015 through 2017 certification period and the 2017 through 2019 certification period. Staff recommends denial of Mr. Ariav's applications for renewal of certification for violations of the following ACJA provisions:

- ACJA § 7-201(E)(2)(c)(2)(b) The applicant or an officer, director, partner, member, trustee, or manager of the applicant:
  - . . . .
  - (iii) Has conduct showing the applicant or an officer, director, partner, member, trustee, or manager of the applicant is incompetent or a source of injury and loss to the public;
    - . . . .
  - (ix) Has been found civilly liable in an action involving misrepresentation, material omission, fraud, misrepresentation, theft or conversion;
    - . . . .
  - (xii) Has violated any order of a court judicial officer, administrative tribunal or the board
  - (xv) Failed to disclose information on the certification application subsequently revealed through the background check
- ACJA § 7-201(F) Candor
  - a. A certificate holder shall not knowingly:
    - (1) Make a false statement of material fact or law to a tribunal; or
    - (2) Fail to disclose a material fact to a tribunal, except as required by applicable law.
- ACJA § 7-208(J)(1)(a)

A legal document preparer shall avoid impropriety and the appearance of impropriety in all activities, shall respect and comply with the laws, and shall act at all times in a manner

that promotes public confidence in the integrity and impartiality of the legal and judicial systems.

- ACJA §7-208(J)(1)(d)

A legal document preparer shall refrain from knowingly making misleading, deceptive, untrue, or fraudulent representations while assisting a consumer in the preparation of legal documents. A legal document preparer shall not engage in unethical or unprofessional conduct in any professional dealings that are harmful or detrimental to the public.

- ACJA § 7-208(J)(2)(c)

A legal document preparer shall maintain and observe the highest standards of integrity and truthfulness in all professional dealings.

On July 26, 2016, Judge Rogers of the Maricopa County Superior Court issued a minute entry in which he found:

- Mr. Ariav, without substantial justification, filed lawsuits on multiple occasions with the intent to harass the defendant (the “Defendant”). The lawsuits included “graphic and lurid” details that were found to be not true. The suits were dismissed and fees awarded against Mr. Ariav.
- The Defendant sought injunctions against harassment which Mr. Ariav violated.
- Mr. Ariav sought unfounded injunctions against harassment against the Defendant.
- Mr. Ariav appeared at the Defendant’s home and confronted her with a gun.
- Mr. Ariav reported the untrue statements to a professional board that regulated the Defendant.
- Mr. Ariav engaged in abusive discovery practices.
- Mr. Ariav unreasonably expanded or delayed court proceedings.
- Mr. Ariav repeatedly filed documents or requests for relief that had already been ruled on.

On July 26, 2016, the Superior Court issued an order finding that Mr. Ariav is a vexatious litigant.

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**5) CERTIFICATION AND ELIGIBILITY**

*5-A: Review, discussion and possible action regarding request for Inactive Status from Cheri Smith.*

Cheri Smith was granted certification on July 1, 2017. On October 25, 2017, Ms. Smith submitted a request for her certification to be placed on Inactive Status.

Staff has confirmed there are no pending complaints filed against her.

Staff recommends that the Board accept the request and place Cheri Smith, Certificate number 81745, on Inactive Status.

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**6) ADMINISTRATIVE ISSUES**

*6-A: Review, discussion and possible action regarding proposed Code changes concerning continuing education and certification issues.*

Staff will present information at the meeting.