



FIDUCIARY BOARD

Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3222
Hearing Room 109

September 8, 2011
10:30 A.M.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Pamela Johnston
Deborah Primock

Telephonically Present:

Mary Jane Baumgarten
Diana Corry
Sherry Reed
Shari Tomlinson

Absent:

Marlin "Kip" Anderson
Ted Evertsen

OTHER ATTENDEES

AOC Staff:

Nancy Swetnam
Linda Grau
Karla Clanton
Kandace French
Nathan Perry
Nina Preston
Beth Rensvold
Kimberly Siddall

Guests:

Robert M. Barnes
JD Boren
Heather Bull
Gregory T. Sulzer

CALL TO ORDER

Called to Order By: Pamela Johnston

Time: 10:38 A.M.

1) REVIEW AND APPROVAL OF MINUTES

1-A: *Review, discussion, and possible action regarding the regular session minutes of the meeting held on July 14, 2011.*

Individual Addressing the Board: Pamela Johnston

Discussion: None

Motion: Move to approve the regular session minutes of the meeting on July 14, 2011.

Motion Proposals: First Mary Jane Baumgarten
Second Shari Tomlinson

Motion Results: Pass

1-B: *Review, discussion, and possible action regarding the executive session minutes of the meeting held on July 14, 2011.*

Individual Addressing the Board: Pamela Johnston

Discussion: None

Motion: Move to approve the executive session minutes of the meeting on July 14, 2011.

Motion Proposals: First Deborah Primock
Second Mary Jane Baumgarten

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding Arizona Department of Veterans Services' non-compliance with the Board's Final Order issued in complaint number 09-0001 and the status of ADVS' probation in the Consent Agreement entered in complaint number 07-0027.*

Individual Addressing the Board: Nancy Swetnam

Discussion:

The Board’s Final Order in complaint number 09-0001 involving the Arizona Department of Veterans’ Services (“ADVS”) was filed on November 18, 2010. The Final Order assessed costs to ADVS in the amount of \$9,297.61, to be remitted no later than 60 days following entry of the Board’s Final Order. The costs were to be remitted to the Division made payable to the “Arizona Supreme Court” no later than January 17, 2011.

Discussion by Staff and Board regarding the failure to pay timely. Mr. Sulzer appeared before the Board as requested to provide information to the Board regarding ADVS’ failure to make timely payments.

When Mr. Sulzer was asked by the Board for an explanation concerning his lack of follow-up in this matter, he admitted it was simply not done and it was not a matter of oversight.

On November 16, 2009, the Board entered a Consent Agreement with ADVS in regards to complaint number 07-0027. The provisions of the Consent Agreement include a term of probation with specified terms. The agreed upon probationary period is scheduled to end on November 15, 2011.

Mr. Sulzer stated court records filed by the Probate Administration have indicated progress and ADVS is now “very, very selective” in taking on Fiduciary cases. ADVS has also declined to take cases where the clients do not have the resources available for the costs incurred for the program.

Mr. Sulzer stated to the Board he has rewritten several rules and policies to make ADVS policies and procedures less “cumbersome”. Each employee now has a desk book that contains existing procedures and exhibits. Once new policies are in place, the desk books will be rewritten and revised.

Pamela Johnston recommended the board enter Executive Session to receive the advice of counsel.

Motion:

Move to enter Executive Session to receive the advice of counsel.

Board entered Executive Session at 11:23 A.M. and returned to Regular Session at 11:35 A.M.

Motion Proposals:

First Deborah Primock
Second Pamela Johnston

Motion Results:

Pass

Individual Addressing the Board: Nancy Swetnam

Discussion: Discussion regarding directing Mr. Sulzer to file a copy of ADVS' new policies and procedures to the Certification and Licensing Division ("Division") no later than Friday, October 14, 2011 and providing new policies to the board members for review prior to the November 10, 2011 board meeting.

Additional discussion to request Mr. Sulzer return to the November 10, 2011 board meeting for an informal interview regarding the new policies and procedures. The next quarterly status report will also be reported to the board at that time.

Motion: Move to direct Mr. Sulzer to file a copy of ADVS' new policies and procedures to the Division no later than Friday, October 14, 2011 and to direct Mr. Sulzer return to the November 10, 2011 board meeting for an informal interview to discuss the issues and questions in relation to the new policies and procedures and to discuss the next quarterly status report.

Motion Proposals: First Deborah Primock
Second Diana Corry

Motion Results: Pass

2-B: *Review, discussion and possible action regarding the following complaint dismissed by the Division Director pursuant to Arizona Code of Judicial Administration § 7-201 (D)(4)(a) and (H)(2)(a):*

Complaint Number 11-0008

Individual Addressing the Board: Nancy Swetnam

Discussion: On August 12, 2011, Division Director Nancy Swetnam dismissed complaint number 11-0008 without prejudice upon determining the complaint does not meet the criteria contained in ACJA § 7-201(H)(2)(a)(2)(b) through (f). On August 15, 2011, notice of the dismissal was forwarded to the complainant with notice the complainant could request Board review of the dismissal. To date, no request for Board review has been received from the complainant. It is recommended the Board affirm the dismissal of complaint number 11-0008.

Motion: Move to affirm and accept the decision of Nancy Swetnam by upholding the Division Director Dismissal of complaint number 11-0008.

Motion Proposals: First Shari Tomlinson
Second Pamela Johnston
Motion Results: Pass

Individual Addressing the Board: Linda Grau

Discussion: Linda Grau requests a motion to authorize the Vice Chair to sign on behalf of the full board.

Motion: Move to allow the Vice Chair to sign the affirmation of dismissal on behalf of the full board.

Motion Proposals: First Deborah Primock
Second Diana Corry
Motion Results: Pass

2-C: Review, discussion and possible action regarding complaint number 09-0020 involving licensed fiduciary Lyndi Anderson.

Individual Addressing the Board: Nancy Swetnam

Discussion: On August 24, 2011, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in Allegations 1-15 of complaint number 09-0020. Therefore, it is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 09-0020.

Motion: Move to accept staff recommendation and to accept the findings of the Probable Cause Evaluator and dismiss complaint number 09-0020.

Motion Proposals: First Shari Tomlinson
Second Mary Jane Baumgarten
Motion Results: Pass

Individual Addressing the Board: Nancy Swetnam

Discussion: Nancy Swetnam requests a motion to authorize the Vice Chair to sign on behalf of the full board.

Motion: Move to allow the Vice Chair to sign the affirmation of dismissal on behalf of the full board.

Motion Proposals: First Shari Tomlinson
Second Mary Jane Baumgarten
Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Review, discussion and possible action regarding setting the 2012 meeting calendar.*

Individual Addressing the Board: Kandace French

Discussion: Discussion regarding the suggested meeting schedule.

Motion: Move to adopt the 2012 Board Meeting schedule as recommended by Division staff.

Motion Proposals: First Shari Tomlinson
Second Mary Jane Baumgarten

Motion Results: Pass

3-B: *Review and discussion regarding the status of work performed by the Committee on Improving Judicial Oversight and Processing of Probate Court Matters (“Probate Committee”)*

Individual Addressing the Board: Nancy Swetnam

Discussion: Nancy Swetnam provided an update on the status of the work performed by the Committee of Improving Judicial Oversight and Processing of Probate Court Matters (“Probate Committee”). The report included proposed rule changes to § 7-202. Ms. Swetnam will provide additional information at the next board meeting.

4) INITIAL LICENSE APPLICATIONS

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

1. Bonye W. Barone
2. Lori M. Braddock
3. Diane B. Prescott
4. Brian E. Williamson
5. Vergal V. Tan

Individual Addressing the Board: Kimberly Siddall

Discussion: The following applications remain incomplete pending receipt of fingerprint results, professional responsibility training, and/or additional information. It was recommended the following applicants be deferred to the November 10, 2011 meeting.

1. Boyne W. Barone
2. Lori M. Braddock

Motion: Move to defer the above applicants to the November 10, 2011 Board meeting.

Motion Proposals: First Deborah Primock
Second Mary Jane Baumgarten

Motion Results: Pass

Discussion: Discussion regarding the application of Diane Prescott.

Is it recommended to grant licensure and to include language regarding non-disclosure on future applications may result in denial of licensure or disciplinary action.

3. Diane Prescott

Motion: Move to approve licensure of applicant Prescott and to include language regarding non-disclosure on future applications may result in denial of licensure or disciplinary action.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: Pass

Discussion: The following applicant has submitted a complete application, demonstrating he meets the minimum eligibility requirements. No information has been presented during the background check which is contrary to licensure being granted. The applicant voluntarily surrendered his license in July of 2010. It is recommended the Board grant initial licensure.

4. Brian E. Williamson

Motion: Move to accept recommendation and grant licensure to applicant Williamson.

Motion Proposals: First Shari Tomlinson
Second Mary Jane Baumgarten

Motion Results: Pass

Discussion: The following applicant has submitted a complete application, demonstrating he meets the minimum eligibility requirements. No information has been presented during the background check which is contrary to licensure being granted. It is recommended the Board grant initial licensure.

5. Vergal V. Tan

Motion: Move to accept recommendation and grant licensure to applicant Tan.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

5) RENEWAL LICENSE APPLICATIONS

5-A: *Review, discussion, and possible action regarding renewal of licensure for:*

1. Anita Royal

Individual Addressing the Board: Kimberly Siddall

Discussion: The following applicant has submitted a complete application, demonstrating she meets the minimum eligibility requirements. It is recommended the Board grant renewal of licensure to the following applicant:

1. Anita Royal

Motion: Move to accept staff's recommendation and grant renewal of licensure to Anita Royal.

Motion Proposals: First Shari Tomlinson
Second Mary Jane Baumgarten

Motion Results: Pass

5-B: *Review, discussion, and possible action regarding the following pending renewal application for business licensure:*

1. Pima County Public Fiduciary Office (Anita Royal)

Individual Addressing the Board: Kimberly Siddall

Discussion: The following business submitted a complete application, and demonstrating it meets the minimum eligibility requirements. It is recommended the Board grant renewal of fiduciary licensure to the following business entity:

1. Pima County Public Fiduciary Office (Anita Royal)

Motion: Move to accept the recommendation of the Board to grant renewal of fiduciary licensure to the above business entity.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

6) LICENSE AND ELIGIBILITY

6-A: *Review, discussion, and possible action regarding request for placement on inactive status received from licensed fiduciary Sherri L. Schamel, license number 20618.*

Individual Addressing the Board: Kimberly Siddall

Discussion: Ms. Schamel was granted licensure on July 9, 2009. On August 12, 2011, Ms. Schamel submitted a request for her license to be placed on Inactive Status.

Ms. Schamel is not assigned to any cases.

Staff recommends the Board accept Ms. Schamel's request to be placed on inactive status.

Motion: Move to accept staff recommendation and to place Ms. Schamel on inactive status.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

6-B: *Review, discussion, and possible action regarding voluntary surrender requests received from licensed fiduciaries:*

1. Heather Frenette
2. Silvia R. Arellano

Individual Addressing the Board: Kimberly Siddall

Discussion: On November 20, 2000, the Fiduciary Board granted initial licensure to Ms. Frenette. On July 19, 2011, Ms. Frenette submitted a request for consideration by the Board to accept the voluntary surrender of her fiduciary license.

On July 8, 2010, the Fiduciary Board granted initial licensure to

Ms. Arellano. On October 15, 2010, Ms Arellano submitted a request for consideration by the Board to accept the voluntary surrender of her fiduciary license.

Division records confirm there are no pending complaints involving either Ms. Frenette or Ms. Arellano. Staff recommends the Board accept the voluntary surrender of Ms. Frenette and Ms. Arellano.

Motion: Move to accept staff recommendation to accept the voluntary surrender of Ms. Frenette and Ms. Arelanno.

Motion Proposals: First Shari Tomlinson
Second Deborah Primock

Motion Results: Pass

CALL TO THE PUBLIC

None

ADJOURNMENT

Motion: Move to adjourn.

Motion Proposals: First Deborah Primock
Second Shari Tomlinson

Motion Results: Pass

Time: 12:12 P.M.