



## Arizona Supreme Court Fiduciary Board

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

Date: March 10, 2011  
Time: 10:30 am – 2:30 pm

### Approved Regular Meeting Minutes

#### MEMBER ATTENDANCE:

##### Present:

Marlin “Kip” Anderson  
Pamela Johnston  
Diana L. Clarke  
Ted Evertsen  
Mary Jane Baumgarten

##### Telephonically Present:

Sherry Reed  
Shari Tomlinson

##### Absent:

Deborah Primock  
Diana Corry

#### OTHER ATTENDEES

##### AOC Staff:

Nancy Swetnam  
Kandace French  
Nina Preston  
Alex Navarro  
Kimberly Siddall  
Susan Hunt  
Karla Clanton  
Debbie MacDougall  
Deann Barker  
Susan Hunt Transcriber

##### Guests:

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**CALL TO ORDER**

**Called to Order By:** Marlin “Kip” Anderson

**Time:** 10:33 a.m.

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**1) REVIEW AND APPROVAL OF MINUTES**

**I-A:** *Review, discussion, and possible action regarding the regular session minutes of the meeting held on January 13, 2011.*

**Individual Addressing the Board:** Marlin “Kip” Anderson

**Discussion:** None

**Motion:** Moved to approve the regular session minutes of the meeting on January 13, 2011.

**Motion Proposals:** First Diana Clarke  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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**2) PENDING COMPLAINTS**

**2-A:** *Review, discussion and possible action regarding complaint number 07-0023 involving Sun Valley Group and Peter Frenette.*

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** On January 5, 2011, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist as to Allegations 1 and 2 and does exist as to Allegations 3 and 4 in complaint number 07-0023. It is recommended the Board accept the finding the Probable Cause Evaluator and dismiss Allegations 1 and 2.

Regarding Allegations 3 and 4, it is recommended the Board enter a finding grounds for formal disciplinary action exists involving Peter Frenette (“Frenette”) and Sun Valley Group (“SVG”) pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) and (H)(7) for acts of misconduct involving ACJA § 7-201(F)(1) and § 7-202 (F)(1), (F)(4), (J)(4)(i), (J)(5), (J)(5)(f), and Arizona Revised Statutes § 14-3703(c) and § 14-3704.

It was recommended the Board offer Frenette and SVG a Consent Agreement to resolve the disciplinary action through issuance of a Letter of Concern, reimbursement of \$69.50 to the estate of Elizabeth Rogers for fees charged to the estate related to the investigation of this complaint, and reimbursement of all fees charged to the estate since the administration of the estate was completed. Alternatively, if Board wishes to hear from Frenette and SVG directly regarding a possible Consent Agreement resolution, it expedites the Board to invite Frenette and SVG to attend and participate in a Formal Interview with the Board pursuant to ACJA § 7-201(H)(8).

**Motion:** Moved to accept the findings of the Probable Cause evaluator and dismiss Allegations 1 and 2. Regarding Allegations 3 and 4, moved to accept the findings as noted above and grounds for formal disciplinary action exists and the Board enter into a Consent Agreement, including a Letter of Concern and the reimbursement of \$69.50.

Also moved to find that probable cause exists and grounds for a recommendation of formal discipline and therefore, in light of the current circumstances in the presence of Mr. Frenette here today, good cause exists to expedite the invitation to have Mr. Frenette address the above matters today, particularly with respect to a possible resolution via a Consent Agreement and Letter of Concern.

**Motion Proposals:** First Diana Clarke  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**Discussion:** Mr. Frenette was present and was asked to come forward to address the Board's discussion of a potential Consent Agreement in resolution of this complaint. Mr. Frenette stated this has been resolved and he has worked with the beneficiaries and received consent to close the estate and did so.

**Motion:** Moved for Board to approve authorizing staff to enter into discussions of a Consent Agreement with Mr. Frenette regarding resolving the disciplinary actions through a Letter of Concern and addressing items 3 and 4 for possible reimbursement or establishing those actions have already been taken in the underlying case, so any further reimbursement is not necessary. Additionally, moved to approve Mr. Frenette's invitation to attend an interview at the next regularly scheduled Board meeting.

**Motion Proposals:** First Diana Clarke  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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

Complaint Number 10-0015

Complaint Number NC10-0018

**Individuals Addressing the Board:** Nancy Swetnam

**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.

**Motion:** Moved to go into executive session to discuss further.

**Motion Proposals:** First Ted Evertsen  
Second Diana Clarke

**Motion Results:** Pass

**EXECUTIVE SESSION #1** Start: 11:14 a.m. End: 11:22 a.m.

**Motion:** Moved to affirm dismissal of Complaint Number 10-0015.

**Motion Proposals:** First Diana Clarke  
Second Pamela Johnston

**Motion Results:** Pass

**Individuals Addressing the Board:** Nancy Swetnam

**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.

**Motion:** Moved to affirm the dismissal of Complaint Number NC10-0018.

**Motion Proposals:** First Diana Clarke  
Second Pamela Johnston

**Motion Results:** Pass

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**3) ADMINISTRATIVE ISSUES**

**3-A:** *Review, discussion, and possible action regarding the status of the work performed by the Fiduciary Board Regulatory Scope Subcommittee.*

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** Nancy Swetnam provided a verbal report to the board regarding the status of the suggested amendments and the work completed by the Board. She stated there was a draft that was suggested by some members of the group that would significantly alter the Code of Conduct for fiduciaries. Pending legislation is changing on a daily basis that would impact the Code of Conduct for Fiduciaries. One of the provisions in place both at the Court and the Committee level, is the issue a fiduciary at the time of appointment or possibly 60 days after appointment, providing a budget or estimate of the costs that are going to be charged against the estate. If that provision passes, significant amendments may need to be made to the Code of Conduct for fiduciaries.

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

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** Nancy Swetnam provided a verbal report to the board regarding the progress of the work completed to date and future anticipated by this committee. There will be an update by the Probate Committee at the March AJC meeting.

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**4) INITIAL LICENSE APPLICATIONS**

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

**Individuals Addressing the Board:** Alex Navarro

**Discussion:** The following applicants have submitted a complete application, demonstrating they meet the minimum eligibility requirements,

and no information has been presented during the background check which is contrary to licensure being granted. It was recommended the Board grant initial licensure to the following applicants:

1. Hall, Patricia D.
2. Landis, Roger A.
3. Strickland, Gary B.

**Motion:** Moved to accept recommendation and grant licensure to the above applicants.

**Motion Proposals:** First Shari Tomlinson  
Second Pamela Johnston

**Motion Results:** Pass

**Individuals Addressing the Board:** Alex Navarro

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

4. Bernardaini, Janice L.

**Motion:** Moved to accept recommendation and grant licensure of Ms. Barnardaini.

**Motion Proposals:** First Pamela Johnston  
Second Diana Clarke

**Motion Results:** Pass

**4B:** *Review, discussion, and possible action regarding the following pending application for individual licensure:*

1. Paul R. Noseworthy

**Individuals Addressing the Board:** Alex Navarro

**Discussion:** On August 23, 2010, Mr. Noseworthy submitted an initial application for licensure.

During a background check of his application, it was noted he

failed to disclose felony or misdemeanor convictions regardless of whether civil rights were restored. Section VII of the initial application requires applicants to disclose misdemeanor or felony convictions. Mr. Noseworthy refused to acknowledge his failure to answer the question on the application regarding felonies or misdemeanors in which there were at least two arrest warrants from 1999 to 2004.

Further background check revealed Mr. Noseworthy has outstanding bills of approximately \$60,000.00.

Mr. Noseworthy's listed only the following work experiences in his application: managing savings and checking accounts, overseeing transactions of monthly expenses, providing guidance of distribution of assets and equities, providing guidance regarding insurance policies, organizing and initiating health care appointments, etc.

It was recommended the Board deny Mr. Noseworthy's application pursuant to Arizona Code of Judicial Administration § 7-201(E)(1), the applicant does not meet the qualifications or eligibility requirements at the time of the application; § 7-201(E)(2)(c)(2)(b)(v), the applicant has a conviction by final judgment of a misdemeanor if the crime has a reasonable relationship to the practice of the license profession regardless of whether civil rights have been restored; § 7-201 (E)(2)(c)(2)(b)(xii), the applicant has violated any order of a court, judicial officer, administrative tribunal, or the board; § 7-201 (E)(2)(c)(2)(b)(xiv), has made a false or misleading oral or written statement to division staff or the board, and § 7-201(E)(2)(c)(2)(b)(xv), the applicant failed to disclosed information on the licensing application subsequently revealed through the background check.

**Motion:** Moved to deny Mr. Noseworthy's application as noted above.

**Motion Proposals:** First Shari Tomlinson  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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## 5) RENEWAL LICENSE APPLICATIONS

**5A:** *Review, discussion, and possible action regarding request for placement on Inactive Status received from licensed fiduciaries Susan Cooper License Number 20619, and Gary Warner*

1. Cooper, Susan
2. Warner, Gary

**Individuals Addressing the Board:** Alex Navarro

**Discussion:** Ms. Cooper was granted licensure on July 9, 2009 by the Fiduciary Board. On January 14, 2011, Ms. Cooper submitted a request for her license to be placed on Inactive Status.

Mr. Warner was granted licensure on March 30, 1999. On February 16, 2011, Mr. Garner submitted a request for his license to be placed on Inactive Status.

ACJA § 7-201 (E)(8)(a) reads:

A certificate holder may transfer to inactive status, upon written request to the board. Upon recommendation of division staff the board may accept the transfer of the certificate holder to inactive status and division staff shall note in the certification database the certificate holder in on inactive status, in good standing. The inactive certificate holder shall not engage in the practice of the profession or occupation of certification pro bono or for a fee or other compensation while on inactive status and shall not present themselves as a certificate holder.

Division records confirm there are no pending complaints involving Ms. Cooper, and Mr. Warner and both have submitted notarized affidavits affirming they have no client assigned to them. It was recommended the Board accept Ms. Cooper's and Mr. Warner's request to be placed on Inactive Status.

**Motion:** Moved to accept recommendation and accept Ms. Cooper's and Mr. Warner's request to be placed on Inactive Status.

**Motion Proposals:** First Shari Tomlinson  
Second Pamela Johnston

**Motion Results:** Pass

**5B:** *Review, discussion, and possible action regarding Voluntary Surrender request received from license fiduciary:*

1. Elizabeth J. Fromkes

**Individuals Addressing the Board:** Alex Navarro

**Discussion:**

On September 9, 2010, the Fiduciary Board granted initial licensure to Fromkes. On January 7, 2011, Ms. Fromkes submitted a request for consideration by the Board to accept the voluntary surrender of her fiduciary license.

ACJA § 7-201(E)(7) reads:

“*Voluntary Surrender*”. A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.”

Division records confirm there are no pending complaints involving Ms. Fromkes, and she submitted a notarized affidavit affirming she has no cases assigned to her. Therefore, staff recommended the Board accept the voluntary surrender of Ms. Fromkes.

**Motion:**

Moved to accept recommendation to accept voluntary surrender of Ms. Fromkes.

**Motion Proposals:**

First Mary Jane Baumgarten  
Second Ted Evertsen

**Motion Results:**

Pass

**Motion:**

Moved to go into Executive session to discuss confidential matters and for advice of counsel.

**Motion Proposals:**

First Pamela Johnston  
Second Mary Jane Baumgarten

**Motion Results:**

Pass

**EXECUTIVE SESSION #2**

Start: 12:08 p.m.

End: 12:18 p.m.

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**CALL TO THE PUBLIC**

Helen Boland – Requested information on becoming a fiduciary; she will contact staff.

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**ADJOURNMENT**

***Motion:*** Moved to adjourn.

***Motion Proposals:*** First Pamela Johnston  
Second Diana Clarke

***Motion Results:*** Pass

***Time:*** 12:30 p.m.

Initials: SH

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