



Arizona Supreme Court Fiduciary Board

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

Date: May 12, 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
Deborah Primock

Telephonically Present:

Sherry Reed
Shari Tomlinson

Absent:

Diana Corry

OTHER ATTENDEES

AOC Staff:

Linda Grau
Kandace French
Nina Preston
Alex Navarro
Kimberly Siddall
Karla Clanton
Debbie MacDougall
Kitty Boots
Lori Braddock

Guests:

Heather Bull

CALL TO ORDER

Called to Order By: Marlin “Kip” Anderson

Time: 10:40 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 March 10, 2011.

Individual Addressing the Board: Marlin “Kip” Anderson

Discussion: None

Motion: Moved to approve the regular session minutes of the meeting on March 10, 2011

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

1-B: Review, discussion, and possible action regarding the executive session minutes of the meeting held on March 10, 2011

Individual Addressing the Board: Marlin “Kip” Anderson

Discussion: None

Motion: Moved to approve the executive session minutes of the meeting on March 10, 2011

Motion Proposals: First Diana Clarke
Second Pamela Johnston

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding complaint number 09-0025 involving Statewide Community Services, Inc.

Individuals Addressing the Board: Linda Grau

Discussion: On March 7, 2011, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 09-0025. Therefore, it was recommended the Board accept the probable cause determination and dismiss the complaint.

Motion: Moved to accept the Board's recommendation and dismiss complaint number 09-0025.

Motion Proposals: First Diana Clarke
Second Shari Tomlinson

Motion Results: Pass

2-B: *Formal interview with Peter Frenette and Sun Valley Group regarding complaint number 07-0023.*

Individuals Addressing the Board: Linda Grau

Discussion: At the March 10, 2011 meeting, the Board reviewed and considered complaint number 07-0023. The Board's Order accepted the finding of the Probable Cause Evaluator, dismissed allegations 1 and 2 and entered a finding grounds for formal disciplinary action exists as to allegations 3 and 4, pursuant to ACJA § 7-201(H)(6)(a) and (H)(7), for acts of misconduct involving ACJA § 7-201(F)(1) and ACJA § 7-202(F)(1), (F)(4), (J)(4)(i), (J)(5), (J)(5)(f) and Arizona Revised Statutes § 14-3703(c) and §14-3704.

The Board's Order requested Division staff engage in discussions with Mr. Frenette regarding a possible Consent Agreement resolution of the complaint; with proposed Consent Agreement provisions to include issuance of a Letter of Concern, reimbursement of fees charged to the estate related to responding to the complaint, and reimbursement, if applicable, of all fees charged to the estate after the administration of the estate was completed.

The Board's Order requested Division staff conduct research necessary to determine and document the amount of any applicable reimbursement of fiduciary fees.

The Board's Order directed Mr. Frenette, individually and as the named designated principal for Sun Valley Group, be invited to participate in this Formal Interview pursuant to ACJA § 7-201(H)(8). Mr. Frenette was in attendance at the March 10th meeting and agreed to attend and participate in this Formal Interview.

Mr. Frenette was not present at the meeting today. The Board

asked also that staff do some additional research regarding the fees charged to the estate; staff is in the process of conducting that research but was unable to ascertain the information the Board requested through court records. A response from Mr. Frenette's attorney indicated they needed six to eight weeks to provide that information. In light of this information, it was recommended this matter be deferred to the July meeting. Another letter will be sent to Mr. Frenette regarding the interview.

Motion: Moved to defer this matter to the July meeting as recommended by staff.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

2-C: 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.

Individuals Addressing the Board: Linda Grau

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. Thusly, the costs were to be remitted to the Division made payable to the "Arizona Supreme Court" no later than January 17, 2011.

Having not received the ordered assessed costs, Division staff contacted ADVS designated principal Gregory Sulzer on April 20, 2011 and inquired about ADVS' failure to remit the ordered costs. During the call, Mr. Sulzer indicated he believed the payment had been sent to the Division but agreed to look into the matter. On April 26, 2011, Mr. Sulzer presented a check in the ordered amount. The Final Order and a copy of the Division's Compliance Unit request was provided for Board review.

On November 16, 2009, the Board entered the Consent Agreement with ADVS in 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.

It was recommended the Board invite ADVS and Mr. Sulzer to the

July 14, 2011 Board meeting to address ADVS' failure to comply the Final Order issued by the Board in complaint number 09-0001 and to discuss the status of ADVS' probation in complaint number 07-0027.

Motion: Moved to accept the above recommendation and invite ADVS and Mr. Sulzer to the July meeting to address ADVS' failure to comply the Final Order issued by the Board in complaint number 09-0001 and to discuss the status of ADVS' probation in complaint number 07-0027.

Motion Proposals: First Mary Jane Baumgarten
Second Shari Tomlinson
Recusal Diana Clarke

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Review and discussion regarding proposed new legislature.*

Individuals Addressing the Board: Linda Grau

Discussion: Staff recommended this matter be deferred to the July meeting when Nancy Swetnam is available to comment on the above matter.

Motion: Moved to accept the above recommendation and defer this matter to the July meeting.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

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: Linda Grau

Discussion: The report of the Probate Committee will be reviewed by the Arizona Judicial Council at its meeting on June 20, 2011. There should be significant information available for the Board at the July meeting. It was therefore recommended the matter be deferred to the July meeting.

Motion: Moved to defer this item to the July meeting for reasons stated

above by staff.

Motion Proposals: First Diana Clarke
Second Pamela Johnston
Motion Results: Pass

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 application remains incomplete pending receipt of fingerprint results, professional responsibility training, and/or additional information. It is tentatively recommended the above applicant be deferred to the July 14, 2011 meeting.

1. Forrest, Devon E.

Motion: Moved to accept recommendation and defer the above applicant to the July meeting.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten
Motion Results: Pass

Individuals Addressing the Board: Alex Navarro

2. Singh, Vinay M.

Discussion: The above applicant has submitted a complete application, demonstrating he 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 above applicant.

Motion: Moved to accept recommendation and grant licensure of Vinay Singh.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten
Motion Results: Pass

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

1. Fleming and Curti, PLC

Individuals Addressing the Board: Alex Navarro

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

Motion: Moved to accept recommendation and grant initial business licensure to Fleming and Curti, PLC.

Motion Proposals: First Mary Jane Baumgarten
Second Pamela Johnston

Motion Results: Pass

5) RENEWAL LICENSE APPLICATIONS

5A: *Review, discussion, and possible action regarding Renewals received. (previously stated as "Inactive Status" in error.)*

1. Frenette, Heather
2. Frenette, Peter
3. McCollum, Stephanie (previously stated Jennifer – clerical error.)
4. Royal, Anita

Individuals Addressing the Board: Alex Navarro

Discussion: The above applications remain incomplete pending receipt of and/or additional information. It was recommended the above applicants be deferred to the July 14, 2011 Board meeting.

Motion: Moved to accept recommendation and defer the above applicants to the July meeting.

Motion Proposals: First Diana Clarke
Second Debra Primock

Motion Results: Pass

5B: *Review, discussion, and possible action regarding renewal of business entities:*

1. Pima County Public Fiduciary Office (Anita Royal)
2. The Sun Valley Group, Inc. (Peter Frenette)

Individuals Addressing the Board: Alex Navarro

Discussion: The above business applications remain incomplete pending receipt of background and/or additional information. It was recommended the above business applicants be deferred to the July 14, 2011 Board meeting.

Motion: Moved to accept recommendation to defer the above business applicants to the July Board meeting.

Motion Proposals: First Diana Clarke
Second Pamela Johnston

Motion Results: Pass

5C: *Review, discussion, and possible action regarding Inactive Status request received:*

1. Vanderheiden, Richard T.

Discussion: Mr. Vanderheiden was granted licensure on April 2, 1999. On April 21, 2011, Mr. Vanderheiden 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.

Mr. Vanderheiden has confirmed he is not assigned to any cases.

It was recommended the Board accept Mr. Vanderheiden's request to be placed on Inactive Status.

Motion: Moved to accept the recommendation that Mr. Vanderheiden's certification be placed on Inactive Status.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten
Motion Results: Pass

CALL TO THE PUBLIC - None

ADJOURNMENT

Motion: Moved to adjourn.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten
Motion Results: Pass

Time: 11:02 a.m.