



## **FIDUCIARY BOARD**

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

**September 12, 2013**  
**10:30 a.m.**

### **Approved Regular Meeting Minutes**

#### **MEMBER ATTENDANCE:**

##### **Present:**

Gary Krcmarik – Acting Chair  
Ted Evertsen

##### **Telephonically Present:**

Mary Jane Baumgarten  
Emily Kile  
Leonard Montanaro  
Hon. Jay Polk  
Mark Rubin

##### **Absent:**

Deborah Primock  
Diana Corry  
Catherine Robbins  
Sherry Reed

#### **OTHER ATTENDEES:**

##### **AOC Staff:**

Mark Wilson  
Linda Grau  
Debbie MacDougall  
Kimberly Siddall  
Anne Hunter  
Wendy Reiter  
Michelle Martinez  
William MacIntyre  
Arnita Oliver

##### **Guests:**

Raena Honan  
Lori Braddock  
Katherine Trojahn  
Roger Coventry  
Heather Bull

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**CALL TO ORDER**

**Called to Order By:** Gary Krcmarik-Acting Chair

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

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**Individual Addressing the Board:** Michelle Martinez

**Discussion:** Discussion is held to appoint an acting chair due to the absence of the Board's chair.

**Motion:** Move to nominate Gary Krcmarik as acting-chair for the meeting.

**Motion Proposals:** First Emily Kile  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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

**1-A: Review discussion, and possible action regarding the regular session minutes of the meeting held on July 11, 2013.**

**Individual Addressing the Board:** Gary Krcmarik

**Discussion:** None.

**Motion:** Move to approve regular session minutes for the meeting of July 11, 2013.

**Motion Proposals:** First Ted Evertsen  
Second Mary Jane Baumgarten

**Motion Results:** Pass

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**2) PENDING COMPLAINTS:**

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

- *Complaint Number 12-0003 – Patricia Hall*
- *Complaint Number 10-0011 – Entrust Fiduciary Services, Inc.*
- *Complaint Number 13-0003 – Ruth Graham*

- *Complaint Number 11-0003 – John Harris*
- *Complaint Number 12-0010 – Rena Steele*

**Individual Addressing the Board:** Linda Grau

**Discussion:** **Complaint Number 12-0003 - Patricia Hall:** - At the July meeting, the Board reviewed and considered the Investigation Summary Report, Probable Cause Determination, and Board Recommendation. In addition, the Board heard from Division staff, the complainant, and the complainant's sister. The Board deferred consideration of the matter and requested Division staff provide the additional information.

It is recommended the Board accept the May 21, 2013 finding of Probable Cause Evaluator Baumstark that probable cause does not exist in complaint number 12-0003 and dismiss complaint number 12-0003.

**Motion:** Move to accept staff's recommendation.

**Motion Proposals:** First Mark Rubin  
Second Hon. Jay Polk

**Motion Results:** Pass

**Individual Addressing the Board:** Linda Grau

**Discussion:** **Complaint Number 10-0011 - Entrust Fiduciary Services, Inc.:** - The Division received this complaint on September 4, 2010. The complainant offered ten allegations.

The matter was investigated and submitted for probable cause determination.

On July 12, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause *does not* exist as to Section 1: Allegations 1, 2(a), 2(c), 2(d), 3, 4, 5, 6, 7 and 8 and Section 2: Allegations 1 and 2. Probable Cause Evaluator Baumstark entered a finding probable cause *does* exist as to Section 1: Allegation 2(b).

It is recommended the Board dismiss Allegations 1, 2(a), 2(c), 2(d), 3, 4, 5, 6, 7, and 8 in Section 1 and Allegations 1 and 2 of Section 2 of the Investigation Summary in complaint number 10-0011. Regarding Section 1: Allegation 2(b), it is recommended the Board enter a finding Lisa Price and Entrust Fiduciary Services failed to notify beneficiary Herb Curtain of the final accounting filed in Superior Court in Yuma County case number S1400-GC2009-

00129 and issue a Letter of Concern.

**Motion:** Move to accept the staff's recommendation.

**Motion Proposals:** First Ted Evertsen  
Second Mary Jane Baumgarten  
Recused Hon. Jay Polk

**Motion Results:** Pass

**Individual Addressing the Board:** Linda Grau

**Discussion:** **Complaint Number 13-0003 – Ruth Graham:** The Division received this complaint on April 2, 2013.

The complainant submitted four (4) allegations:

1. Ms. Graham failed to timely file an Initial Inventory in the matter of Joan Henry.
2. Ms. Graham failed to timely file the First Annual Accounting in the matter of Joan Henry.
3. Ms. Graham failed to file any Annual Accountings or other court documents in the matter of Joan Henry, during the period of April 1, 2009 and October 11, 2013.
4. Ms. Graham failed to properly manage the ward's income and the estate's resources.

The matter was investigated and submitted for probable cause determination.

On August 29, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause *does exists* as to complaint number 13-0003.

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) and (H)(6)(k)(7) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (J)(1)(a), (J)(2)(c), (J)(5)(k) and (J)(5)(m).

It is recommended the Board offer Graham a Consent Agreement intended to resolve this complaint, pursuant to ACJA § 7-201(H)(24)(a)(6)(c). It is recommended the proposed Consent Agreement include an acknowledgement of the misconduct, a statement giving notice to Graham that if she enters the Consent Agreement she waives her right to a hearing, and imposes the following sanctions pursuant to ACJA § 7-201 (H)(24)(a)(6):

- a) Graham offers and the Board accepts Graham's voluntary surrender of her fiduciary license, license number 20475, pursuant to ACJA § 7-201(H)(24)(a)(6)(c). Graham agrees she will not seek future licensure as a fiduciary.
- b) Graham agrees to cease and desist from offering to or acting in any capacity which requires an active fiduciary license and Graham agrees she will not seek or accept any court appointment, pursuant to ACJA § 7-201(H)(24)(a)(6)(c).

In the event Graham declines the opportunity to enter the Consent Agreement within 20 days of receipt of the Board's offer, it is recommended the matter proceed with the filing and service of Notice of Formal Statement of Charges seeking revocation of Graham's license and a cease and desist order pursuant to ACJA § 7-201(H)(10) without further Board order.

If Graham accepts and entered the agreement as offered, it is recommended the Board authorize the Chair to sign and enter the agreement with Graham on behalf of the Board without further Board order.

**Motion:** Move to accept staff's recommendation.

**Motion Proposals:** First Hon. Jay Polk  
Second Ted Evertsen

**Motion Results:** Pass

**Individual Addressing the Board:** Linda Grau

**Discussion:** **Complaint Number 11-0003 – John Harris:** - The Division received this complaint on April 13, 2011. The complainant offered ten allegations.

The matter was investigated and submitted for probable cause determination.

On July 29, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause *does exists* as to Allegations 2, 3, 4 and 8 and *does not exist* as to Allegations 1, 5, 6, 7, 9 and 10. It is recommended the Board accept the finding of the Probable Cause Evaluator and *dismiss* Allegations 1, 5, 6, 7, 9 and 10 of complaint number 11-0003.

Regarding Allegations 2, 3, 4 and 8, it is recommended the Board enter a finding grounds for informal disciplinary action exists

pursuant to ACJA § 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (J)(4)(d), (J)(4)(g) and (J)(4)(i) and issue a Letter of Concern.

**Motion:** Move to accept staff's recommendation.

**Motion Proposals:** First Ted Evertsen  
Second Hon. Jay Polk

**Motion Results:** Pass

**Individual Addressing the Board:** Linda Grau

**Discussion:** **Complaint Number 12-0010 – Rena Steele:** - The Division received this complaint on July 31, 2012. The complainant offered two (2) allegations:

1. The Maricopa County Public Fiduciary alleges in the matter of Anita Tolles, one of its former employees, Ms. Steele mishandled a ward's jewelry by failing to disclose it was sold then failed to document and deposit the proceeds.
2. In the Estate of Gary Turk, Ms. Steele misplaced several checks and failed to deposit them into the estate in a timely matter.

The matter was investigated and submitted for probable cause determination.

On August 29, 2013, Probable Cause Evaluator Baumstark entered a finding probable cause does exist in complaint number 12-0010. 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) and (H)(6)(k)(7) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (J)(2)(a), (J)(2)(b)(1), (J)(3)(e), (J)(5)(c) and (J)(5)(h).

It is recommended the Board offer Steele a Consent Agreement intended to resolve this complaint, pursuant to ACJA § 7-201(H)(24)(a)(6)(c). It is recommended the proposed Consent Agreement include an acknowledgement of the misconduct, a statement giving notice to Steele that if she enters the Consent Agreement she waives her right to a hearing, and imposes the following sanctions pursuant to ACJA § 7-201 (H)(24)(a)(6):

- a) The Board issues a Censure to Steele, pursuant to ACJA § 7-201(H)(24)(a)(6)(b).
- b) The Board accepts Ms. Steele's request to go in inactive status with the following conditions:

- i. Ms. Steele shall cease and desist from offering or providing any fiduciary services that require active licensure until such time as she is returned to active status by the Board.
- ii. Upon being approved to active licensure status pursuant to ACJA § 7-201(E)(8), Steele shall work under the direct supervision of a licensed fiduciary for no less than one year.

In the event Ms. Steele declines the opportunity to enter the Consent Agreement within (20) twenty days of receipt of the Board’s offer, it is recommended the matter proceed with the filing and service of Notice of Formal Statement of Charges pursuant to ACJA § 7-201(H)(10) seeking a (90) ninety day suspension of Steele’s license, a cease and desist order, (5) five hours of mandated continuing education in the curriculum areas of ethics and professional responsibility, and the imposition of costs of the investigation and related proceedings without further Board order.

If Ms. Steele accepts and entered the agreement as offered, it is recommended the Board authorize the Chair to sign and enter the agreement with Ms. Steele on behalf of the Board without further Board order.

**Motion:** Move to accept staff’s recommendation.

**Motion Proposals:** First Emily Kile  
 Second Leonard Montanaro  
 Recused Ted Evertsen

**Motion Results:** Pass

**2-B: Review, discussion and possible action regarding the Division Director dismissal of complaint number 13-0011.**

**Individual Addressing the Board:** Linda Grau

**Discussion:** Pursuant to ACJA § 7-201(H)(1)(g)(3), complaints dismissed 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 13-0011:** - On August 16, 2013, Division Director Wilson dismissed complaint number 13-0011 without prejudice upon determining the complainant failed to supply information needed to remedy an insufficient complaint or failed to

demonstrate the alleged acts of misconduct are within the licensee's responsibilities as required by law, court rules or the applicable ACJA sections. Notice of the dismissal was forwarded to the complainant. The complainant did not request Board review of the dismissal. It is recommended the Board affirm the dismissal.

*Motion:* Move to accept the staff's recommendation.

*Motion Proposals:* First Hon. Jay Polk  
Second Mary Jane Baumgarten

*Motion Results:* Pass

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**3) ADMINISTRATIVE ISSUES:**

**3-A: *Update regarding complaints processed by diversion pursuant to Administrative Order 2012-83.***

*Individual Addressing the Board:* Debbie MacDougall

*Discussion:* There are no diversion cases to report at this time.

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**4) LINCESURE AND ELIGIBILITY:**

**4-A: *Review, discussion, and possible action regarding the voluntary surrender of license received from the following licensed fiduciaries:***

1. *Chalmers T. James, Jr., license number 20295*
2. *Dixie Fredrickson, license number 20202*
3. *Christina I. Rodriguez, license number 20679*

*Individual Addressing the Board:* Kimberly Siddall

*Discussion:* It is recommended the Board accept the requests for voluntary surrender of license from the following applicants:

1. *Chalmers T. James, Jr., license number 20295*
2. *Dixie Fredrickson, license number 20202*
3. *Christina I. Rodriguez, license number 20679*

*Motion:* Move to accept the voluntary surrender of licenses for the following applicants: Mr. James, Ms. Fredrickson and Ms. Rodriguez.

**Motion Proposals:** First Ted Evertsen  
Second Hon. Jay Polk  
**Motion Results:** Pass

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**5) INITIAL LICENSE APPLICATIONS**

**5-A: Review, discussion, and possible action regarding the following pending applications for individual and/or business entity licensure:**

1. RHL Fiduciary LLC (Robert Harner)
2. Jennifer Goldman
3. Kelly Ellis
4. Katherine Trojahn
5. Philip DeVico
6. Fred Cohen

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** It is recommended the Board grant initial licensure to the following applicant:

1. RHL Fiduciary LLC (Robert Harner)
2. Jennifer Goldman

**Motion:** Move to accept staff's recommendation.

**Motion Proposals:** First Hon. Jay Polk  
Second Leonard Montanaro  
**Motion Results:** Pass

**Individual Addressing the Board:** Kimberly Siddall

**Discussion:** It is recommended the Board grant initial licensure to the following applicant:

3. Kelly Ellis

**Motion:** Move to grant initial licensure.

**Motion Proposals:** First Leonard Montanaro  
Second Mark Rubin  
**Motion Results:** Pass

**Individual Addressing the Board:** Wendy Reiter

**Discussion:** It is recommended the Board grant initial licensure to the following applicant:

4. *Katherine Trojahn*

**Motion:** Move to grant initial licensure.

**Motion Proposals:** First Ted Evertsen  
Second Mark Rubin

**Motion Results:** Pass

**Individual Addressing the Board:** Wendy Reiter

**Discussion:** 5. *Philip DoVico*

It is recommended the Board grant fiduciary licensure, however, language should be included in the Board's letter granting licensure acknowledging the issues of concern and reserve the right of the Board to take action on any related complaints with regards to Mr. DoVico or Southwest Fiduciary, Inc. in the future.

**Motion:** Move to accept staff's recommendation.

**Motion Proposals:** First Emily Kile  
Second Ted Evertsen  
Recused Hon. Jay Polk

**Motion Results:** Denied.

**Discussion:** It is recommended deferring the matter to the next board meeting and invite Mr. DoVico to the next meeting so that the Board has an opportunity to interview him and discuss their concerns.

**Individual Addressing the Board:** Wendy Reiter

**Discussion:** It is recommended that the Board deny the application for fiduciary licensure for the following applicant:

6. *Fred Cohen*

**Motion:** Move to accept denial of fiduciary licensure.

**Motion Proposals:** First Emily Kile  
Second Leonard Montanaro

**Motion Results:** Pass

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**CALL TO THE PUBLIC**

*Individuals Addressing the Board:* None

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**ADJOURNMENT**

*Motion:* Move to adjourn.

*Motion Proposals:* First Emily Kile  
Second

*Motion Results:* Pass

*Time:* 11:15 a.m.

Initials: AO