



FIDUCIARY BOARD

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

May 8, 2014
10:30 A.M.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Deborah Primock
Emily Kile
Gary Krmarik
Catherine Robbins

Telephonically Present:

Diana Corry
Hon. Jay Polk
Sherry Reed

Absent:

Mark Rubin
Leonard Montanaro

OTHER ATTENDEES:

AOC Staff:

Mark Wilson
Michelle Martinez
Debbie MacDougall
Kimberly Siddall
Anne Hunter
Pasquale Fontana
Wendy Reiter
Rachael Rowland
Arnita Oliver

Guests:

CALL TO ORDER

Called to Order By: Deborah Primock, Chair

Time: 10:33 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 13, 2014.*

Individual Addressing the Board: Deborah Primock

Discussion: None

Motion: Move to approve the regular session minutes for the meeting of March 13, 2014.

Motion Proposals: First Gary Krcmarik
Second Catherine Robbins

Motion Results: Pass

1-B: *Review, discussion and possible action regarding the executive session minutes of the meeting held on March 13, 2014.*

Individual Addressing the Board: Deborah Primock

Discussion: None

Motion: Move to approve the executive session minutes for the meeting of March 13, 2014.

Motion Proposals: First Gary Krcmarik
Second Emily Kile

Motion Results: Pass

2) PENDING COMPLAINTS:

2-A: *Review, discussion and possible action regarding complaint number 13-0010 involving licensed fiduciary Kay Kozak.*

Individual Addressing the Board: Kimberly Siddall

Discussion: **Complaint Number 13-0010** - Kay Kozak – The Division received this complaint on August 1, 2013. The complainant submitted five (5) allegations:

1. Ms. Kozak violated HIPAA regulations.
2. Ms. Kozak did not manage the income of the estate.
3. Caregivers were instructed by Kozak to not let clients go to bed until late hours and would not let incontinent bedding to be changed appropriately.
4. Ms. Kozak employed neglectful and incompetent caregivers.
5. Ms. Kozak had a new Will signed by a dying ward with the help of another caregiver who held the wards hand while signing.

The matter was investigated and submitted for probable cause evaluation.

On April 7, 2014, Probable Cause Evaluator Mike Baumstark entered a finding probable cause *does not* exist in this complaint.

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 13-0010.

Motion: Move to accept staff’s recommendation and request staff send a letter to Ms. Kozak reminding her of a fiduciary’s duties and obligations; and to take appropriate precautions so there is no appearance of impropriety.

Motion Proposals: First Emily Kile
Second Catherine Robbins

Motion Results: Pass

2-B: *Review, discussion and possible action regarding complaint number 09-0007 involving Stephanie McCollum.*

Individual Addressing the Board: Pasquale Fontana

Discussion: **Complaint Number 09-0007** – Stephanie McCollum - On March 6, 2009, the Division received a written complaint, containing two allegations:

1. The complainant alleges Ms. McCollum hired the complainant to complete construction work on behalf of SVG, and that she requested he hire her husband, Jim McCollum, and pay him 50% (fifty percent) of the profits from a completed work project.
2. The complainant alleges Ms. McCollum wanted to pay Jim McCollum 50% (fifty percent) of the profits from other work projects and when the complainant refused to pay he was not hired for any future work.

The matter was investigated and submitted for probable cause evaluation.

On April 7, 2014, Probable Cause Evaluator Mike Baumstark entered a finding probable cause *does not* exist as to Allegation 2 but *does* exist as to Allegation 1.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Stephanie McCollum has *not* committed the alleged acts of misconduct as detailed in the Allegation 2.

It is recommended the Board enter a finding and dismiss Allegation 2 pursuant to Arizona Code of Judicial Administration (“ACJA”) §7-201(H)(5)(c)(1).

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Stephanie McCollum has committed the alleged acts of misconduct as detailed in the Allegation.

Regarding Allegation 1, it is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to ACJA § 7-201(F)(1) and § 7-202(J) and issue a Letter of Concern pursuant to AJCA § 7-201(H)(24)(a)(6)(a)..

Motion: Move to have it further investigated to substantiate and bring Stephanie McCollum in for an interview.

Motion Proposals: First Emily Kile
 Second Gary Krcmarik
 Recused Judge Jay Polk

Motion Results: Pass

2-C *Review, discussion and possible action regarding complaint number 13-0006 involving Stephanie McCollum.*

Individual Addressing the Board: Pasquale Fontana

Discussion: **Complaint Number 13-0006** – Stephanie McCollum - On March 14, 2013, the Division received a written complaint, containing three (3) allegations:

1. The complainant alleges Ms. McCollum did not comply with the wishes of the ward and family to discharge Frenette as care manager and by not removing her and not reducing caregiver hours allowed for excessive and unnecessary costs to the estate.
2. The complainant alleges Ms. McCollum did not terminate home health services despite knowing that PCP for the ward did not think she required home health care.
3. The complainant alleges Ms. McCollum failed to disclose of her prior relationship with Frenette therefore creating the appearance of collusion and possible conspiracy charges.

The matter was investigated and submitted for probable cause evaluation.

On April 7, 2014, Probable Cause Evaluator Baumstark entered a finding probable cause *does not* exist as to Allegations 1 and 2 but *does* exist as to Allegation 3.

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations 1 and 2 pursuant to ACJA § 7-201(H)(5)(c)(1).

Regarding Allegation 3, 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) and ACJA § 7-202(J) and issue a Letter of Concern pursuant to AJCA § 7-201(H)(24)(a)(6)(a).

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins
Second Gary Krcmarik
Recused Judge Jay Polk

Motion Results: Pass

2-D: Review, discussion and possible action regarding complaint number 13-0004 involving Gregory DeVico and Southwest Fiduciary, Inc.

Individual Addressing the Board: Pasquale Fontana

Discussion: **Complaint Number 13-0004** – Gregory DoVico and Southwest Fiduciary, Inc. - On April 22, 2013, the Division received a written complaint, containing nine (9) allegations:

1. The complainant alleges SFI billed the estate for quarterly reports but did not provide the reports
2. The complainant alleges SFI uses software programs, Time Matters and Time Keepers, which added unfair and unnecessary billing costs to the estate.
3. The complainant alleges SFI expended in excess of 2,350,000.00 and there has been continual depletion of the estate's assets since 2006.
4. The complainant alleges SFI conveyed property, a restricted asset, to the ward and took a \$412,000.00 loan on the property.
5. The complainant alleges SFI failed to properly insure the ward's residence of and the home was damaged by water resulting in devaluation of the estate.
6. The complainant alleges Gregory DoVico, as trustee of the Petric Family Trust, made a loan to SFI manager, Phillip DoVico, for \$100,000.00, using the ward's house as security and charges 18% interest.
7. The complainant alleges SFI did not list the \$100,000.00 loan on the annual accounting for that year.
8. The complainant alleges SFI had its attorney perform tasks that should have been done by the fiduciary creating unnecessary financial expenses for the ward.
9. The complainant alleges SFI failed to pay the ward's taxes on time resulting in interest and penalty charges.
10. The complainant alleges DoVico did not avoid self-dealing or the appearance of a conflict of interest in violation of ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), ACJA § 7-202(J)(7), § 7-202 (J)(2)(b), and § 7-202 (J)(4)(g).

11. The complainant alleges DoVico delegated fiduciary responsibilities to an unlicensed employee, in violation of ACJA § 7-202(f)(5)(a) and § 7-202(F)(5)(c).

The matter was investigated and submitted for probable cause evaluation.

On April 8, 2014, Probable Cause Evaluator Baumstark entered a finding probable cause *does not* exist as to Allegations 2, 3, 4, 5, 6, 7 and 9. But *does* exist as to Allegation 1, 8, 10 and 11.

It is recommended the Board except the finding of the Probable Cause Evaluator and dismiss Allegations 2, 3, 4, 5, 6, 7 and 9 pursuant to Arizona Code of Judicial Administration (“ACJA”) §7-201(H)(5)(c)(1).

It is further recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Gregory DoVico and Southwest Fiduciary Inc., have committed the alleged acts of misconduct as detailed in the Allegations 1, 8, 10 and 11.

It is recommended the Board enter a finding grounds for informal disciplinary action exists for acts of misconduct involving Allegations 1 and 8 for acts of misconduct involving ACJA §7-201(F)(1), ACJA §7-202(F)(5)(a) and (c), §7-202(J), §7-202(H)(6)(k) and A.R.S §14-1104(1) and issue a Letter of Concern.

It is recommended the Board enter a finding grounds for formal disciplinary action exists for acts of misconduct involving Allegations 10 and 11 pursuant to ACJA §7-201(F)(1), ACJA §7-202(F)(5)(a) and (c), and §7-202(J) and issue a Censure.

Considering the mitigating and aggravating factors, should the Board ultimately find misconduct occurred, it is recommended the Board issue a Censure to Mr. DoVico and Southwest Fiduciary, Inc., pursuant to ACJA § 7-201(H)(24)(a)(6)(b).

If the Board accepts the recommendation and moves for formal disciplinary action, it is recommended the Board authorize the Chair to sign the Notice of Formal Statement of Charges on behalf of the full Board.

Motion: Move to accept staff’s recommendation as to Allegation 1 only.

Motion Proposals: First Emily Kile
Second Gray Krcmarik
Recused Judge Jay Polk, Deborah Primock

Motion Results: Pass

Motion: Move to table Allegations 10 and 11 until the next meeting.

Motion Proposals: First Gary Krcmarik
Second Emily Kile
Recused Judge Jay Polk and Deborah Primock

Motion Results: Pass

Motion: Move to reject the findings of the Probable Cause Evaluator and dismiss the findings for Allegation 8.

Motion Proposals: First Emily Kile
Second Gary Krcmarik
Motion Results: Pass Judge Jay Polk, Deborah Primock

Motion: Move to accept staff's recommendation to dismiss Allegations 2, 3, 4, 5, 6, 7, & 9.

Motion Proposals: First Gary Krcmarik
Second Emily Kile
Motion Results: Pass Judge Jay Polk, Deborah Primock

2-E: Review, discussion and possible action regarding Gregory DeVico and Southwest Fiduciary, Inc. settlement proposal concerning complaint number 13-0007.

Individual Addressing the Board: Pasquale Fontana

Discussion: This matter was previously presented to the Board on January 9, 2014, at which time the Board accepted the findings of the Probable Cause Evaluator and issued a Notice of Formal Statement of Charges and Right to Hearing.

On April 17, 2014, Paul Harter, counsel for Southwest Fiduciary, Inc. presented a settlement proposal suggesting that the charges should be dismissed and, in the alternative, as a compromise and in an effort to resolve the matter without a hearing and without admitting fault or responsibility proposed a Letter of Concern be issued.

Motion: Move to maintain the recommendation that was previously provided and not accept the settlement offer.

Motion Proposals: First Emily Kile
Second Sherry Reed
Recused Deborah Primock
Opposed Catherine Robbins

Motion Results: Pass

3) INITIAL LICENSURE AND ELIGIBILITY

3-A: Review, discussion and possible action regarding the following applications for initial licensure:

1. Kathryn Munro
2. Fiduciary Services of Northern Arizona, LLC
3. Ellen Riddick

Individual Addressing the Board: Rachael Rowland

Discussion: It is recommended to grant initial licensure to the following applicants:

1. Kathryn Munro
2. Fiduciary Services of Northern Arizona, LLC

Motion: Move to accept staff's recommendation and grant initial licensure.

Motion Proposals: First Judge Jay Polk
Second Gary Krcmarik

Motion Results: Pass

Discussion: It is recommended to grant initial licensure to the following applicants:

3. Ellen Riddick

Motion: Move to accept staff's recommendation and grant initial licensure.

Motion Proposals: First Emily Kile
Second Judge Jay Polk
Recused Catherine Robbins

Motion Results: Pass

4) LICENSURE AND ELIGIBILITY:

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

1. *Shellie Hills, License number 20004*
2. *RaShara L. Badilla, License number 20010*

Individual Addressing the Board: Kimberly Siddall

Discussion: It is recommended the Board accept the requests from Shellie Hills and RaShara Badilla to voluntarily surrender their license.

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins
Second Gary Krcmarik

Motion Results: Pass

4-B Review, discussion and possible action regarding the request of Virginia Flores to retake the Fiduciary Licensing Examination.

Individual Addressing the Board: Kimberly Siddall

Discussion: It is recommended the Board permit Ms. Flores to retake the examination for the fifth time.

Motion: Move to accept staff's recommendation.

Motion Proposals: First Gary Krcmarik
Second Catherine Robbins

Motion Results: Pass

5) PROPOSED ACJA REVISION:

5-A: Update, discussion and possible action regarding proposed amendment to ACJA § 7-201 to address untimely renewals.

Individual Addressing the Board: Anne Hunter

Discussion: A brief update is given by Anne Hunter of the proposed amendment regarding untimely renewals. A pilot program was put into place for a year which expired on January 1 and another Administrative Order issued to extend the program. Again, this program was put into place to process untimely renewal applications and recommend to the applicable board to renew a certificate if the applicant demonstrates good cause for the untimely filing.

6) **AMENDED STATEMENT OF CHARGES:**

6-A: *Review, discussion and possible action regarding the amended Notice of Formal Statement of Charges for complaint number 11-0007 – Arizona Department of Veterans’ Services.*

Individual Addressing the Board: Anne Hunter

Discussion: **Complaint Number 11-0007** – Arizona Department of Veterans’ Services - On January 9, 2014, the Board accepted the findings of the Probable Cause Evaluator in regards to complaint number 11-0007 and dismissed Allegations 2, 3, 4 and 5 of the complaint. The Board found grounds for and issued a Letter of Concern to ADVS pertaining to Allegations 6, 7 and 8.

Regarding Allegation 1 of the complaint, the Board entered a finding grounds for formal disciplinary action existed and issued a Notice of Formal Statement of Charges, pursuant to ACJA § 7-201(H)(6)(a). ADVS timely filed a request for hearing pursuant to ACJA § 7-201(H)(13).

Prior to the hearing, ADVS proposed a settlement which involved ADVS withdrawing its request for hearing and the Board removing the term “knowingly submitted a fraudulent Report to Court” from the Notice of Formal Statement of Charges and replaced it with “knowingly submitted a false Report to Court.”

At its March 14th meeting, the Board voted to deviate from the posted agenda pursuant to ACJA § 1-202(C)(2)(c) that provides for hearing an agenda item that has not been posted in less than the 48 hours notice which is based on certain criteria. The Board did vote to hear that agenda item and also voted on a proposal. The Board accepted the settlement proposal and issued an amended Notice of Formal Statement of Charges. Division staff drafted the amended statement. In the amended statement, the formal charge that ADVS violated ACJA § 7-201(F)(1), ACJA § 7-202(F)(1) and (J)(2)(f) was not changed, with the exception of replacing the word “fraudulent” with the word “false.” Further, the disciplinary sanction of censure was not changed.

Division staff recommends that Board accept the amended statement and authorize the Chair to sign the statement on behalf of the full Board.

Staff would also like the Board to be aware that subsequent to the March 14th meeting and the vote to accept a settlement, a complaint was received that the open meeting laws were violated, although the Board voted on hearing that item. It is suggested, in the motion to accept the Amended Notice Formal Statement of Charges and that the Board also include the language that reaffirms and ratifies any actions regarding this particular case.

Motion: Move to accept staff's recommendation.

Motion Proposals: First Catherine Robbins

Second Emily Kile

Motion Results: Pass

7) ADMINISTRATIVE ISSUES:

7-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 to the Board at this time.

CALL TO THE PUBLIC

Individuals Addressing the Board: Remarks from Mark Wilson

ADJOURNMENT

Motion: Move to adjourn.

Motion Proposals: First Gary Krcmarik

Second Catherine Robbins

Motion Results: Pass

Time: 1:05 P.M.

Initials: AO