



# FIDUCIARY BOARD

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

**September 10, 2015**  
**10:30 a.m.**

## **Approved Regular Meeting Minutes**

### **MEMBER ATTENDANCE:**

#### **Present:**

Deborah Primock-Chair  
Gary Krcmarik  
Elaine Acosta Sweet  
Catherine Robbins

#### **Telephonically Present:**

Diana Corry  
Emily Kile  
Leonard Montanaro  
Honorable Jay Polk

#### **Absent:**

Mark Rubin  
Sherry Reed

### **OTHER ATTENDEES:**

#### **AOC Staff:**

Mark Wilson  
Michelle Martinez  
Debbie MacDougall  
Anne Hunter  
Pasquale Fontana  
Sheryll Prokop  
Hal White  
Wil Castro  
Armita Oliver

#### **Guests:**

Mary Jane Condit  
Michael Bogle  
Andrea ?  
Charles Fuss  
Cindy Gonzalez  
Shawnie Patterson

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**CALL TO ORDER**

*Called to Order By:* Deborah Primock, Chair

*Time:* 10:31 a.m.

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

**1-A:** *Review, discussion, and possible action regarding the regular session minutes of the meeting held on July 9, 2015.*

*Individual Addressing the Board:* Deborah Primock

*Discussion:* None

*Motion:* Move to accept the regular session minutes of the meeting on July 9, 2015.

*Motion Proposals:* First Gary Krcmarik  
Second Elaine Sweet

*Motion Results:* Pass

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**2) PENDING COMPLAINTS:**

**2-A:** *Review, discussion, and possible action regarding complaint number 14-0004 involving license holder, Denise Shepherd.*

*Individual Addressing the Board:* Pasquale Fontana

*Discussion:* **Complaint No. 14-0004 - Denise Shepherd** - On July 3, 2014, the Division received a written complaint against Denise Shepherd containing four allegations:

1. Complainant alleges Wheeler did not receive medical care and did not see a doctor until 19 months into the guardianship.
2. Complainant alleges Shepherd did not properly manage Wheeler's real property.
3. Complainant alleges Shepherd delayed the termination of the Conservatorship until six months after Wheeler's death causing a delay in probate.

4. Complainant alleges Shepherd negotiated a settlement regarding a promissory note that was contrary to Wheeler's wishes.

The matter was investigated and submitted for probable cause evaluation.

On August 31, 2015, Probable Cause Evaluator Baumstark entered a finding probable cause *does not exist* in Allegations 1, 2, 3, and 4.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Denise Shepherd has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 14-0004.

It is further recommended the Board dismiss complaint number 14-0004.

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

**Motion Proposals:** First Catherine Robbins  
Second Judge Jay Polk

**Motion Results:** Pass

**2-B: Review, discussion and possible action regarding complaint number 15-0008, involving license holder, Walter Bache.**

**Individual Addressing the Board:** Bill MacIntyre

**Discussion:** **Complaint Number 15-0008 – Walter Bache** - On April 3, 2015, the Division received a complaint alleging misconduct on the part of license holder, Walter Bache. Complainant alleged Bache, who the complainant hired as her POA, mismanaged her assets and stole some of her personal items.

The case was investigated and on August 20, 2015, Probable Cause Evaluator Mike Baumstark found no probable cause exists for the allegations.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Walter Bache has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 15-0008.

It is further recommended the Board dismiss complaint number 15-0008.

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

**Motion Proposals:** First Catherine Robbins  
Second Gary Krcmarik

**Motion Results:** Pass

**2-C: Review, discussion and possible action regarding complaint number 15-0004, involving license holder, Maricopa County Public Fiduciary.**

**Individual Addressing the Board:** Bill MacIntyre

**Discussion:** **Complaint Number 15-0004 – Maricopa County Public County Fiduciary** - On January 20, 2015, the Division received a complaint alleging misconduct on the part of the MCPF. Complainant alleged the MCPF was appointed unnecessarily to care for her son and, after appointment, engaged in a pattern of inappropriate care and mismanaged assets. This complaint was filed by the same complainant in case number 12-0011, alleging the same violations, however, no new facts or information was discovered.

The case was investigated and on August 20, 2015, Probable Cause Evaluator Mike Baumstark found no probable cause exists for the allegations.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Maricopa County Public Fiduciary has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 15-0004.

It is further recommended the Board dismiss complaint number 15-0004.

**Motion:** Move to accept staff's recommendation and dismiss the complaint with prejudice.

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

**Motion Results:** Pass

**2-D: Review, discussion and possible action regarding complaint numbers 14-0015 and 14-0016, involving license holders, Mary Jane Condit and Condit and Associates.**

**Individual Addressing the Board:** Hal White

**Discussion:** **Complaint Numbers 14-0015 and 14-0016 – Mary Jane Condit and Condit and Associates** – On December 9, 2014, the Division received a complaint alleging misconduct on the part of Mary Jane Condit and Condit and Associates as follows:

1. James J. Kerkes, who was under extreme medication and suffered from dementia. Condit & Associates, LLC, allowed Mr., Kerkes to change his Will ten days before he passed away.
2. Stack of Money, three \$10,000 certificates of deposit and three letters were missing from the safe.
3. No beneficiaries were allowed in room when safe was opened. How could she take over and take items in father’s safe. My dad had beneficiaries. He wanted us to do this
4. Ms. Condit did not at a minimum, record pictorially and establish and maintain accurate record of all real and personal property.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Mary Jane Condit and Condit and Associates has not committed the alleged act(s) of misconduct as detailed in Allegations 1, 2 and 3 and has committed the alleged act(s) of misconduct as detailed in Allegation 4.

It is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-202(J)(5)(b) by failing to marshal and pictorially record the property of the estate.

It is further recommended the Board issue a Letter of Concern.

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

**Motion Proposals:** First Emily Kile  
Second Elaine Sweet

**Motion Results:** Pass

**2-E:** *Review, discussion and possible action regarding complaint numbers 14-0017 and 14-0018, involving license holders, East Valley Fiduciary Services and Michael Bogle.*

**Individual Addressing the Board:** Hal White

**Discussion:** **Complaint Number 14-0017 and 14-0018 – East Valley Fiduciary Services and Michael Bogle.** - On December 12, 2014, the Division received a complaint alleging the following misconduct on the part of East Valley Fiduciary Services and Michael Bogle, complaint numbers 14-0017 and 14-0018 as follows:

1. Mr. Huehne claims he did not receive his profit sharing in a timely manner.
2. Mr. Huehne claims he incurred legal and other expenses on top of his monthly HOA assessment, and wants a total of \$7,065 because he did not receive his profit sharing in a timely manner.

The matter was investigated and submitted for probable cause evaluation.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding East Valley Fiduciary Services and Michael Bogle *have* committed the alleged act(s) of misconduct as detailed in Allegation 1 and *have not* committed the alleged act(s) of misconduct as detailed in Allegation 2 of the Investigation Summary and Allegation Analysis Report in complaint numbers 14-0017 and 14-0018.

It is recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving § 7-202(J)(5),(6) and (7) by failing to timely process payments.

It is further recommended the Board issue a Letter of Concern.

***Motion:*** Move to accept staff’s recommendation and issue a Letter of Concern.

***Motion Proposals:*** First Leonard Montanaro  
 Second Emily Kile  
 Opposed Catherine Robbins

***Motion Results:*** Pass

***2-F: Review, discussion and possible action regarding complaint number 12-0004, involving license holder, Entrust Fiduciary Services, Inc.***

***Individual Addressing the Board:*** Hal White

***Discussion:*** **Complaint Number 12-004 – Entrust Fiduciary Service, Inc.** - On May 23, 2012, the Division received a complaint alleging the following misconduct on the part of Entrust Fiduciary Services Inc., complaint number 12-0004.

Allegations Alleged by Complainant:

1. Adult Protective Services (“APS”) did not petition the court for guardianship or conservatorship as required by statute.

2. Prior to appointment Price spent 1.2 hours at nursing home with Schmidt's wife Valerie Schmidt ("Valerie") and charged the estate on itemized bill after appointment.
3. Price misused Schmidt's finances and assets.
4. Abuse of power by Price.
5. Schmidt believes his deceased wife's Valerie accounts were depleted before her death.
6. Price took two home computers from Schmidt's house and Schmidt's attorney, Amanda Taylor ("Taylor") asked for the 2 computers to be returned, no response from Price.
7. Price paid for Schmidt's license plate and registration, even though he is a disabled veteran.
8. Price paid pass due credit cards Schmidt owed on which were settled for a lesser amount.
9. Price paid for labor for landscaping that was never done.
10. Price did not pay Schmidt's bills for September, October, or November 2011.

The matter was investigated and submitted for probable cause evaluation.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Lisa Price *has not* committed the alleged act(s) of misconduct as detailed in Allegations 1, 3, 4, 5, 6, 7, 8, and 9 and Lisa Price *has* committed the alleged act(s) of misconduct as detailed in Allegations 2 and 10 of the Investigation Summary and Allegation Analysis Report in complaint number 12-0004.

It is further recommended the Board enter a finding grounds for informal disciplinary action exists pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for act(s) of misconduct involving: (i) A.R.S. § 14-5414 by causing herself to be paid for services related to the possible appointment as a fiduciary for Valarie Schmidt when she was not appointed; and (ii) ACJA § 7-201(J)(4)(d) for failure to properly manage the ward's estate after he was declared competent by Veterans' Affairs but before she was removed/released as the fiduciary by the Superior Court.

It is recommended that the Board issue a Letter of Concern.

***Motion:***

The Board has additional questions regarding the actions of Ms. Price and request that the investigator address those issues in a supplemental investigation. The Board also has questions for Ms. Price and invite her to attend the next meeting.

The Board defers this matter until the next meeting.

**2-G: Review, discussion and possible action regarding the Division Director dismissal of complaint number 15-0016.**

**Individual Addressing the Board:** Debbie MacDougall

**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 15-0016** – On August 14, 2015, Division Director Wilson dismissed complaint number 15-0016 without prejudice upon determining the complaint falls outside the jurisdiction of the Fiduciary Board. 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 affirm the dismissal.

**Motion Proposals:** First Gary Krcmarik  
Second Elaine Sweet  
Recused Catherine Robbins

**Motion Results:** Pass

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**3) INITIAL LICENSURE AND ELIGIBILITY:**

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

1. **Sandra Wyrick**
2. **Charles Fuss**
3. **Gary Gene McGaha**
4. **Louise Harter**
5. **Cindy Gonzales**
6. **Jessica Zachary**

**Individual Addressing the Board:** Sheryll Prokop

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

1. Sandra Wyrick
2. Charles Fuss

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

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

**Motion Results:** Pass

**Individual Addressing the Board:** Sheryll Prokop

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

3. Gary Gene McGaha

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

**Motion Proposals:** First Catherine Robbins  
Second Elaine Sweet

**Motion Results:** Pass

**Individual Addressing the Board:** Wil Castro

**Discussion:** It is recommended the Board grant initial fiduciary licensure and include the aforementioned language regarding the applicant's failure to disclose in her notification of licensure:

4. Louise Harter

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

**Motion Proposals:** First Catherine Robbins  
Second Gary Krcmarik

**Motion Results:** Pass

**Individual Addressing the Board:** Anne Hunter

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

5. Cindy Gonzales

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

**Motion Proposals:** First Elaine Sweet  
Second Gary Krcmarik  
Recused Catherine Robbins

**Motion Results:** Pass

**Individual Addressing the Board:** Anne Hunter

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

6. Jessica Zachary

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

**Motion Proposals:** First Gary Kremerik  
Second Elaine Sweet

**Motion Results:** Pass

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**4) RENEWAL OF LICENSURE APPLICATIONS:**

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

**Brian Bjorndahl**

**Individual Addressing the Board:** Anne Hunter

**Discussion:** It is recommended the Board deny the renewal application for the following applicant:

Brian Bjorndahl

**Motion:**

**Motion Proposals:** First Elaine Sweet  
Second Judge Jay Polk

**Motion Results:** Pass

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**5) ADMINISTRATIVE ISSUES:**

**5-A: Review, discussion, and possible action regarding the establishment of the 2016 Board meeting schedule.**

**Individual Addressing the Board:** Debbie MacDougall

**Discussion:** The Fiduciary Board is asked to consider and approve the 2016 meeting calendar.

Therefore, it is recommended the 2016 meeting calendar be set as follows:

January 14, 2016  
March 10, 2016  
May 12, 2016  
July 14, 2016  
September 8, 2016  
November 10, 2016

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

**Motion Proposals:** First Gary Krcmarik  
Second Elaine Sweet

**Motion Results:** Pass

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## CALL TO THE PUBLIC

**Individuals Addressing the Board:** Mary Jane Condit

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## ADJOURNMENT

**Motion:** Move to adjourn.

**Motion Proposals:** First Catherine Robbins  
Second Elaine Sweet

**Motion Results:** Pass

**Time:** 11:55 a.m.

Initials: AO