

FIDUCIARY BOARD

Meeting Agenda – Thursday, September 10, 2015

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 109

General Inquiries Call: 602-452-3378 (Certification and Licensing Division Line)

Members of the Public May Attend Meeting in Person

For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

CALL TO ORDER *Deborah Primock, Chair*

1) REVIEW AND APPROVAL OF MINUTES..... *Deborah Primock, Chair*

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

2) PENDING COMPLAINTS..... *Division Staff*

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

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

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

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.

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.

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

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

3) INITIAL LICENSURE AND ELIGIBILITY.....Division Staff

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

4) RENEWAL OF LICENSURE APPLICATIONS.....Division Staff

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

Brian Bjorndahl

5) ADMINISTRATIVE ISSUES.....Division Staff

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

CALL TO THE PUBLICDeborah Primock, Chair

ADJOURNDeborah Primock, Chair

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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.

A draft of the regular session minutes for the meeting of July 9, 2015, is attached for the Board's review and consideration.

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2) PENDING COMPLAINTS

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

On July 3, 2014, the Division received a written complaint against Denice 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 upon completion of the investigation, the Investigation Summary was forwarded to Probable Cause Evaluator, Mike Baumstark. On August 31, 2015, Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in Allegations 1, 2, 3, and 4, as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 14-0004.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Denice 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.

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2) PENDING COMPLAINTS

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

Recommendation:

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.

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2) PENDING COMPLAINTS

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

Recommendation:

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.

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2) PENDING COMPLAINTS

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.

On December 9, 2014, the Division received a complaint alleging misconduct on the part of the Mary Jane Condit and Condit and Associates, complaint numbers 14-0015 and 14-0016.

Complainant alleged:

Allegation 1: James J. Kerkes (Mr. 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.

Allegation 2: Stacks of Money, three \$10,000 certificates of deposit and three letters were missing from the safe.

Allegation 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.

Allegation 4: Ms. Condit did not at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.

Investigation Summary:

Mr. Kerkes called Attorney Egan and requested she change two documents, Mr. Kerkes' Will and his Family Trust. The Will change made Ms. Condit his PR, and Trustee on the Family Trust. On July 19, 2010, ten days after the new documents were signed, notarized and witnessed Mr. Kerkes passed away.

Mr. Kerkes apparently did not tell the beneficiaries that he had changed his Will, although Mrs. Kerkes-Babcock and Complainant helped Mr. Kerkes find his attorney's phone number so he could do so.

Much of the dispute revolves around the contents of a safe and representations Mr. Kerkes allegedly made regarding those contents prior to his death. Complainant said that Mr. Kerkes told his family there were letters for his beneficiaries and \$10,000 Certificates of Deposit with the letters. Mr. Kerkes also told his beneficiaries there was money to pay off the vehicles loan balances in the safe. Mr. Kerkes told Ms. Condit there was \$60,000 in the safe. Ms. Condit reports there were no letters, CDs, money set aside to pay off vehicles or \$60,000. The safe contents were marshalled, three days after Mr. Kerkes passed.

On July 21, 2010, Ms. Condit and another staff member, Ms. April Little, traveled to Mr. Kerkes' residence to marshal assets, which included taking pictures of Mr. Kerkes residence, and inventorying the assets which included the decedent's safe. The family members wanted to be present, when the safe was opened, but Ms. Condit refused. Ms. Caughey was the only family member present when the safe was opened.

Ms. Condit, an employee, Ms. April Little, Mr. Kerkes granddaughter, Ms. Caughey and the locksmith, Mr. Forster, owner of Absolute Lock and Safe were present. Mr. Forster opened the safe, and a chamber inside the safe at Ms. Condit's request. A handwritten inventory was provided, along with pictures of the safe and its contents.

Ms. Condit did not provide pictures of the top part of the safe when it was opened, or pictures of the contents of the envelopes strapped to the door of the safe. The investigation identified four stories concerning the amount and location of cash that was in the safe. These stories come from three different sources. In addition the investigation determined that the handwritten inventory was not inclusive of all property. For example, eight rings were photographed but only six appear on the handwritten inventory.

Ms. Condit reports that this was a contentious and dangerous situation and that family members, made Ms. Condit's PR duties much harder than customary. For example, Ms. Brandi Sammon did not turn in a vehicle, or vacate the home, when first asked. The vehicle had to be repossessed, and the home foreclosed. Restraining orders were issued and other obstacles needed to be overcome all of which made the PR duties more difficult.

Ms. Condit reports the estate owed more than it was worth, and Ms. Condit paid bills in the prescribed order of liquidity. Beneficiaries were disappointed because they did not get their fathers belongings as promised. The Will had a share equally among the beneficiaries provision. After liquidating the car, motorcycles, jewelry, watches and guns, Ms. Condit gave the never fully inventoried, never pictured household furniture, appliances, tools and other unknown items to the beneficiaries. A complete inventory and or a pictorial inventory of the household was never done, Ms. Condit reports because of difficulties between the PR and the beneficiaries.

Recommendation:

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 of the Investigation Summary and Allegation Analysis Report in complaint numbers 14-0015 and 14-0016.

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 committed the alleged act(s) of misconduct as detailed in Allegation 4 of the Investigation Summary and Allegation Analysis Report in complaint numbers 14-0015 and 14-0016.

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 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.

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2) PENDING COMPLAINTS

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.

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.

Allegation 1: Mr. Huehne claims he did not receive his profit sharing in a timely manner.

Allegation 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.

Investigation Summary:

East Valley Fiduciary Services (EVFS) was acting as successor trustee to The Mandile Family Trust and The Mandile Family Survivor's Trust since June 20, 2013. As trustee, Fiduciary Michael Bogle was responsible for T&M Hardware including certain profit sharing issues. T&M has contracted with Benetech for assistance with its profit sharing program.

Mr. Huehne was eligible for a distribution from the profit sharing plan and claims that the profit sharing check was paid untimely. Mr. Huehne first requested a disbursement on or about October 22, 2013.

The distribution check was sent out from T&M Hardware on January 12, 2015. The check took 14 months from order to distribution.

Recommendation:

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 of the Investigation Summary and Allegation Analysis Report in complaint numbers 14-0017 and 14-0018.

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 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.

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2) PENDING COMPLAINTS

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

Investigation Summary:

Schmidt alleged Price misrepresented herself as an Adult Protective Services (APS) employee and that APS allowed Price to petition the court for guardianship and conservatorship. APS did not petition court as provided in statute.

Schmidt also alleges prior to court appointment; Price stole monies and took control of his deceased wife’s bank account, depleted the account, misused his finances and assets.

Price denied any wrongdoing. Price supplied documentation regarding the matter with her written response.

On August 8, 2015, the investigation was submitted to the Probable Cause Evaluator, Mike Baumstark.

Recommendation:

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 of the Investigation Summary and Allegation Analysis Report in complaint number 12-0004.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding 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 Veteran’s 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.

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2) PENDING COMPLAINTS

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

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.

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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*

The following applicants for individual or business entity fiduciary licensure have submitted complete applications demonstrating that they meet the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which precludes licensure and all applicants have completed the required fiduciary professional training. It is recommended the Board grant initial fiduciary licensure to:

1. Sandra Wyrick
2. Charles Fuss
3. Gary Gene McGaha

The following applications have been processed for Board review and consideration. All applicants have been determined to meet the minimum eligibility requirements for fiduciary licensure. In the event the recommendation is to grant with additional non-disclosure language, the following language would be used:

The Fiduciary Board ("Board") has concluded its review of your application and determined you have satisfied the eligibility requirements for licensure. Although the Board is granting you licensure, the Board members have concerns regarding the failure to disclose <insert failure of disclosure>. Lack of diligence is not a quality embraced by the Board or your colleagues in the profession, and may jeopardize your success. The Board and the Division place the highest priority on honesty and candor. Your failure to disclose information on future applications may result in denial of your renewal of licensure or disciplinary action.

4. Louise Harter – Ms. Harter has submitted an application for initial licensure and meets the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which precludes licensure and Ms. Harter completed the required fiduciary professional training.

Ms. Harter answered no to all of the background questions, but was found to have two undisclosed bankruptcies. When questioned about them, Ms. Harter said her attorney told her that after they

were done, the bankruptcies would be discharged and she did not need to disclose them to us. Ms. Harter produced them. There were no adversarial complaints associated with the bankruptcies.

Staff's recommendation is to grant initial licensure to applicant, Louise Harter, but include the aforementioned language regarding the applicant's failure to disclose in her notification of licensure.

Materials and recommendations for the following two applicants will be provided to the Board at or prior to the meeting:

5. Cindy Gonzales
6. Jessica Zachary

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4) RENEWAL OF LICENSURE APPLICATIONS

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

Brian Bjorndahl

On his application for renewal of his fiduciary license, Mr. Bjorndahl failed to disclose being a defendant in a 2012 civil lawsuit filed by a former client of the law firm with whom the licensee was employed. The lawsuit alleged legal malpractice, negligence and breach of duty on the part of Mr. Bjorndahl and the firm, in their representation of the plaintiff in her capacity as personal representative of her mother's estate. Per Mr. Bjorndahl, the plaintiff alleged that she was given improper advice in settling a claim in the probate action, which the licensee denies. The lawsuit was resolved by settlement agreement in 2013. Per the licensee, he failed to disclose the litigation because it "never came to mind."

At the July 9th Board meeting, the Board reviewed the pending renewal application for Brian Bjorndahl, deferred consideration of the application, and invited Mr. Bjorndahl to attend the September meeting of the Fiduciary Board for an interview regarding his failure to disclose civil litigation on his renewal application. Mr. Bjorndahl's response regarding the Board's invitation to attend has been included in the Board materials.

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5) ADMINISTRATIVE ISSUES

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

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