

FIDUCIARY BOARD

Meeting Agenda – Thursday, May 10, 2018

Arizona Supreme Court -1501 West Washington Street

Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 230

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 ORDERDeborah 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 interim meeting held on March 8, 2018.

2) PENDING COMPLAINTS.....Division Staff

2-A: Review, discussion and possible action regarding complaint numbers 16-0004 and 16-0005, involving licensees Southwest Fiduciary and Gregory Dovico.

2-B: Review, discussion and possible action regarding complaint numbers 17-0001 and 17-0002, involving licensees Elizabeth Crosby and Integrated Fiduciary Services, Inc.

2-C: Review, discussion and possible action regarding complaint numbers 16-0007, 16-0008, 16-0009 and 17-0014 involving licensees Northern Arizona Fiduciaries and Carla Jones.

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

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

1. Laber & Laber, PLC
2. Cheri Murray
3. Tara Miller

4) LICENSURE AND ELIGIBILITY.....*Division Staff*

4-A: Review, discussion, and possible action regarding the voluntary surrender of licensure received from Alexander Hobson.

5) ADMINISTRATIVE ISSUES*Division Staff*

CALL TO THE PUBLIC*Deborah Primock, Chair*

ADJOURN*Deborah 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 March 8, 2018.

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2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding complaint numbers 16-0004 and 16-0005, involving licensees Southwest Fiduciary and Gregory DoVico.*

The Certification and Licensing Division (“Division”) received a complaint containing the following allegations:

1. Southwest Fiduciary, Inc. did not properly set up the trust causing Beneficiary to be disqualified for social security benefits.
2. Southwest Fiduciary, Inc. spent down the trust, but little was spent on helping Beneficiary.
3. Southwest Fiduciary, Inc. did not prudently manage the trust because funds were not invested to promote financial growth and offset administrative costs and fees.
4. Southwest Fiduciary, Inc. charged the trust to correct mistakes the fiduciary made when preparing the trust.
5. Southwest Fiduciary, Inc. did not file required trust accountings.

The Division’s investigation substantiated Allegation 3.

By way of background, Southwest Fiduciary, Inc. was appointed trustee of the subject trust on or about August 30, 1999 and executed the trust on or about November 17, 1999. Southwest Fiduciary, Inc. was not involved in the preparation of the trust. The trust appears to have been prepared on or about July 21, 1999 by the Maricopa County Public Fiduciary’s office and filed with the Superior Court, by and through counsel, along with a petition to establish a trust and appoint a trustee.

On or about January 20, 2000, Southwest Fiduciary, Inc. received \$60,000.00, representing the balance of the trust, from the Maricopa County Public Fiduciary’s office. Gregory DoVico, owner and designated principal of Southwest Fiduciary, Inc., held the trust funds in standard checking and savings bank accounts and maintained those funds in checking and savings accounts until the trust was required to be spent down beginning in July 2015. Mr. DoVico did not invest any portion of the trust money outside of standard checking and savings accounts.

The Division notes that, although Mr. DoVico and Southwest Fiduciary, Inc. began administering the trust on or about January 20, 2000 upon receipt of the trust money, the Division did not have regulatory authority over fiduciaries acting as trustees until on or about September 30, 2009, pursuant to Administrative Order 2009-105.

The Division did not substantiate Allegations 1, 2, 4 and 5.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Gregory DoVico and Southwest Fiduciary have not committed the alleged act(s) of misconduct as detailed in allegations 1, 2, 4 and 5 of the Investigation Summary and Allegation Analysis Report in complaint numbers 16-0004 and 16-0005.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Gregory DoVico and Southwest Fiduciary have committed the alleged act(s) of misconduct as detailed in allegation 3 of the Investigation Summary and Allegation Analysis Report in complaint numbers 16-0004 and 16-0005.

It is recommended the Board enter a finding dismissing allegations 1, 2, 4 and 5 and enter a finding grounds for informal disciplinary action exists for allegation 3 pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA §§ 7-202(J)(2)(a) and 7-202(J)(7) and A.R.S. §§ 14-10801; 14-10804; 14-10901; 14-10902 and 14-10903, all as further described in the Investigation Summary and Allegation Analysis Report.

It is further recommended the Board enter an order dismissing allegations 1, 2, 4 and 5 and issuing a Letter of Concern as to allegation 3.

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2) PENDING COMPLAINTS

2-B: Review, discussion and possible action regarding complaint numbers 17-0001 and 17-0002, involving licensees Elizabeth Crosby and Integrated Fiduciary Services, Inc.

On February 17, 2017, the Certification and Licensing Division (“Division”) received a complaint containing the following allegations:

1. Elizabeth Crosby and Integrated Fiduciary Services, Inc. violated a term of a Court Order by failing to timely notify an interested party of a significant change affecting the ward.
2. Elizabeth Crosby and Integrated Fiduciary Services, Inc., made no effort to re-evaluate or consider the improvement of a Ward’s condition to ensure the least restrictive environment.
3. Elizabeth Crosby and Integrated Fiduciary Services, Inc. failed to timely file an inventory of assets with the Court, sought several extensions of time to file, and charged the estate for requests for relief from the Court.
4. Elizabeth Crosby and Integrated Fiduciary Services, Inc., by obtaining a medical report, violated code of conduct because she tampered with an expert witness and interfered with attorney-client privilege.

The Division’s investigation determined that Ms. Crosby did not timely notify an interested party of a significant change affecting the ward, per Allegation 1. The said term of the Court’s order set out that the ward’s brother “...shall be promptly (that is, within 24 hours) be informed of any significant change of medical condition, incident, or event affecting...”

Ms. Crosby notified the ward’s brother four days after the ward fell, injured her hip, and required immediate hospitalization. The Division notes that although the court’s order, in its terms, did not specifically name Ms. Crosby, she is the court-appointed guardian and Ms. Crosby acknowledged that she interpreted the order to read that it was her responsibility to contact the family member.

Allegations 2, 3 and 4 were not substantiated.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Elizabeth Crosby and Integrated Fiduciary Services, Inc. have not committed the alleged act(s) of misconduct as detailed in allegations 2, 3 and 4 of the Investigation Summary and Allegation Analysis Report in complaint numbers 17-0001 and 17-0002.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Elizabeth Crosby and Integrated Fiduciary Services, Inc. have committed the alleged act(s) of misconduct as detailed in allegation 1 of the Investigation Summary and Allegation Analysis Report in complaint numbers 17-0001 and 17-0002.

It is recommended the Board dismiss allegations 2, 3 and 4 and enter a finding grounds for informal disciplinary action exists for allegation 1 pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for act(s) of misconduct involving ACJA §§ 7-201(H)(6)(a) and 7-202(J)(1)(a) as further described in Investigation Summary and Allegation Analysis Report.

It is further recommended the Board enter and order dismissing allegations 2, 3 and 4 and issuing a Letter of Concern as to allegation 1.

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2) PENDING COMPLAINTS

2-C: *Review, discussion and possible action regarding complaint numbers 16-0007, 16-0008, 16-0009 and 17-0014 involving licensees Northern Arizona Fiduciaries and Carla Jones.*

Complaint numbers 16-0007, 16-0008, 16-0009, and 17-0014 involving Northern Arizona Fiduciaries, Inc., (“NAF”) and Carla Jones were brought before this Fiduciary Board on September 7, 2017 at which time the Board voted to defer all matters for consideration at a later date. The Board instructed Certification and Licensing Division (“Division”) staff to attempt to resolve the regulatory issues related to the conduct, detailed in the complaints corresponding Investigation Summaries, through a Consent Agreement.

Division staff has met with NAF representatives and it is proposed that the Fiduciary Board, NAF and Ms. Jones enter into this Consent Agreement to resolve complaint numbers 16-0007, 16-0008, 16-0009 and 17-0014.

Terms of the Consent Agreement include, but are not limited to:

2. For all services provided by the demoted employee but billed at a Fiduciary rate NAF has caused or shall within 30 days of the date of this agreement the return of the difference between the fiduciary billing rate and the lower appropriate rate for the services provided. If the funds cannot be returned they shall be forwarded to the State as unclaimed property.
3. The Fiduciary Board censures NAF and Ms. Jones and places each on probation for a term of two years from the date of the first onsite visit by Affiliated Monitors, Inc. as further described below.
4. Not as part of the probationary terms and as a continuing obligation, NAF and Ms. Jones agree to provide the Fiduciary Board and Division staff unimpeded access to NAF records and staff.

Terms of Probation include:

5. Terms of Probation:
 - a. NAF shall enter into an agreement with Affiliated Monitors, Inc. and the agreement shall be in form and substance satisfactory to Division staff (the “Agreement”). The purpose of the Agreement is to provide the Fiduciary Board

with assurances that NAF and Ms. Jones are in compliance with all code, rules and statutory requirements and, if appropriate, cause NAF and Ms. Jones to modify their policies, procedures and practices.

- b. The Agreement shall provide for two years of monitoring. The first year there shall be no less than four monitoring visits. Additional visits will be required if remedial actions are identified requiring the visits to determine code, rule and statutory compliance.
 - c. In the second year there shall be no less than two monitoring visits. Additional visits will be required if remedial actions are identified requiring the visits to determine code, rule and statutory compliance.
 - d. In addition to the monitoring, the Agreement shall provide that Affiliated Monitors, Inc. shall provide reports to Division staff after each monitoring visit.
 - e. All cost associated with the monitoring and any reports or other activity shall be paid by NAF and Ms. Jones.
 - f. NAF and Ms. Jones shall comply with all reasonable requests of Affiliated Monitors, Inc. NAF and Ms. Jones shall immediately notify Division staff of any refusal to comply. The notification shall contain the request and the bases of NAF and Ms. Jones refusal to comply.
6. NAF and Ms. Jones shall comply with all code, rule and statutory obligations. A failure to comply with these obligations or the Monitoring Agreement may result in further discipline. The parties agree that upon a violation the Fiduciary Board may reopen the Complaints as if this agreement was not entered.

Recommendations:

The Division recommends the Board accept the terms of the Consent and issue a Censure to NAF and Carla Jones for the conduct in complaint numbers 16-0007, 16-0008, 16-0009, and 17-0014, as detailed in the Investigation Summaries. The Division further recommends the Board places NAF and Carla Jones on probation for a term of two years from the date of the first onsite visit by Affiliated Monitors, Inc., as further detailed in the Consent Agreement's terms of probation.

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3) INITIAL LICENSURE AND ELIGIBILITY

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

The following applicant for business entity fiduciary licensure has submitted a complete application demonstrating it meets the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which would preclude licensure.

The Division recommends approval of initial business entity fiduciary licensure for the following applicant:

1. Laber & Laber, PLC

2. Cheri Murray applied for initial fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training. Ms. Murray disclosed two family matters, two bankruptcies that occurred in 1986 and 2012 and a 2010 Maricopa County Superior Court case in which she was listed as a defendant for breaching a contract to repay fees associated with a purchase of property. A judgement was entered against her and the matter was handled in the 2012 bankruptcy case. An adversary proceeding was initiated in the 2012 bankruptcy case in which Ms. Murray filed a complaint to avoid the judicial lien on the real estate resulting from the 2010 Maricopa County Superior Court case. An order was granted in her favor, granting judgment by default and the bankruptcy was discharged and terminated in 2014.

Division recommends that initial fiduciary licensure be granted to Cheri Murray.

3. Tara Miller applied for initial fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training. Ms. Miller disclosed several civil cases, to include three civil cases that involved allegations of violations of fair debt collection and legal malpractice. Ms. Miller was a listed defendant in these cases and stated that she had limited involvement in these matters with no direct allegations made against her. Two of the cases were dismissed with prejudice and the other concluded with a satisfaction of judgment being entered in favor of the plaintiff.

Division recommends that initial fiduciary licensure be granted to Tara Miller.

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4) LICENSURE AND ELIGIBILITY

4-A: *Review, discussion, and possible action regarding the voluntary surrender of licensure received from Alexander Hobson.*

Alexander Hobson was granted licensure on March 18, 1999. On March 14, 2018, the Division received Mr. Hobson's request to voluntarily surrender his license.

ACJA § 7-201(E)(7) reads:

A certificate holder in good standing may surrender their certificate to the board. However, the surrender of the certificate is not valid until accepted by the board. The board or division staff may require additional information reasonably necessary to determine if the certificate holder has violated any provision of the statutes, court rules and this section or the applicable section of the ACJA. The surrender does not prevent the commencement of subsequent discipline proceedings for any conduct of the surrendered certificate holder occurring prior to the surrender.

Division records indicate that there are no pending complaints against his license.

It is recommended the Board accept the request of Alexander Hobson to voluntarily surrender his individual fiduciary license.