



Arizona Supreme Court Defensive Driving Board

Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3222
Conference Room 109

Date: April 20, 2011
Time: 10:00 a.m. – 2:00 p.m.

Regular Meeting Minutes

MEMBER ATTENDANCE

Present:

Robert G.A. Hall
Elaine Acosta Sweet
Leonard Montanaro
Paul E. Hallums
William (Patch) Pachnowski
Melissa J. Caraker

Telephonically Present:

Steven Soldis
Judge Daniel S. Jurkowitz
Lynette Rudlow

Absent:

Judge Gary J. LaFleur

OTHER ATTENDEES

AOC Staff:

Kitty Boots
Nancy Swetnam
Kandace French
Kimberly Siddall
Linda Grau
Jennifer Greene
Chris Dewitt
Alex Navarro
Karla Clanton
Debbie MacDougall
Richard Frohm
Becky Sorenson
Susan Hunt

Guests:

Alex Smith
Debra Grossman
Marla Keller
Pamela Najera
Michelle Riedel
Bill Riedel

CALL TO ORDER

Called to Order By: Elaine Sweet, Chair

Time: 10:00 a.m.

1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion and possible approval of the regular session minutes for the meeting of February 16, 2011.

Individuals Addressing the Board: Elaine Sweet

Discussion: No discussion.

Motion: Moved to approve the regular session minutes for the meeting of February 16, 2011.

Motion Proposals: First Robert Hall
Second Leonard Montanaro

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding complaint number 10-L007 involving certified defensive driving instructor Christopher Honan.

Individuals Addressing the Board: Nancy Swetnam

Discussion: On January 21, 2011, pursuant to ACJA § 7-201(H)(5)(a)(3), Probable Cause Evaluator Mike Baumstark entered a finding probable cause exists in complaint number 10-D007. The particular sections of laws, court rules, ACJA, and orders relevant to the alleged acts of misconduct are ACJA § 7-201(F)(1) and ACJA § 7-205(J)(2), (J)(2)(b), (J)(2)(b)(1), (J)(2)(b)(4), (J)(2)(b)(5) and (J)(2)(b)(7).

On February 16, 2011, the Board accepted the finding of the Probable Cause Evaluator and entered a finding grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a), (H)(6)(k)(3) and (H)(6)(k)(7).

The Notice of Formal Statement of Charges and Right for Hearing

in complaint number 10-L007 was filed on March 8, 2011 and was personally served to Mr. Honan on March 11, 2011.

ACJA § 7-201(H)(11) reads:

Answer to Formal Statement of Charges or Default. The certificate holder shall file an answer to the formal statement of charges within fifteen days after the date the statement is served, unless otherwise ordered by the board for good cause. Answers shall comply with Rule 8, Rules of Civil Procedure. Any defenses not raised in the answer are waived. If a certificate holder fails to file an answer within the time provided, the certificate holder is in default and the factual allegations in the formal statement of charges are deemed admitted. The board may enter a finding or findings against the certificate holder of one or more of the assertions contained in the notice.

Mr. Honan did not file and answer. Therefore, it was recommended the Board:

- Adopt the Factual Allegations of Misconduct contained in the Notice of Formal Statement of Charges as the Findings of Fact in complaint number 10-L007;
- Adopt the Formal Charge contained in the Notice of Formal Statement of Charges as the Conclusion of Law in complaint number 10-L007;
- Order the following disciplinary sanctions pursuant to ACJA § 7- 201(H)(24)(a)(6):
 - a) Revoke Honan’s instructor certification, pursuant to ACJA § 7-201(H)(24)(a)(6)(i);
 - b) Issue a cease and desist order enjoining Honan from instructing Arizona defensive driving courses, representing to the public, the court, or any defensive driving school that he is certified as an Arizona defensive driving instructor, and from engaging in any and all activities that require Arizona defensive driving instructor certification until such time in the future as Honan is granted reinstatement by the Defensive Driving Board, pursuant to ACJA § 7-201(H)(24)(a)(6)(g);
 - c) Mandate and order as a condition for reinstatement

Honan participate in no less than ten (10) additional hours of continuing education in the curriculum areas of ethics and professional responsibility, in addition to the annual ten (10) hour continuing education requirement, pursuant to ACJA § 7-201(H)(24)(a)(6)(f);

- d) Assess costs associated with the investigation and disciplinary proceedings in complaint number 10-L007 in the amount of \$484.69, to be remitted no later than 60 days following entry of the Board’s Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j). The assessed costs shall be made payable to “Arizona Supreme Court” and submitted to the Certification and Licensing Division, 1501 West Washington, Suite 104, Phoenix, Arizona 85007; and,
- e) Impose a civil penalty in the amount of \$500.00 to be remitted no later than 60 days following entry of the Board’s Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(k). The imposed civil penalty shall be remitted made payable to “Arizona Supreme Court” and submitted to the Certification and Licensing Division, 1501 West Washington, Suite 104, Phoenix, Arizona 85007.

Motion: Moved to accept the finding of the probable cause evaluator and accept the recommendations contained in the formal statement of charges and disciplinary sanctions recommended by staff noted above.

Motion Proposals: First Leonard Montanaro
Second Steve Soldis
Recusal Paul Hallums, Robert Hall, Patch Pachnowski
Motion Results: Pass

Motion: Moved to authorize chair to sign the final order on the above matter on behalf of the Board.

Motion Proposals: First Judge Daniel S. Jurkowitz
Second Leonard Montanaro
Recusal Paul Hallums, Robert Hall, Patch Pachnowski
Motion Results: Pass

2-B: *Review, discussion and possible action regarding complaint number 10-L007 involving certified defensive driving instructor Christopher Honan.*

*Complaint Number 10-D006
Complaint Number 10-D008*

Individuals Addressing the Board: Nancy Swetnam

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.

Complaint Number 10-D006:

On February 3, 2011, Certification and Licensing Division Director Nancy Swetnam determined the complaint did not meet the criteria provided for in ACJA § 7-201(H)(2)(a)(2)(f) and dismissed complaint number 10-D006 without prejudice. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant. The timeline for the complainant to request Board review has passed and no request for Board review has been received. Therefore, it was recommended the Board affirm the dismissal of complaint number 10-D006.

Complaint Number 10-D008:

On February 3, 2011, Division Director Swetnam determined the complaint did not meet the criteria provided for in ACJA § 7-201(H)(2)(a)(2)(e) and dismissed complaint number 10-D008 without prejudice. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant. The timeline for the complainant to request Board review has passed and no request for Board review has been received. Therefore, it was recommended the Board affirm the dismissal of complaint number 10-D008.

Motion: Moved to accept recommended dismissal of complaint number 10-D006.

Motion Proposals: First Leonard Montanaro
Second Robert Hall
Recusal

Motion Results: Pass

Motion: Moved to accept recommended dismissal of complaint number 10-D008.

Motion Proposals: First Steve Soldis
Second Lynette Rudow
Recusal Leonard Montanaro

Motion Results: Pass

Motion: Moved to accept modification to the motion above on complaint number 10-D008, affirming the dismissal of this complaint with prejudice.

Motion Proposals: First Melissa Caraker
Second Steve Soldis
Recusal Leonard Montanaro

Motion Results: Pass

2-C: *Review, discussion and possible action regarding complaint number 11-D001 involving Improv Traffic School.*

Individuals Addressing the Board: Nancy Swetnam

Discussion: On March 18, 2011, Probable Cause Evaluator Mike Baumstark entered a finding probable cause exists in complaint number 11-D001. Therefore, it was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding grounds for informal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) and (H)(7) for an act of misconduct involving ACJA § 7-201(F)(1) and ACJA § 7-205(F)(1) and (J)(1)(e) and issue a Letter of Concern.

Review and discussion of the website.

Motion: Moved to accept the finding of the Probable Cause Evaluator and enter a finding grounds for informal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) and (H)(7) for an act of misconduct involving ACJA § 7-201(F)(1) and ACJA § 7-205(F)(1) and (J)(1)(e) and issue a Letter of Concern and grant authority to the Chair the to sign Letter of Concern on behalf of the Board.

Motion Proposals: First Leonard Montanaro
Second Melissa Caracker
Recusal Steve Soldis

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: Review and discussion regarding pending administrative matters.

Individuals Addressing the Board: Kandace French

Discussion: There are no administrative matters for the Board's review in the month of April.

Motion: None

4) INITIAL CERTIFICATION APPLICATIONS

4-A: Review, consideration and possible action regarding pending initial certification applications of the following defensive driving instructors:

Individuals Addressing the Board: Alex Navarro

Discussion: The following application remains incomplete pending receipt of additional documentation. It was recommended the following application be deferred to the June 15, 2011 meeting.

3. Morrow, Dennis G.

Motion: Moved to approve staff recommendation and defer the above applicant to the June 15, 2011 meeting.

Motion Proposals: First Robert Hall
Second Leonard Montanaro

Motion Results: Pass

Individuals Addressing the Board: Alex Navarro

Discussion: The following applications are complete and it was recommended they be approved for initial certification.

1. Knottenbelt, Sandy L.
2. Maroney, Paul R.

Motion: Moved to approve staff recommendation and grant initial

certification to the above applicants.

Motion Proposals: First Paul Hallums
Second Patch Pachnowski
Recusal Steve Soldis
Motion Results: Pass

Individuals Addressing the Board: Alex Navarro

Discussion: The following applicants have submitted a complete application, demonstrating the applicants meets the minimum eligibility requirements, and no information has been presented during the background check which is contrary to certification being granted. It was recommended the Board grant initial certification to the following applicants:

4. Roedig, Cynthia A.
5. Schmidt, Karol L.

Motion: Moved to approve staff recommendation and grant initial certification to Roedig and Schmidt.

Motion Proposals: First Robert Hall
Second Lynette Rudow
Motion Results: Pass

4-B: *Review, consideration and possible action regarding pending initial certification application of the following defensive driving school:*

Easy-Fast-Fun.com

Individuals Addressing the Board: Chris DeWitt

Discussion: Easy Fast Fun.com is an internet format defensive driving school, applied for certification on July 19, 2010. The school's office is located in San Diego, California.

After recommending approval by staff at the February 16th meeting, this matter was deferred to the April 20th meeting, as there was some concern by the Board members regarding the name of the school and the content of the school's proposed website. The owner and principal of the school, Marla Keller, was present and answered questions/concerns by the Board.

Motion: Moved to approve new certified name of school as Easy Fun

Arizona Defensive Driving On Line.

Motion Proposals: First Leonard Montanaro
Second Steve Soldis
Motion Results: Pass

5) CERTIFICATION AND ELIGIBILITY

5-A: *Review, discussion and possible action regarding approval of a third party contract between:*

ArizonaDriver.com and ABC Defensive Driving School
ArizonaDriver.com and Arizona School of Defensive Driving

Individuals Addressing the Board: Chris DeWitt

Discussion: A third party contract between Traffic School Online and American Safety Council, was submitted to, and reviewed by program staff. The contract provided ADM school services to customers of Traffic School Online by American Safety Council.com. Traffic School Online will be responsible for correcting registration and completion errors within three days, as specified by code. Traffic School Online will be responsible for collecting and remitting all court diversion fees, state fees and state surcharges.

Traffic School Online and American Safety Council are both certified defensive driving schools in good standing.

Staff recommended the Board approve the third party contracts pursuant to ACJA 7-205(F)(22)(c)(13).

Motion: Moved to approve staff's recommendation as noted above to approve third party contracts pursuant to ACJA 7-205(F)(22)©(13).

Motion Proposals: First Leonard Montanaro
Second Steve Soldis
Motion Results: Pass

Individuals Addressing the Board: Chris DeWitt

Discussion: A third party contract between ArizonaDriver.com and Arizona School of Defensive Driving was submitted to and reviewed by program staff. The contract stipulates Arizona School of Defensive Driving will refer all students who wish to take an internet course to ArizonaDriver.com.

ArizonaDriver.com and Arizona School of Defensive Driving are both certified defensive driving schools in good standing.

Staff recommended the Board approve the third party contracts pursuant to ACJA 7-205(F)(22)(c)(13).

Motion: Moved to approve staff's recommendation as noted above to approve third party contracts pursuant to ACJA 7-205(F)(22)©(13).

Motion Proposals: First Paul Hallums
Second Leonard Montanaro

Motion Results: Pass

5-B: *Review, discussion, and possible action regarding change of ownership of following school:*

Got a Ticket? Defensive Driving School

Individuals Addressing the Board: Chris DeWitt

Discussion: Got a Ticket? Defensive Driving School is a dual format defensive driving school that has been certified since May 2008 and has been operated by Robert Etherington. The school is being sold to Traffic School Management Services, LLC, operated by William Riedel. No changes are being made to the current curriculum or operations. Traffic School Management's application has been reviewed by staff.

Mr. Riedel was present to address the Board's questions.

It was recommended certification be granted to Got a Ticket? Defensive Driving Schools.

Motion: Moved to approve staff recommendation and grant certification for Got a Ticket ? Defensive Driving School.

Motion Proposals: First Leonard Montanaro
Second Steve Soldis

Motion Results: Pass

5-C: *Review, discussion, and possible action regarding denial of certification of the following school:*

Universal Driving School

Individuals Addressing the Board: Chris DeWitt

Discussion: Attached are the Finding of Facts, Conclusions of Law, and Hearing Officer's Recommendation report regarding the denial of Mr. Mamode's certification application. Hearing Officer Taylor recommended the Board uphold the denial.

It was recommended certification be denied to Universal Driving School.

Motion: Moved to approve recommendation that certification be denied for Universal Driving School.

Motion Proposals: First Leonard Montanaro
Second Robert Hall

Motion Results: Pass

CALL TO THE PUBLIC – None

ADJOURNMENT

Motion: Moved to adjourn the meeting.

Motion Proposals: First Leonard Montanaro
Second Robert Hall

Motion Results: Pass

Time: 11:25 a.m.

Initials: SH

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