



Supreme Court Fiduciary Board

Arizona State Courts Building
1501 West Washington Street
Phoenix, Arizona 85007-3222
Conference Room 109
Date: December 11, 2008
Time: 10:30 a.m. – 2:30 p.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Diana L. Clarke
Judge Dean Fink
Mary E. Carlton
Mary Jane Baumgarten
Pamela Johnston
Sherry Reed

Telephonically Present:

Marlin "Kip" Anderson

Absent:

Diana M. Corry
Shari J. Tomlinson

OTHER ATTENDEES

AOC Staff:

Linda Grau
Nancy Swetnam
Kitty Boots
Nina Preston
Kimberly Siddall
Tony Posante
Alex Navarro
Karla Clanton
Lori Braddock
Bonnie Toms

Guests:

Gary B. Strickland
Richard T. Vanderheiden
Eileen Gilbride
Heather Bull
Kathleen O'Meara
Mark Harrison

CALL TO ORDER

Called to Order By:

Judge Dean Fink

Time:

10:34 am

Discussion:

Ms. Grau announced Shari J. Tomlinson would not be able to attend today's meeting. Introduction of new staff member Lori Braddock.

1) REVIEW AND APPROVAL OF MINUTES

1-A: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on October 9, 2008.

Individual Addressing the Board: Linda Grau

Discussion: Staff recommended approval of the Regular Session Minutes.

Motion: Board moved to approve the October 9, 2008 Regular Session Minutes.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

1-B: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on November 13, 2008.

Individual Addressing the Board: Linda Grau

Discussion: Draft of the Regular Session Minutes for November 13, 2008 have not yet been circulated to the Board for review.

Motion: Staff recommended the Board defer consideration of the November 13, 2008 Regular Session Minutes to the next regularly scheduled meeting to be held on January 8, 2009.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: Formal Interview with certified fiduciaries Richard Vanderheiden and the Maricopa County Public Fiduciary Office and possible action regarding complaint number 07-0004.

Individual Addressing the Board: Nancy Swetnam, Gary B. Strickland, Richard T. Vanderheiden

Discussion: Pam Johnston requested language clarification of wording “within a reasonable period” on page 2, lines 11 and 12 of amended proposed Consent Agreement presented for Board review by Attorney Strickland. Discussion followed regarding pros and cons of subjective language and specified time frames.

Motion: Approve and accept the amended consent agreement in the matter of complaint number 07-0004 as presented. Further moved and accepted to have Judge Fink sign the consent agreement on behalf of the Board.

Motion Proposals: First Mary E. Carlton
Second Mary Jane Baumgarten
Recusal Diana L. Clarke

Motion Results: Pass

2-B: Review, discussion and possible action regarding complaint numbers:

07-0011 – Jane Anne Geisler and Managed Protective Services

03-0010 – Richard Vanderheiden

Individuals Addressing the Board: Nancy Swetnam

Discussion: Nancy Swetnam stated the Board considered complaint number 07-0011 Jane Anne Geisler and Managed Protective Services at the November 13, 2008 meeting. Complaint was deferred at request of legal counsel in order to provide additional information.

Motion: Recommendation to go into Executive Session in order to accept advice from legal counsel, Nina Preston.

Motion Proposals: First Mary Jane Baumgarten
Second Pamela Johnston

Motion Results: Pass

Executive Session: 10:50 am – 11:10 am

Discussion: Ms. Swetnam reported the Probable Cause Evaluator found probable cause does not exist in Allegations 1, 2, 3 and 4 of complaint number 07-0011 but does exist as to Allegation 5. Ms. Swetnam recommended the Board accept the finding of the probable cause evaluator to dismiss Allegations 1, 2, 3 and 4. Regarding Allegation 5, Ms. Swetnam recommended the Board enter a finding grounds for informal disciplinary action exists Ms. Geisler and Managed Protective Services committed the violation pursuant to ACJA § 7-201 (H)(6)(a) and (H)(7) for an act of misconduct involving ACJA § 7-201 (F)(1) and ACJA § 7-202 (F)(1), (F)(4) and (J)(4)(i) and that the Board issue a Letter of Concern.

Motion: Accept the recommendation of the Division Director.

Motion Proposals: First Mary E. Carlton

Motion Results: Second Pamela Johnston
Pass

Discussion: After discussion with Legal Counsel regarding additional information about case law relating to the issuance of fees charged to a ward, protected person or estate for a licensee or certificate holder having to defend his or herself against a regulatory complaint, it was recommended the Letter of Concern issued to Ms. Geisler and MPS include additional language requesting Ms. Geisler and MPS reimburse ward Mildred Hurley the amount of \$787.50 billed to Hurley's estate for fiduciary and attorney's fees charged related to responding to the complaint.

Motion: Motion to add to the previously ordered Letter of Concern, additional language requesting Ms. Geisler and MPS reimbursement of the fees billed for purposes of responding to the complaint.

Motion Proposals: First Sherry Reed
Second Mary Jane Baumgarten

Motion Results: Pass

Discussion: Ms. Swetnam reported the matter involving complaint number 03-0010 and Richard Vanderheiden's individual certification was returned for probable cause review following the Superior Court Special Action remand. The probable cause evaluator found probable cause does exist. Ms. Swetnam recommended the Board accept the finding of the probable cause evaluator, enter a finding grounds for formal disciplinary action exists, and invite Mr. Vanderheiden to participate in a formal interview at the January 8, 2009 meeting.

Motion: Accept staff recommendation to adopt probable cause finding, enter finding of grounds for formal discipline, and to invite Mr. Vanderheiden and his counsel to attend the January 8, 2009 Board meeting for a formal interview to discuss a possible consent agreement resolution.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

2-C: *Review, discussion and possible action regarding the pending formal disciplinary action involving complaint numbers 07-0029, 08-0001, and certificate holder Candace Bow*

Individuals Addressing the Board: Nancy Swetnam, Linda Grau

Discussion: Discussion regarding consideration of an amended Consent Agreement with modification to remove the provision requiring Board to accept Ms. Bow’s voluntary surrender as part of consent agreement.

Motion: Accept and enter proposed amended Consent Agreement with Ms. Bow.

Motion Proposals: First Marlin “Kip” Anderson
Second Mary E. Carlton

Motion Results: Pass

Discussion: Staff reported the signed original of the proposed Consent Agreement has not yet been received. Recommendation to allow Judge Dean Fink or Vice Chair Mary Carlton to sign proposed Consent Agreement on behalf of the Board upon its receipt.

Motion: Accept the recommendation and authorize Judge Fink or Vice Chair Mary Carlton to sign the Consent Agreement on behalf of the full Board.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

3) CERTIFICATION AND ELIGIBILITY

3-A: *Review, discussion, and possible action regarding pending renewal application of Candace Bow.*

Individual Addressing the Board: Kimberly Siddall, Mark Harrison

Discussion: Discussion regarding letter received from Kathleen O’Meara with additional information regarding current status of Ms. Bow’s court-assigned cases.

Motion: Accept staff’s recommendation to have Ms. Bow not accept any new appointments and to divest all fiduciary appointments and submit documentation of her efforts to be discharged within 30 days.

Motion Proposals: First Sherry Reid
Second Mary Jane Baumgarten
Recusal Judge Dean Fink

Motion Results: Pass

3-B: Review, discussion, and possible action regarding pending renewal application of Clare Guthrie .

Individual Addressing the Board: Kimberly Siddall

Discussion: Staff recommends the Board enter the amended consent agreement provided for Board review in which Ms. Guthrie agrees to take and pass the Fiduciary Examination within 6 months of the signed Consent Agreement and to complete 10 hours of continuing education as recommended in addition to the 20 hours of continuing education required to qualify for 2010-2012 certification renewal.

Motion: Motion to accept Staff recommendation.

Motion Proposals: First Diana L. Clarke
Second Pamela Johnston
Recusal Judge Dean Fink

Motion Results: Pass

3-C: Review, discussion, and possible action regarding pending applications for certification submitted by:

Stephanie Walker
Constance Olsen
Sally Simpson
Deborah Holiday
Vivian Hartless

Individuals Addressing the Board: Kimberly Siddall

Discussion: Regarding Stephanie Walker and Constance Olsen, background results have not yet been received. Recommended to defer to January meeting.

Motion: Accept staff recommendation.

Motion Proposals: First Mary E. Carlton
Second Mary Jane Baumgarten

Motion Results: Pass

Discussion: Regarding Sally Simpson and Deborah Holiday, recommended the Board grant certification.

Motion: Accept staff recommendation.

Motion Proposals: First Mary E. Carlton
Second Sherry Reed

Motion Results: Pass

Discussion: Regarding Vivian Hartless, recommended the Board deny certification as applicant does not meet the minimum eligibility requirement of 1 year experience.

Motion: Accept staff recommendation.

Motion Proposals: First Marlin “Kip” Anderson
Second Mary Jane Baumgarten

Motion Results: Pass

3-D: *Review, discussion, and possible action regarding Voluntary Surrender request received from certified fiduciary Thomas C. Eisner, certificate number 20516.*

Individual Addressing the Board: Karla Clanton

Discussion: Staff recommendation to accept volunteer surrender of certification for Thomas C. Eisner.

Motion: Motion to accept staff recommendation.

Motion Proposals: First Mary Jane Baumgarten
Second Mary E. Carlton

Motion Results: Pass

3-E: *Review, discussion, and possible action regarding pending renewal application of Marie Barnett and Yuma Private Fiduciary, L.L.C.*

Individual Addressing the Board: Kimberly Siddall

Discussion: Ms. Barnett has provided the requested Certificates of Completion. Staff recommendation to grant renewal certification to Marie Barnett and her company Yuma Private Fiduciary, L.L.C.

Motion: Motion to accept staff recommendation.

Motion Proposals: First Mary Jane Baumgarten
Second Pamela Johnston

Motion Results: Pass

4) ADMINISTRATIVE ISSUES

4-A: Update regarding Board member recruitment and appointments.

Individuals Addressing the Board: Linda Grau

Discussion: Recommendations have been forwarded to the Chief Justice and an appointment order has not yet been issued. Appointments are anticipated in advance of the January meeting.

CALL TO THE PUBLIC

No response.

ADJOURNMENT

Motion: Adjourn the meeting.

Motion Proposals: First Mary E. Carlton
Second Mary Jane Baumgarten

Motion Results: Pass

Time: 1:38 pm

Initials: BT

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