



## Supreme Court Fiduciary Board

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

Date: May 14, 2009  
Time: 10:30 am – 2:30 pm

### Approved Regular Meeting Minutes

#### MEMBER ATTENDANCE:

##### Present:

Shari Tomlinson  
Mary E. Carlton  
Judge Dean Fink  
Kenneth Reeves, III  
Mary Jane Baumgarten  
Pamela Johnston  
Deborah Primock

##### Telephonically Present:

Marlin "Kip" Anderson  
Sherry Reed  
Diana M. Corry  
Diana L. Clarke

##### Absent:

#### OTHER ATTENDEES

##### AOC Staff:

Linda Grau  
Nancy Swetnam  
Nina Preston  
Bonnie Toms  
Lori Braddock  
Karla Clanton  
Tony Posante

##### Guests:

Mary Jane Condit  
Lisa Price  
Devin Price

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#### CALL TO ORDER

*Called to Order By:*

Shari Tomlinson

*Time:*

10:33 a.m.

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**1) REVIEW AND APPROVAL OF MINUTES**

***1-A: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on December 11, 2008.***

***Individuals Addressing the Board:*** Shari Tomlinson

***Discussion:*** There were no changes or corrections.

***Motion:*** Move to accept the Regular Session Minutes of December 11, 2008.

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

***Motion Results:*** Pass

***1-B: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on March 12, 2009.***

***Individuals Addressing the Board:*** Shari Tomlinson, Linda Grau

***Discussion:*** Ms. Grau reported a spelling error and wording correction needed on page 5.

***Motion:*** Move to accept the Regular Session Minutes of March 12, 2009 with above amendments.

***Motion Proposals:*** First Judge Dean Fink  
Second Kenneth Reeves, III

***Motion Results:*** Pass

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**2) PENDING COMPLAINTS**

***2-A: Report, discussion, and possible action regarding complaints dismissed by the Division Director pursuant to Arizona Code of Judicial Administration § 7-201 (D)(4)(a) and (H)(2)(b):***

***Complaint Number 08-0032***  
***Complaint Number 09-0002***  
***Complaint Number 09-0004***

***Individuals Addressing the Board:*** Nancy Swetnam

***Complaint Number 08-0032***

***Discussion:*** On March 3, 2009, Division Director Swetnam dismissed complaint number 08-0032 with prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on March 3, 2009. No request for Board review has been received from the complainant. Recommendation the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

***Motion:*** Move to affirm Division Director's dismissal of Complaint Number 08-0032.

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

***Motion Results:*** Pass

***Complaint Number 09-0002***

***Discussion:*** On March 3, 2009, Division Director Swetnam dismissed complaint number 09-0002 with prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on March 3, 2009. No request for Board review has been received from the complainant. Recommendation the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

***Motion:*** Move to affirm Division Director's dismissal of Complaint Number 09-0002.

***Motion Proposals:*** First Judge Dean Fink  
Second Kenneth Reeves, III

***Motion Results:*** Pass

***Complaint Number 09-0004***

***Discussion:*** On March 3, 2009, Division Director Swetnam dismissed complaint number 09-0004 without prejudice for lack of jurisdiction. Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on March 3, 2009. No request for Board review has been received from the complainant. Recommendation the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

***Motion:*** Move to affirm Division Director's dismissal of Complaint Number 09-0004.

**Motion Proposals:** First Deborah Primrock  
Second Mary Jane Baumgarten  
**Motion Results:** Pass

**2-B:** *Review, discussion, and possible action regarding certificate holder complaint number 07-0026 involving Mary Jane Condit.*

**Individuals Addressing the Board:** Nancy Swetnam

**Discussion:** On April 23, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist as to Allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 and does exist as to Allegations 12 and 13. Recommendation the Board dismiss Allegations 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11 of complaint number 07-0026.

Regarding Allegation 12, an amended recommendation was distributed to Board members. Recent correspondence from Ms. Condit showed there was no violation as Notice to the Court was received within the 10 day limit. Recommendation to reject finding of the Probable Cause Evaluator and dismiss Allegation 12.

Regarding Allegation 13, it was recommended the Board reject the finding of the probable cause evaluator and enter a finding grounds for formal disciplinary action does not exist pursuant to Arizona Code of Judicial Administration (“ACJA”) § 7-201 (H)(6)(a) and (H)(7) for acts of misconduct involving Arizona Supreme Court Rule 127, ACJA 7-201 (F)(1), and ACJA § 7-202 (F)(1) and (J)(5)(g).

It was further recommended the Board issue a Letter of Concern to Condit and include language of the Board’s finding and assessment that a better practice would be to reimburse the estate for fiduciary and attorney’s fees billed to the estate for defending against a Division complaint. Specifically, the recommendation would be that Condit reimburse the estate of Ilene Dame Smee the total of \$287.50.

**Motion:** Move to accept the findings of the Probable Cause Evaluator as to Allegations 1 through 11, dismiss Allegations 12 and 13, and impose sanctions as referenced above.

**Motion Proposals:** First Judge Dean Fink  
Second Mary E. Carlton  
**Motion Results:** Pass

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**3) CERTIFICATION AND ELIGIBILITY**

**3-A: *Review, discussion, and possible action regarding pending application for certification submitted by Valerie Mills.***

**Individuals Addressing the Board:** Karla Clanton

**Discussion:** Applicant has submitted an application for standard certification. The application is complete; no information has been presented during the background which is contrary to certification being granted. The applicant has demonstrated she meets the minimum eligibility requirements of certification. Staff recommended standard certification be granted.

**Motion:** Move to accept staff recommendation to grant standard certification.

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

**Motion Results:** Pass

**3-B: *Review, discussion, and possible action regarding Inactive Status request received from certified fiduciary Jeffrey M. Alloway, certificate number 20453.***

**Individuals Addressing the Board:** Karla Clanton

**Discussion:** Mr. Alloway was granted certification on January 23, 2003. On April 2, 2009, Mr. Alloway submitted a request for his certification to be placed on inactive status. Staff reviewed court records and confirmed Mr. Alloway is not assigned to any cases. Division records confirm there are no pending complaints involving Mr. Alloway. Staff recommended the Board accept the transfer of the certificate holder to inactive status, in good standing.

**Motion:** Move to accept the recommendation of staff to accept transfer to inactive status.

**Motion Proposals:** First Kenneth Reeves, III  
Second Mary E. Carlton

**Motion Results:** Pass

**3-C: *Review, discussion, and possible action regarding Voluntary Surrender request received from certified fiduciary Barbara Desmond, certificate number 20570.***

**Individuals Addressing the Board:** Karla Clanton

**Discussion:** Ms. Desmond was granted certification on November 8, 2006. On April 14, 2009, Ms. Desmond submitted a request to voluntarily surrender her certification. Staff has reviewed court records and confirmed Ms. Desmond is not assigned to any case. Division records confirm there are no pending complaints involving Ms. Desmond. Staff recommended the Board accept the voluntary surrender.

**Motion:** Move to accept staff recommendation to accept the voluntary surrender of certification of Barbara Desmond.

**Motion Proposals:** First Deborah Primrock  
Second Mary E. Carlton

**Motion Results:** Pass

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**4) ADMINISTRATIVE ISSUES**

**4-A: Update regarding pending legislation.**

**Individuals Addressing the Board:** Linda Grau

**Discussion:** Ms. Grau discussed a summary that had been provided for Board review regarding HB 2317, HB2347, and HB 2344. There was no further update available.

**4-B: Review of the Arizona Rules of Probate Procedure.**

**Individuals Addressing the Board:** Linda Grau, Lori Braddock

**Discussion:** Ms. Grau introduced AOC staff, Lori Braddock who spoke regarding the newly implemented standardized, statewide Arizona Rules of Probate Procedure effective January 1, 2009.

**4-C: Review, discussion, and possible action regarding Arizona Supreme Court Rule Petition to Amend Rule 7, Arizona Rules of Probate Procedure [R-08-0032].**

**Individuals Addressing the Board:** Linda Grau, Nancy Swetnam

**Discussion:** Rule Petition No. R-08-0032, submitted by the Arizona Association of Superior Court Clerks, was made available for the Board's review and consideration. The petition requests two changes to Rule 7 of the Rules of the Supreme Court, to improve the processing and access to confidential documents filed in a probate case. After review and consideration, the Board decided to not take a formal position one way or another.

**Motion:** Move for Board to take no formal position in this matter.

**Motion Proposals:** First Kenneth Reeves, III  
Second Judge Dean Fink

**Motion Results:** pass

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## CALL TO THE PUBLIC

Mary Jane Condit spoke regarding her views on the complaint process.

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## ADJOURNMENT

**Motion:** Adjourn the meeting.

**Motion Proposals:** First Kenneth Reeves, III  
Second Mary Jane Baumgarten

**Motion Results:** Pass

**Time:** 11:08 a.m.

Initials: BT