



Arizona Supreme Court Fiduciary Board

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

Date: November 12, 2009
Time: 10:30 a.m. – 2:30 p.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Shari Tomlinson
Mary E. Carlton
Marlin “Kip” Anderson
Diana L. Clarke
Judge Dean Fink
Kenneth Reeves, III
Pamela Johnston
Deborah Primock

Telephonically Present:

Mary Jane Baumgarten
Sherry Reed

Absent:

Diana M. Corry

OTHER ATTENDEES

AOC Staff:

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

Guests:

Kiersten Murphy
Kevin O’Malley
Jay M. Polk
Lisa Price
Mike Bogle
Heather Bull
Michael R. Perry
Stephanie McCallum
Silvia Arellani
Peter Frenette
Susan Cooper
Mary Jane Condit
Ron Christie
Charles Butzine

CALL TO ORDER

Called to Order By: Shari Tomlinson

Time: 10:32

1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion and possible approval of the Regular Session Minutes for the meeting held on February 14, 2008.

Individuals Addressing the Board: Shari Tomlinson

Discussion: Staff determined the February 14, 2008 Regular Minutes were deferred and inadvertently not brought back to the Board for review and approval. Approval of the minutes by those members attending the February 14, 2008 meeting would allow for the posting of the minutes to the Fiduciary website for public viewing.

Motion: Move to approve the Regular Session Minutes for the meeting held on February 14, 2008.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: **Pass**

1-B: Review, discussion and possible approval of the Executive Session Minutes for the meeting held on May 8, 2008.

Individuals Addressing the Board: Shari Tomlinson

Discussion: Staff review of draft minutes indicated the May 8, 2008 Executive Minutes were deferred and not brought back to the Board for review and approval. Approval of the minutes by those members attending the May 8, 2008 meeting would allow for preservation of the record. Pursuant to Arizona Code of Judicial Administration § 1-202, Executive Session Minutes are confidential.

Motion: Move to approve the Executive Session Minutes for the meeting held on May 8, 2008.

Motion Proposals: First Marlin "Kip" Anderson
Second Mary Jane Baumgarten

Motion Results: **Pass**

1-C: Review, discussion and possible approval of the Executive Session Minutes for the meeting held on May 22, 2008.

Individuals Addressing the Board: Shari Tomlinson

Discussion: Staff review of draft minutes indicated the May 22, 2008 Executive Minutes were deferred and not brought back to the Board for review and approval. Approval of the minutes by those members attending the May 22, 2008 meeting would allow for preservation of the record. Pursuant to Arizona Code of Judicial Administration § 1-202, Executive Session Minutes are confidential.

Motion: Move to approve the Executive Session Minutes for the meeting held on May 22, 2008.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: Pass

1-D: Review, discussion and possible approval of the Regular Session Minutes for the meeting held on September 10, 2009.

Individuals Addressing the Board: Shari Tomlinson

Discussion: No discussion.

Motion: Move to approve the Regular Session Minutes for the meeting held on September 10, 2009.

Motion Proposals: First Diana L. Clarke
Second Pamela Johnston

Motion Results: Pass

1-E: Review, discussion and possible approval of the Executive Session Minutes for the meeting held on September 10, 2009.

Individuals Addressing the Board: Shari Tomlinson

Discussion: No discussion.

Motion: Move to approve the Executive Session Minutes for the meeting held on September 10, 2009.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: Pass

2) **PENDING COMPLAINTS**

(Shari Tomlinson announced Agenda Item 2-C would be reviewed first.)

2-C: *Review, discussion and possible action regarding a proposed Consent Agreement as resolution of the pending formal disciplinary action involving the Arizona Department of Veterans' Services and complaint number 07-0027.*

Individuals Addressing the Board: Nancy Swetnam

Discussion: The Board accepted the finding of the Probable Cause Evaluator that violations had occurred. ADVS was subsequently served with Notice of Formal Statement of Charges. ADVS filed the required Answer, requested a hearing, and a hearing officer was appointed. ADVS requested a Consent Agreement as consideration of a possible resolution to the pending action. ADVS has entered the proposed Consent Agreement as resolution to complaint number 07-0027. It was recommended the Board accept the Consent Agreement with ADVS as presented. Discussion followed with staff answering questions from board members.

Motion: Move to accept Consent Agreement with AVDS as presented.

Motion Proposals: First Marlin "Kip" Anderson
Second Diana L. Clarke

Motion Results: **Pass**

Motion: Move to authorize Chair Shari Tomlinson to sign the consent agreement on behalf of the board.

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

Motion Results: **Pass**

(Return to Agenda Item 2-A)

2-A: *Review, 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):*

Individuals Addressing the Board: Linda Grau

Discussion: On August 24, 2009, Division Director Nancy Swetnam dismissed complaint number 09-0015 with prejudice for lack of jurisdiction, and referred the matter to entities which may hold jurisdiction. On August 26, 2009, notice of the dismissal was forwarded to the complainant with notice the complainant could request Board review of the dismissal. No request for review was received. It was recommended the Board affirm the dismissal of complaint number 09-0015.

Motion: Move to affirm the dismissal of complaint number 09-0015.

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

Motion Results: Pass

Complaint Number 09-0019

Individuals Addressing the Board: Linda Grau

Discussion: On October 21, 2009, Division Director Swetnam dismissed complaint number 09-0019 with prejudice for lack of jurisdiction. On October 21, 2009, notice of the dismissal was forwarded to the complainant with notice the complainant could request Board review of the dismissal. No request for review was received. It was recommended the Board affirm the dismissal of complaint number 09-0019.

Motion: Move to affirm the dismissal of complaint number 09-0019.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

2-B: *Review, discussion, and possible action regarding complaint number 09-0003 involving certificate holders Arizona Department of Veterans' Services, Glenn Hall, and Gary Warner.*

Individuals Addressing the Board: Linda Grau

Discussion:

On October 2, 2009, Probable Cause Evaluator Mike Baumstark determined probable cause exists regarding Allegations 1, 2, 3, 4, 5, and 6 of complaint number 09-0003 involving ADVS, Glenn Hall, and Gary Warner. It was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding ADVS, Gary Warner, and Glenn Hall committed the alleged acts of misconduct. It was further recommended the Board enter a finding grounds for formal disciplinary action exists for acts of misconduct and impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6):

- a) Issue a Censure to ADVS, Warner and Hall;
- b) Order Gary Warner and Glenn Hall to participate in no less than 10 additional hours of continuing education in the curriculum area of professionally responsibility or management training, in addition to the annual ten (10) hour continuing education requirement
- c) Assess costs associated with the investigation and related disciplinary proceedings to ADVS with the costs to be remitted no later than ninety (90) days following entry of the Board’s Final Order; and,
- d) Impose civil penalties in the amount of \$250.00 per found violation to ADVS, to be remitted no later than ninety (90) days following entry of the Board’s Final Order.

Mitigating factors, aggravating factors, and proportionality were discussed. Further discussion included requiring AVDS to develop internal processes and procedures specific to benefits which may be due to the ward, a tickler system for applications, and a possible consent agreement.

Motion:

Move to accept the findings of Probable Cause Evaluator Mike Baumstark; enter a finding ADVS, Gary Warner, and Glenn Hall committed the alleged acts of misconduct; enter a finding grounds for formal disciplinary action exists for these acts of misconduct; impose the sanctions as presented; and require ADVS to develop an internal tracking system for applications for benefits.

Motion Proposals:

First Diana L. Clarke
Second Kenneth Reeves, III

Motion Results:

Pass

Motion:

Move to amend the prior motion requiring the internal tracking system to be developed, implemented, and completed within 90 days.

Motion Proposals:

First Judge Dean Fink
Second Mary E. Carlton

Motion Results: Pass

2-D: *Review, discussion and possible action regarding complaint number 09-0012 involving certificate holder Jeffrey Lake.*

Individuals Addressing the Board: Linda Grau

Discussion: On November 9, 2009, Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 09-0012. It was recommended the Board accept the finding the Probable Cause Evaluator and dismiss complaint number 09-0012.

Motion: Move to accept the finding of Probable Cause Evaluator Baumstark and dismiss complaint number 09-0012.

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

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Review, discussion, and possible action regarding proposed amendments to ACJA § 7-202.*

Individuals Addressing the Board: Linda Grau, Lisa Price, Jay Polk

Discussion: The substantive change to ACJA § 7-202 will be out for public comment period though November 13, 2009. Staff provided a verbal report to the Board regarding the status of the proposed changes to ACJA § 7-202 including public comment received through November 6, 2009.

The substantive change is found in ACJA § 7-202(J)(6)(a) as follows:

6. *Trustee and Power of Attorney. A licensed fiduciary who is acting as a trustee or agent under a power of attorney shall abide by this code of conduct, regardless of whether or not that person is acting pursuant to court appointment.*

a. Service as Trustee or Agent For Competent Individuals. The provisions of this code of conduct that require a fiduciary to make decisions in the best interests of the ward or protected person do not apply to a licensed fiduciary who is acting as a trustee or agent under a power of attorney for a competent individual, where the fiduciary provides the

individual with advice regarding the management of the individual's assets and the individual makes an alternative decision.

Discussion among board members and staff followed. Agenda item 3-A was opened for public comment at 11:08 a.m.. Lisa Price, president of the Arizona Fiduciaries Association (AFA), came forward to explain some of the reasons for change and to express concern with the use of the word "competent" in the proposed change to ACJA § 7-202(J)(6)(a). Jay Polk spoke regarding his part in drafting the proposed changes and his concerns with some of the wording. Further discussion ended with the suggestion to table the matter for further study. Jay Polk and the AFA will continue to work together on the proposed revisions.

Motion: Move to table consideration of the proposed language changes in order to review and assimilate the alternative language that has been submitted, to revive the Regulatory Scope Subcommittee for review and discussion, and to set a 60 day deadline for any additional comments to come in. At that time, the Regulatory Scope Subcommittee will plan a meeting; and set a schedule and agenda in order to process and bring the revision back to the Board. Members of the Regulatory Scope Subcommittee will be determined at the January board meeting.

Motion Proposals: First Diana L. Clarke
Second Kenneth Reeves, III

Motion Results: Pass

3-B: Nomination and election of the 2010 Fiduciary Board Vice-Chair.

Individuals Addressing the Board: Kandace French

Discussion: ACJA § 7-201 (I)(3)(b) reads:

Vice Chair. The board shall elect a vice chair from among the appointed members of the board. The vice chair shall serve in the capacity as vice chair for a specified term. If the vice chair resigns or ceases to be a member of the board, the board shall vote to elect a new vice chair from among the existing members. The vice chair shall act as chair in the absence of the chair.

Current terms for Mary E. Carlton and Judge Fink will expire at midnight on December 31st, 2009.

Motion: Move to nominate Pamela Johnston for the position of vice chair.

Motion Proposals: First Diana L. Clarke

Motion Results: Second Kenneth Reeves, III
Pass

Motion: Move to elect Pamela Johnston as vice chair for the term beginning January 1, 2010.

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

3-C: Report to the Board regarding status of board member recruitment.

Individuals Addressing the Board: Linda Grau, Kandace French

Discussion: Ms. Grau provided a verbal report to the Board regarding the status of the recruitment for vacant and expiring public and fiduciary board member positions. Ms. French presented outgoing board members Mary E. Carlton and Judge Dean Fink with certificates of appreciation from Chief Justice Rebecca White Berch.

4) REVIEW OF CERTIFICATION APPLICATIONS

4-A: Review, discussion, and possible action regarding pending applications for certification submitted by:

Sarah J. Holcomb
Kathleen A. Lawson
Michael D. Bogle
Mary E. Belasco
Linnea K. Grooms

Individuals Addressing the Board: Kimberly Siddall

Discussion: The above listed applicants have completed all requirements for standard certification. It was recommended standard certification be granted.

Motion: Move to grant standard certification to the above listed applicants.

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

Joe D. Cannon

Discussion: It was recommended the Board defer consideration of the above applicant to the next board meeting.

Motion: Move to defer consideration of this application to the next board meeting to be held on January 14, 2010.

Motion Proposals: First Diana L. Clarke
Second Kenneth Reeves, III

Motion Results: **Pass**

Elizabeth Hedger

Discussion: It was recommended the Board go into Executive Session in order to discuss information of a confidential nature.

Motion: Move to go into executive session for discussion of the above application.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: **Pass**

Executive Session: 12:05 p.m. – 12:07 p.m.

Discussion: It was recommended the Board invite the applicant to the January meeting for an informal interview.

Motion: Move to invite Ms. Hedger to the January meeting for an informal interview.

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

Motion Results: **Pass**

Ron Gann

Discussion: Board had been provided with court documentation regarding the applicant. It was recommended the Board invite the applicant to the January meeting for an informal interview regarding his misdemeanor conviction.

Motion: Move to invite applicant to the January meeting for an informal interview.

Motion Proposals: First Diana L. Clarke
Second Kenneth Reeves, III

Motion Results: **Pass**

5) **CERTIFICATION AND ELIGIBILITY**

5-A: *Review, discussion, and possible action regarding request for voluntary surrender of certification received from certified fiduciary Elizabeth Mulvey.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: Elizabeth Mulvey submitted a request to voluntarily surrender her certification. Division records confirmed there were no pending complaints involving Mulvey and she is not assigned to any cases. Staff recommended the Board accept the voluntary surrender for Elizabeth Mulvey.

Motion: Move to accept the request for voluntary surrender for Ms. Mulvey.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Motion Results: Pass

5-B: *Review, discussion, and possible action regarding request for waiver of the requirement of applicant's experience received from Charles Butzine.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: Documentation regarding Mr. Butzine's experience and education had been provided for Board review. Staff recommended the Board review and determine if the experience can be waived within the five year period.

Motion: Move to invite applicant to the January board meeting in order to answer questions regarding his experience.

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

Motion Results: Pass

CALL TO THE PUBLIC

Jay Polk came forward to thank the Board for allowing him to speak earlier in the agenda. Charles Butzine came forward to ask if he could answer any questions the Board may have at this time. As this was not an agenda item, he will return at the January board meeting as requested.

ADJOURNMENT

Motion: Adjourn the meeting.

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

Motion Results: **Pass**

Time: 12:12 p.m.

Initials: BT