



Supreme Court Fiduciary Board

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

Date: April 8, 2010
Time: 10:30 am – 2:30 pm

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Marlin “Kip” Anderson
Mary Jane Baumgarten
Diana L. Clarke
Kenneth Reeves, III
Deborah Primock
Pamela Johnston

Telephonically Present:

Shari Tomlinson
Marlin “Kip” Anderson (1st half)
Sherry Reed

Absent:

Diana M. Corry

OTHER ATTENDEES

AOC Staff:

Linda Grau
Nancy Swetnam
Debbie MacDougall
Kandace French
Kimberly Siddall
Nina Preston
Lori Braddock
Karla Clanton
Alex Navarro
Tony Posante
Afton Foutz
Susan Hunt

Guests:

Scott Ferris

CALL TO ORDER

Called to Order By:

Pamela Johnston

Time:

10:34 a.m.

1) REVIEW AND APPROVAL OF MINUTES

I-A: *Review, discussion, and possible action regarding the Regular Session Minutes of the meeting held on January 14, 2010.*

Individual Addressing the Board: Pamela Johnston

Discussion: No discussion.

Motion: Move to approve the Regular Session Minutes of the meeting on January 14, 2010.

Motion Proposals: First Mary Jane Baumgarten
Second Deborah Primock

Motion Results: Pass

I-B: *Review, discussion and possible action regarding the Executive Session Minutes of the meeting held on January 14, 2010.*

Individuals Addressing the Board: Pamela Johnston

Discussion: No discussion.

Motion: Move to approve the Executive Session Minutes of the meeting on January 14, 2010.

Motion Proposals: First Mary Jane Baumgarten
Second Deborah Primock

Motion Results: Pass

I-C: *Review, discussion, and possible action regarding the Regular Session Minutes of the meeting held on March 11, 2010.*

Individual Addressing the Board: Pamela Johnston

Discussion: No discussion.

Motion: Move to approve the Regular Session Minutes of the meeting on March 11, 2010.

Motion Proposals: First Mary Jane Baumgarten
Second Deborah Primock

Motion Results: Pass

I-D: *Review, discussion and possible action regarding the Executive Session Minutes of the meeting held on March 11, 2010.*

Individuals Addressing the Board: Pamela Johnston

Discussion: No discussion.

Motion: Move to approve the Executive Session Minutes of the meeting on March 11, 2010.

Motion Proposals: First Kenneth Reeves, III
Second Shari Tomlinson

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: *Review, discussion and possible action regarding complaint number 10-0003 dismissed by the Division Director Nancy Swetnam pursuant to Arizona Code of Judicial Administration § 7-201(D)(4)(a) and (H)(2)(a).*

Agenda item 2-A was deferred until further in the meeting.

2-B: *Review, discussion and possible action regarding the following certificate holder complaints:*

Complaint Number 08-0023 – Molly Ann Briggs

Individuals Addressing the Board: Nancy Swetnam

Discussion: Probable Cause Evaluator Mike Baumstark entered a finding probable cause does not exist in complaint number 08-0023. Therefore, it was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0023.

Motion: Move to accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0023.

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

Motion Results: Pass

Complaint Number 08-0029 – ARC/Guardianship Services, Commission

Individuals Addressing the Board: Nancy Swetnam

Discussion: Probable Cause Evaluator Baumstark entered a finding probable cause does not exist in complaint number 08-0029. Therefore, it was recommended the Board accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0029.

It was noted that the board does not have jurisdiction because the alleged misconduct as rep payee occurred after the guardianship had dissolved.

Motion: Move to accept the finding of the Probable Cause Evaluator and dismiss complaint number 08-0029.

Motion Proposals: First Diana L. Clarke
Second Shari Tomlinson

Motion Results: Pass

*Complaint Number 09-0001 - Arizona Department of Veterans' Services
and Gary Warner*

Individuals Addressing the Board: Nancy Swetnam

Discussion: On March 23, 2010, Probable Cause Evaluator Baumstark entered a finding probable cause exists in complaint number 09-0001. Therefore, it was recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding that ADVS and Warner committed the act of misconducts and further recommend that grounds for formal disciplinary action involving ADVS and Warner pursuant to Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a), (H)(6)(k)(2) and (H)(6)(k)(3) for an act of misconduct involving Superior Court in Pima County Local Rule 9.3, ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(a), (E)(3)(c), (F)(1) and (J)(7). As mitigating factors, there were none noted. Aggravating factors include prior disciplinary action. ADVS is currently serving a term of probation as a condition of a consent agreement entered in complaint number 07-0027.

The Board ultimately entered a finding these violations have occurred, the Board impose the following sanctions pursuant to ACJA § 7-201(H)(24)(a)(6):

- a) Issue a Censure to ADVS, pursuant to ACJA § 7-201(H)(24)(a)(6)(b);
- b) Issue a Letter of Concern to Warner, pursuant to ACJA § 7-201(H)(24)(a)(6)(a);
- c) Impose a civil penalty to Warner in the amount of \$100.00 per found violation, and there was one violation, to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(k);
- d) Impose a civil penalty to ADVS in the amount of \$100.00 per found violation, to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to

ACJA § 7-201(H)(24)(a)(6)(k);
Assess costs associated with the investigation and related disciplinary proceedings to be remitted no later than ninety (90) days following entry of the Board's Final Order, pursuant to ACJA § 7-201(H)(24)(a)(6)(j).

Further discussion between board and staff regarding ADVS's current probation terms and the details of censure and letter of concern.

Motion: Move to accept findings of the Probable Cause Evaluator and recommendation of staff regarding formal disciplinary actions as listed above.

Motion Proposals: First Mary Jane Baumgarten
Second Kenneth Reeves, III
Recusal Diana L. Clarke

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-A: *Review, discussion and possible action regarding proposed legislation.*

Individuals Addressing the Board: Kandace French

Discussion: House Bill 2426 – Adult Guardianship and Protective Proceedings was heard by the Committee on Public Safety and Human Services on March 17, 2010. The committee recommended the bill be returned to the Full Senate with a Do Pass recommendation.

Motion: No action taken.

4) REVIEW OF LICENSE APPLICATIONS

4-A: *Review, discussion, and possible action regarding the following pending applications for licensure:*

Debra A. Bailey

Individuals Addressing the Board: Alex Navarro

Discussion: Debra A. Bailey submitted a complete application, demonstrating she meets the minimum eligibility requirements, and no information has been presented during the background investigation which is contrary to licensure being granted. It was recommended

to grant Debra A. Bailey a fiduciary license.

Motion: Move to grant certification to Debra A. Bailey.

Motion Proposals: First Shari Tomlinson

Second Pam Johnston

Motion Results: Pass

*Ellen C. Matthews
Pamela Lynn Phillips*

Individuals Addressing the Board: Alex Navarro

Discussion: It is recommended to defer consideration of certification for Ellen C. Matthews and Pamela Lynn Phillips to the May meeting.

Motion: Move to defer consideration of certification for Ellen C. Matthews and Pamela Lynn Phillips to the May meeting.

Motion Proposals: First Mary Jane Baumgarten

Second Diana L. Clarke

Motion Results: Pass

5) LICENSE AND ELIGIBILITY

5-A: *Review, discussion, and possible action regarding Voluntary Surrender request received from license fiduciaries.*

*Francine T. Saccio
Charles W. King
Gail Christensen
Terry L. Hill*

Individuals Addressing the Board: Alex Navarro

Discussion: There are no pending complaints involving the above licensed fiduciaries. Applicants listed above confirmed they are not assigned to any cases. Staff recommends the Board accept the voluntary surrender of Francine Saccio, Charles King, Gail Christensen, and Terry Hill.

Motion: Move to accept staff recommendation.

Motion Proposals: First Pamela Johnston

Second Mary Jane Baumgarten

Motion Results: Pass

5-B: *Review, discussion, and possible action regarding request for extension to complete continuing education credits received from licensed fiduciary Theresa Whitfield.*

Individuals Addressing the Board: Alex Navarro

Discussion: The Board received and reviewed the written request received from Theresa Whitfield. Staff recommends the Board determine whether Ms. Whitfield's request should be considered a special circumstance pursuant to ACJA § 7-202(L)(8)(c)(2) and determine if the request would warrant an extension of CE credits.

Motion: Move to grant a 90 day extension beginning May 31, 2010 as a one time courtesy extension. If applicant requires additional time, she must submit an application for inactive status; pay any fees due on continuing education. Credits still have to be completed as an inactive Fiduciary.

Motion Proposals: First Diana L. Clarke
Second Pamela Johnston

Motion Results: Pass

5-C: *Review, discussion, and possible action regarding request for placement on Inactive Status received from licensed fiduciary Nancy Anderson, License Number 20381*

Motion: Move to enter into Executive Session.

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

Executive Session 11:46 a.m. to 11:48 a.m.

Individuals Addressing the Board: Kimberly Siddall

Discussion: Discussion regarding deferring the application for inactive status by Nancy Anderson to the May meeting.

Motion: Move to defer the application for inactive status by Nancy Anderson until the next regularly scheduled meeting.

Motion Proposals: First Pamela Johnston
Second Kenneth Reeves, III

Motion Results: Pass

2-A: *Review, discussion and possible action regarding complaint number 10-0003 dismissed by the Division Director Nancy Swetnam pursuant to Arizona Code of Judicial Administration § 7-201(D)(4)(a) and (H)(2)(a).*

Motion: Move to enter into Executive Session

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

Executive Session 11:51 to 11:58 a.m.

Individuals Addressing the Board: Nancy Swetnam

Discussion: Complainant has the right to request review of the dismissal by the Board. Division received a letter dated March 23, 2010 that was sent to Dave Byers which is considered a request for review. Staff recommends Board defer to the next Board meeting.

Motion: Motion to defer the matter to the next Board meeting.

Motion Proposals: First Diana Clarke
Second Mary Jane Baumgarten

Motion Results: Pass

CALL TO THE PUBLIC

No Response

ADJOURNMENT

Motion: Move to adjourn.

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

Motion Results: Pass

Time: 12:00 p.m.

Initials: AF/SH

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