

Supreme Court Board of Fiduciary
Arizona State Courts Building
1501 West Washington Street, Phoenix, Arizona 85007
Conference Room 230
December 13, 2007
10:00 am -2:00 pm

Approved Regular Minutes

MEMBER ATTENDANCE

Present:

Shari J. Tomlinson
Honorable Dean Fink
Mary E. Carlton
Diana L. Clarke
Pamela Johnston
Kymberlei Putz

Telephonically Present:

Absent:

Stacey L. Johnson
Marlin "Kip" Anderson

OTHER ATTENDEES

AOC Staff:

Kitty Boots
Nancy Swetnam
Linda Grau
Alex Navarro
Tony Posante
Nina Preston
Kimberly Siddall
Rhonda Simmons
David Geriminsky

Guests:

Roger Coventry
Don Childers
Mildred Ellis
Charity Antal

CALL TO ORDER

Called to Order By:

Shari J. Tomlinson

Time:

10:07 a.m.

1) REVIEW AND APPROVAL OF MINUTES

1-A: *Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on November 8, 2007.*

Individuals Addressing the Board: None

Discussion: Board discussed the Regular Session Minutes of the meeting held on November 8, 2007.

Motion: Moved to approve the Regular Session Minutes of the meeting held on November 8, 2007.

Motion Proposals: First: Mary E. Carlton
Second: Pamela Johnston

Motion Results: Pass

2) PENDING COMPLAINTS

2-A: *Formal Interview with certified fiduciary Donna Allison-Howard and possible action regarding complaint number 06-0007.*

Individuals Addressing the Board: Linda Grau

Discussion: Ms. Grau recommended and the Board discussed tabling this Agenda Item until later in the meeting pending Ms. Allison-Howard's arrival.

2-B: *Formal Interview with certified fiduciary Mildred Ellis and possible action regarding complaint number 03-0014.*

Individuals Addressing the Board: Mildred Ellis, Linda Grau, Nancy Swetnam

Discussion: Board conducted a Formal Interview with certified fiduciary Mildred Ellis regarding complaint number 03-0014.

Motion: Board Moved to request staff draft a Consent Agreement including provisions Ms. Ellis would resolve the outstanding court ordered sanction fines within 90 days of signing the Consent Agreement. The Board agreed to waive the costs of the investigation and Ms. Ellis agreed any future court ordered fines would be resolved in a timely manner.

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

Motion Results: Pass

2-C: *Formal Interview with certified fiduciary James Clark and possible action regarding complaint number 07-0003.*

Individuals Addressing the Board: Linda Grau

Discussion: Ms. Grau reported Mr. Clark maintained on-going communication with Division staff since being invited to participate in the Formal Interview. After submitting a written acceptance of the Board's invitation, Mr. Clark reported he was scheduled to testify in court. Mr. Clark requested the Board defer the Formal Interview to the January meeting.

Motion: Moved to defer the Formal Interview with James Clark regarding complaint number 07-0003 to the January meeting.

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

Motion Results: Pass

3) ADMINISTRATIVE ISSUES

3-C: *Review and discussion of record of Board proceedings and communications.*

Individuals Addressing the Board: Nancy Swetnam, Linda Grau

Discussion: Ms. Swetnam presented and the Board discussed matters pertaining to the formal record of Board proceedings and communications among Board and Subcommittee members. Ms. Swetnam reviewed the ACJA and court rule provisions related to public meetings, records requests, and communication with interested parties. The Board discussed what action the Board should take, if any, if there is inaccurate information communicated by another person or entity regarding the Board's meetings and actions. The Board acknowledged and reiterated court rule recognizes the approved Minutes are the formal record of each Board meeting.

CALL TO THE PUBLIC REGARDING ITEM 3-C

Individuals Addressing the Board: No response.

3-D: *Review and discussion regarding Board member recusals and Arizona Code of Judicial Administration § 7-201 (I)(5)(b).*

Individuals Addressing the Board: Nancy Swetnam, Nina Preston, Linda Grau

Discussion: Board discussed the circumstances and factors surrounding recusals as articulated in ACJA § 7-201.

CALL TO THE PUBLIC REGARDING ITEM 3-D

Individuals Addressing the Board: No response.

3-A: *Report of the Fiduciary Duties Subcommittee.*

Individuals Addressing the Board: Linda Grau

Discussion: Ms. Grau reported the Subcommittee met on November 27th. At the meeting the Subcommittee discussed possible methods for defining trainee roles and responsibilities in ACJA § 7-202. The Subcommittee discussed possible proposals for amending the examination and certification eligibility requirements. The Subcommittee considered and discussed possible responses to the Arizona Judicial Council's June 2006 request for means to articulate what fiduciary acts require certification. The Subcommittee is scheduled to meet again at 9:30 a.m. on January 10, 2008.

CALL TO THE PUBLIC REGARDING ITEM 3-A

Individual Addressing the Board: Donald Childers

Mr. Childers requested a copy of the working draft of ACJA § 7-202 being considered by the Subcommittee and was directed to the program website and the hard paper copies of the document made available to meeting attendees on the sign-in table.

3-B: *Report of the POA Subcommittee.*

Individuals Addressing the Board: Judge Dean Fink

Discussion: Judge Fink reported the Subcommittee did not have a December meeting scheduled but were continuing to develop a mission statement for the Subcommittee. Judge Fink noted at the November meeting the Subcommittee discussed whether the scope of the Subcommittee discussion should be expanded to include matters pertaining to trusts. The Board discussed this may require an additional action of the Board. Judge Fink noted the Subcommittee's request for a formal legal opinion regarding the Board and Program's authority to address POA related matters, specifically issues of misconduct involving certified fiduciaries and POAs. The Subcommittee is scheduled to meet next on January 10, 2008 immediately following the regularly scheduled Board meeting.

CALL TO THE PUBLIC REGARDING ITEM 3-A

Individuals Addressing the Board: No response.

Tabled Agenda Item Revisited:

2-A: *Formal Interview with certified fiduciary Donna Allison-Howard and possible action regarding complaint number 06-0007.*

Individuals Addressing the Board: Linda Grau

Discussion: Ms. Grau reported Division records reflect Ms. Allison-Howard had indicated in previous communications with staff she would be attending the schedule Formal Interview. While the item was tabled, staff confirmed no additional information was received from Ms. Allison Howard and staff were unable to reach her by phone. Ms. Grau recommended the Board consider deferring the Formal Interview to the January meeting. Board discussed complaint number 06-0007 and expediting the process by requesting staff communicate with Ms. Allison-Howard before the next meeting to attempt to determine whether this complaint can be resolved via Consent Agreement.

Motion: Board Moved to request staff draft a proposed Consent Agreement containing provision Ms. Allison-Howard agree to reimburse the pharmacy and for the Board to issue a Letter of Concern.

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

Motion Results: Pass

CALL TO THE PUBLIC

Individuals Addressing the Board: Roger Coventry

Discussion: Mr. Coventry addressed the Board regarding communications involving the Arizona Fiduciary Association "listserv" regarding Board and Subcommittee actions.

ADJOURN

Motion: Adjourn the meeting.

Motion Proposals: First: Mary E. Carlton
Second: Pamela Johnston

Motion Results: Pass

Time: 12:07 p.m.