

Supreme Court Board of Fiduciary
Arizona State Courts Building
1501 West Washington Street, Phoenix, Arizona 85007
Conference Room 230
November 08, 2007
10:00 am -2:00 pm

Approved Regular Minutes

MEMBER ATTENDANCE

Present:

Marlin "Kip" Anderson
Diana L. Clarke
Judge Dean Fink
Stacey L. Johnson
Pamela Johnston
Kymberlei Putz
Shari J. Tomlinson

Telephonically Present:

Mary E. Carlton

OTHER ATTENDEES

AOC Staff:

Kitty Boots
Linda Grau
Alex Navarro
Nina Preston
Kimberly Siddall
Rhonda Simmons
Nancy Swetnam
David Geriminsky
Jenny Lubben
J.R. Rittenhouse

Guests:

Roger T. Coventry
James Clark

CALL TO ORDER

Called to Order By:

Shari J. Tomlinson

Time:

10:05 a.m.

1) REVIEW AND APPROVAL OF MINUTES

1-A: Discussion, review, and possible approval of the Regular and Executive Session Minutes of the meeting held on October 11, 2007.

Individual Addressing the Board: Linda Grau

Discussion: Board discussed the drafts of the Regular and Executive Session Minutes of the meeting held on October 11, 2007.

Motion: Move to approve the Regular and Executive Session Minutes of the meeting held on October 11, 2007.

Motion Proposals: First: Kymberlei Putz
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.*

Individual Addressing the Board: Linda Grau

Discussion: Board discussed Donna Allison-Howard's request to reschedule.

Motion: Moved to defer to the next regularly scheduled Board meeting.

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

Motion Results: Pass

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

Individual Addressing the Board: Linda Grau

Discussion: Board discussed Mildred Ellis' absence.

Motion: Moved to defer to the next regularly scheduled December Board meeting.

Motion Proposals: First: Stacey L. Johnson
Second: Kymberlei Putz

Motion Results: Pass

2-C: Review, discussion and possible action regarding the following complaints:

07-0019 – Lynette Esser
07-0002 – James Clark
07-0003 – James Clark
07-0006 – James Clark
05-0007 – Sun Valley Group, Inc. (Peter Frenette)

Individuals Addressing the Board: Nancy Swetnam, Linda Grau, Alex Navarro

Discussion: Board discussed the complaints and accepted the verbal recommendation of the Division Director regarding complaint numbers:

07-0019 – Lynette Esser
07-0002 – James Clark
07-0003 – James Clark
07-0006 – James Clark
05-0007 – Sun Valley Group, Inc. (Peter Frenette)

Motion: Moved to dismiss complaint number 07-0019.

Motion Proposals: First: Judge Dean Fink
Second: Marlin “Kip” Anderson

Motion Results: Pass

Motion: Moved to accept the recommendation of staff regarding complaint number 07-0002 and dismiss Allegations 1, 2, and 3 and issue a Letter of Concern to Mr. Clark regarding Allegations 4 and 5.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

Motion: Moved to accept the recommendation of staff complaint number 07-0006 and dismiss Allegations 1, 2, 3, and 4 and issue a Letter of Concern to Mr. Clark regarding Allegations 5, 6, and 7.

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

Motion Results: Pass

Motion: Moved to consolidate complaint numbers 07-0002, 07-0006, and Allegations 4 and 6 of complaint number 07-0003 and issue one Letter of Concern to Mr. Clark.

Motion Proposals: First: Stacey L. Johnson
Second: Judge Dean Fink

Motion Results: Pass

Motion: Moved to reject the finding of the Probable Cause Evaluator and substantiate Allegation 2 of complaint number 07-0003.

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

Motion Results: Pass – Shari Tomlinson opposed.

Motion: Moved to dismiss Allegations 1 and 3 of complaint number 07-0003 and find grounds for formal disciplinary action exists in Allegations 2, 5, 7, 8, and 9 pursuant to ACJA § 7-201 (H)(6)(a), (H)(6)(k)(3), and (H)(6)(k)(7). Further move to invite James Clark for a formal interview pursuant to ACJA § 7-201 (H)(8).

Motion Proposals: First: Judge Dean Fink
Second: Stacey L. Johnson

Motion Results: Pass

Motion: Moved to accept the recommendation of staff and dismiss Allegations 1, 2, 3, 4 and 5 of complaint number 05-0007 and issue a Letter of Concern regarding Allegation 6.

Motion Proposals: First: Kimberlei Putz
Second: Marlin “Kip” Anderson

Motion Results: Pass

Recused: Stacey L. Johnson

2-D: *Review, discussion and possible action regarding request to modify Consent Agreement from Helena Yazzie involving complaint number 06-0016.*

Individuals Addressing the Board: Linda Grau

Discussion: Board discussed Helena Yazzie's request for modification of the Consent Agreement entered in complaint number 06-0016.

Motion: Moved to amend the Consent Agreement to reduce the monthly payment amount to \$150.00 with all payments due on the 22nd of each month, beginning November 22, 2007.

Motion Proposals: First: Kymberlei Putz
Second: Mary E. Carlton

Motion Results: Pass

BREAK STARTED 11:45 a.m.

BREAK ENDED 12:07 a.m.

3) CERTIFICATION AND ELIGIBILITY

3-A: Interview with and possible action regarding applicant East Valley Fiduciary Services.

Individuals Addressing the Board: Kimberly Siddall

Discussion: Board discussed applicant East Valley Fiduciary Services.

Motion: Moved to grant certification to East Valley Fiduciary Services.

Motion Proposals: First: Judge Dean Fink
Second: Stacey L. Johnson

Motion Results: Pass

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

Tonya Ford
Melissa Wilkinson

Individuals Addressing the Board: Kimberly Siddall

Discussion: Board discussed pending applications for Standard certification submitted by:

Tonya Ford
Melissa Wilkinson

Motion: Moved to grant certification to Tonya Ford.

Motion Proposals: First: Mary E. Carlton
Second: Kymberlei Putz

Motion Results: Pass

Motion: Moved to reject the recommendation of staff to invite Melissa Wilkinson to a interview regarding her application.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

Motion: Moved to deny the application of Melissa Wilkinson pursuant to ACJA § 7-201 (E)(2)(c)(2)(b)(i) and (x)(v).

Motion Proposals: First: Pamela Johnston
Second: Diana L. Clarke

Motion Results: Pass

3-C: *Review, discussion, and possible action regarding Inactive Status request received from certified fiduciary William T. Burghart, certificate number 20520.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: Board discussed the Inactive Status request received from certified fiduciary William T. Burghart, certificate number 20520.

Motion: Moved to approve William T. Burghart's request for Inactive Status in good standing.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

3-D: *Review, discussion, and possible action regarding Inactive Status request received from certified fiduciary Lisa Peake, certificate number 20424.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: Board discussed the Inactive Status request received from certified fiduciary Lisa Peake, certificate number 20424.

Motion: Moved to approve Lisa Peake's request for Inactive Status in good standing.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

3-E: *Review, discussion, and possible action regarding request to retake the Fiduciary Examination submitted by Krystal Siler.*

Individuals Addressing the Board: Kimberly Siddall

Discussion: Board discussed the request to retake the Fiduciary Examination submitted by Krystal Siler.

Motion: Moved to allow Krystal Siler to retake the Fiduciary Examination.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

4) ADMINISTRATIVE ISSUES

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

Individual Addressing the Board: Shari Tomlinson

Discussion: Shari Tomlinson reported the Subcommittee has review the draft language in ACJA format and the matter requires additional discussion and consideration. The Subcommittee has schedule a meeting for November 27, 2007 at 10:00 a.m.

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

Individual Addressing the Board: Stacey Johnson, Pamela Johnston

Discussion: Subcommittee reported they are discussing the need further define objective and scope of the POA subcommittee. The Subcommittee is scheduled to meet following the following the full Board meeting.

CALL TO THE PUBLIC

Individual Addressing the Board: Roger Coventry

Discussion: Mr. Coventry expressed concern the publication of complaint related documents would be libelous. Mr. Coventry noted a potential error in the fee schedule contained in ACJA § 7-202 regarding the Inactive Status renewal fee. Mr. Coventry indicated he believes a double jeopardy scenario could exist if the Board enters findings and sanctions against a certificate holder if the Court has previously sanctioned a fiduciary. Mr. Coventry questioned whether the Board had the authority to substantiate a complaint allegation in matters where the Probable Cause Evaluator did not find probable cause exists.

ADJOURN

Motion: Moved to adjourn the meeting.

Motion Proposals: First: Kymberlei Putz
Second: Pamela Johnston

Motion Results: Pass

Time: 12:48 p.m.