



Supreme Court Fiduciary Board

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

Date: September 11, 2008
Time: 10:30 a.m. – 2:30 p.m.

Approved Regular Meeting Minutes

MEMBER ATTENDANCE:

Present:

Marlin “Kip” Anderson
Mary E. Carlton
Diana L. Clarke
Honorable Dean Fink
Mary Jane Baumgarten
Pamela Johnston
Shari J. Tomlinson

Telephonically Present:

Sherry Reed

Absent:

Diana M. Corry

OTHER ATTENDEES

AOC Staff:

Linda Grau
Nancy Swetnam
Kitty Boots
Maria Lopez
Jenny Lubben
Nina Preston
Kimberly Siddall
Tony Posante
Alex Navarro
Karla Clanton
Amy Love

Guests:

Peter Frenette
Bill Sims
C. Zimmerman
Cathy Yoshida
Carla Jones
Candy Wheeler -Ruby
Lisa Price
Roshara L. Badille

CALL TO ORDER

Called to Order By: Shari J. Tomlinson

Time: 10:36

1) REVIEW AND APPROVAL OF MINUTES

1-A: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on July 10, 2008.

Individual Addressing the Board: Linda Grau

Discussion: Staff recommended the Board defer consideration of the July 10, 2008 Regular Session Minutes to the October meeting.

Motion: Board moved to defer consideration of the July 10, 2008 Regular Session Minutes to the October meeting.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

1-B: Discussion, review, and possible approval of the Regular Session Minutes of the meeting held on August 7, 2008.

Individual Addressing the Board: Linda Grau

Discussion: Staff recommended the Board review, discuss and approve the Regular Session Minutes of the meeting held on August 7, 2008.

Motion: Board approved the regular Session Minutes for the meeting held on August 7, 2008.

Motion Proposals: First Mary Jane Baumgarten
Second Marlin "Kip" Anderson
Abstain Mary E. Carlton

2) PENDING COMPLAINTS

2-A: Review discussion, and possible action regarding pending complaint number 07-0004 involving Richard Vanderheiden and the Maricopa County Public Fiduciary Office.

Individual Addressing the Board: Nancy Swetnam

Discussion: Staff recommended the Board accept the finding of the probable cause evaluator and enter a finding grounds for formal disciplinary action involving Mr. Vanderheiden and the Maricopa County Public Fiduciary Office exists pursuant to ACJA § 7-201 (H)(6)(a), (H)(6)(k)(2), (H)(6)(k)(3), (H)(6)(k)(7), and (H)(6)(k)(8) for acts of misconduct involving ACJA § 7-201 (F)(1) and ACJA § 7-202 (F)(1), (J)(1)(e), (J)(3), and (J)(7).

Motion: Board moved to accept staff's recommendation.

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

Motion Results: Pass

Recusal Diana L. Clarke

Motion: Board moved to invite Mr. Vanderheiden and the Maricopa County Public Fiduciary Office to an Formal Interview, pursuant to ACJA § 7-201 (H)(8), at the October 9, 2008 Board Meeting.

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

Motion Results: Pass

Recusal Diana L. Clarke

2-A: Review discussion and possible action regarding pending complaint number 07-0029 involving Candace Bow.

Individual Addressing the Board: Nancy Swetnam

Discussion: Staff recommended the Board accept the finding of the probable cause evaluator and enter a finding grounds for formal disciplinary action exist pursuant to ACJA § 7-201 (H)(6)(a), (H)(6)(k)(9), and (H)(6)(k)(10) for acts of misconduct involving Arizona Revised Statutes § 41-130, ACJA § 7-201 (E)(5) and (F)(1), and ACJA § 7-202 (F)(1) and (J)(7).

Motion: Accept staff's recommendation.

Motion Proposals: First Marlin "Kip" Anderson
Second Pamela Johnston

Motion Results: Pass

2-A: Review discussion and possible action regarding pending complaint number 08-0001 involving Candace Bow.

Individual Addressing the Board: Nancy Swetnam

Discussion: Staff recommended the Board accept the finding of the probable cause evaluator and enter a finding grounds for formal disciplinary action exist pursuant to ACJA § 7-201 (H)(6)(a), (H)(6)(h), (H)(6)(k)(2), (H)(6)(k)(3), (H)(6)(k)(7) and (H)(6)(k)(12) for acts of misconduct involving Arizona Revised Statutes § 14-5417, § 14-5418(A) and (B), § 14-5419(A), § 14-7302, ACJA § 7-201 (F)(1), and ACJA § 7-202 (F)(1), (F)(3), (J)(1), (J)(2), (J)(2)(e), (J)(4)(a), (J)(4)(b), (J)(4)(d), (J)(4)(j), and (J)(7). Further, staff recommended the Board consolidate this matter with the action pending in complaint number 07-0029.

Motion: Accept staff's recommendation.

Motion Proposals: First Pamela Johnston
Second Mary Jane Baumgarten

Individual Addressing the Board: Nancy Swetnam

2-B: 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 08-0011
Complaint Number 08-0017
Complaint Number 08-0018
Complaint Number 07-0020
Complaint Number 08-0005
Complaint Number 07-0025
Complaint Number 07-0016

Individual Addressing the Board: Nancy Swetnam

Discussion: Director Swetnam dismissed complaint number NC08-0011 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 July 21, 2008. No request for Board review has been received from the complainant. Therefore, it is recommended the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

Motion: Board moved to affirm the dismissal of complaint number NC08-0011.

Motion Proposals: First Honorable Dean Fink
Second Mary Jane Baumgarten

Discussion: Director Swetnam dismissed complaint number NC08-0017 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 July 21, 2008. The complainant submitted the attached request for Board review. It is recommended the Board review the complainant's request and affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d). The Board discussed the content and specificity with which the complainant stated his concerns regarding the Board's lack of jurisdiction in his written request for Board review.

Motion: Board moved to affirm the dismissal of complaint number 08-0017.

Motion Proposals: First Judge Dean Fink
Second Marlin "Kip" Anderson

Motion Results: Pass

Discussion: Director Swetnam dismissed complaint number 08-0018 with prejudice for lack of jurisdiction and referred the complaint to the State Bar of Arizona. Notice of the dismissal, the referral, and the complainant's right to request Board review of the dismissal were forwarded to the complainant on July 21, 2008. No request for Board review has been received from the complainant. Therefore, it is recommended the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

Motion: Board moved to affirm the dismissal of complaint number 08-0018.

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

Motion Results: Pass

Discussion: Director Swetnam dismissed complaint number 07-0020 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 July 21, 2008. No request for Board review has been received from the complainant. Therefore, it is recommended the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

Motion: Board moved to affirm the dismissal of complaint number 07-0020.

Motion Proposals: First Pamela Johnston
Second Mary E. Carlton

Motion Results: Pass

Discussion: Director Swetnam dismissed complaint number 08-0005 with prejudice for lack of jurisdiction and referred the complaint to the Office of the Attorney General. Notice of the dismissal, the referral, and the complainant's right to request Board review of the dismissal were forwarded to the complainant on July 22, 2008. No request for Board review has been received from the complainant. Therefore, it is recommended the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

Motion: Board moved to affirm the dismissal of complaint number 08-0005.

Motion Proposals: First Pamela Johnston
Second Mary E. Carlton

Motion Results: Pass

Discussion: Director Swetnam dismissed complaint number 07-0025 with prejudice for lack of jurisdiction and referred the complaint to the Office of the Attorney General. Notice of the dismissal, the referral, and the complainant's right to request Board review of the dismissal were forwarded to the complainant on July 22, 2008. No request for Board review has been received from the complainant. Therefore, it is recommended the Board affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d).

Motion: Board moved to affirm the dismissal of complaint number 07-0025.

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

Motion Results: Pass
Recusals Judge Dean Fink and Diana L. Clarke

Discussion: Acting Director Katherine Boots dismissed complaint number 07-0016 with prejudice upon determining the complaint does not meet the criteria of ACJA § 7-201 (H)(2)(a)(2)(e). Notice of the dismissal and the complainant's right to request Board review of the dismissal were forwarded to the complainant on July 25, 2008. The complainant submitted a request for Board review. It is recommended the Board review the complainant's request and

affirm the Division Director Dismissal pursuant to ACJA § 7-201 (H)(2)(d). The Board reviewed the complainant's request.

Motion: Board moved to affirm the dismissal of complaint number 07-0016.

Motion Proposals: First Honorable Dean Fink
Second Mary Jane Baumgarten

Motion Results: Pass

3) CERTIFICATION AND ELIGIBILITY

3-A: Review, discussion, and possible action regarding pending renewal application of Candace Bow.

Individual Addressing the Board: Kimberly Siddall

Motion: Board moved to enter in to Executive Session

Motion Proposals: First Marlin "Kip" Anderson
Second Mary Jane Baumgarten
Recusal Judge Dean Fink

Motion Results: Pass

Executive Session: 11:58 a.m.-12:30. Based on his recusal from this agenda item, Judge Dean Fink did not attend or participate in the Executive Session.

Discussion: Staff reported Ms. Bow submitted a request to withdraw her application for renewal.

Motion: Board moved to defer consideration of Ms. Bow's request to withdraw her renewal application to the October meeting.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgarten
Recusal Judge Dean Fink

Motion Results: Pass

3-B: Review, discussion, and possible action regarding pending renewal application of Clare Guthrie.

Individuals Addressing the Board: Kimberly Siddall

Discussion: Staff reported Ms. Guthrie did not return a signed Consent Agreement and submitted a request to withdrawal her renewal application. Subsequently, staff received a letter requesting a voluntary surrender of her certificate. Staff forwarded the Voluntary Surrender Request Form to Ms. Guthrie and her attorney for completion. Staff recommended the Board defer consideration of this agenda item to provide Ms. Guthrie with an opportunity to complete and return the Voluntary Surrender Request form.

Motion: Board moved to defer consideration of the renewal application, the withdrawal request, and Ms. Guthrie request to voluntarily surrender her certificate to the October meeting; requesting Ms. Guthrie provide confirmation all of her cases have been assigned to other fiduciaries.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgarten
Recusal Honorable Dean Fink

3-C: Review, discussion, and possible action regarding pending applications for certification from Rosemerrie Christie and NRM Resource Management (Rosemerrie Christie).

Individual Addressing the Board: Kimberly Siddall

Discussion: Staff recommended standard certification be granted to Rosemerrie Christie and NRM Resource Management.

Motion: Board moved to grant certification to Rosemerrie Christie and NRM Resource Management.

Motion Proposals: First Mary Jane Baumgarten
Second Diana L. Clarke

Motion Results: Pass

3-D: Review, discussion, and possible action regarding pending applications for 2008-2010 certification renewal submitted by Donna Benjamin and D M Benjamin PA, PC (Donna Benjamin).

Individual Addressing the Board: Kimberly Siddall

Discussion: Staff recommended renewal of certification be granted to Donna

Benjamin and D M Benjamin CPA, PC.

Motion: Board moved to grant renewal of certification to Donna Benjamin and D M Benjamin CPA, PC.

Motion Proposals: First Mary E. Carlton
Second Pamela Johnston

Motion Results: Pass

Discussion: Regarding renewal applicant Fred Appel, staff reported Mr. Appel returned a signed consent agreement. Staff recommended the Board enter the Consent Agreement and grant renewal of certification to Fred Appel.

Motion: Board moved to accept staff's recommendation.

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

Motion Results: Pass

Discussion: Staff reported renewal application Marie Barnett states she is unable to locate her remaining continuing education certificates of attendance. Staff recommended the Board consider one of the following options:

- Option 1: Require applicant to provide an affidavit attesting she had completed the required continuing education;
- Option 2: Require applicant to complete 6.5 hours of continuing education and provide proof within 3 months; or,
- Option 3: Require applicant to complete 26.5 hours for the 2008-2010 certification period with the understanding she will audited at renewal.

Motion: Board moved to defer consideration of Marie Barnett's renewal application and require Ms. Barnett to complete 6.5 hours of continuing education and provide proof of attendance within 3 months. NOTE: The Board specified these additional continuing education hours do not carry forward into the 20 hours require for 2010-2012 renewal.

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

Motion Results: Pass

Discussion: Staff recommended the Board defer consideration of the renewal application for Yuma Private Fiduciary, L.L.C. (Marie Barnett) to the October 9, 2008 meeting.

Motion: Board moved to accept staff's recommendation.

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

Motion Results: Pass

Discussion: Staff recommends the Board consider offering a Consent Agreement to renewal wherein Ms. Kulp is required to complete 5 additional hours of continuing education in ethics. Board discussed the proposed Consent Agreement requiring the additional continuing education hours be completed within 90 days and note the additional hours do not carry forward into the 20 hours require for 2010-2012 renewal.

Motion: Board moved to defer consideration of Ms. Kulp's individual renewal application to the October meeting to provide staff an opportunity to offer Ms. Kulp the discussed Consent Agreement..

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

Motion Results: Pass

Discussion: Staff recommended the Board defer consideration of the Fiduciary Services, LLC (Janice Kulp) renewal application to the October 9, 2008 meeting.

Motion: Board moved to accept staff's recommendation.

Motion Proposals: First Pamela Johnston
Second Mary E. Carlton

Motion Results: Pass

Discussion: Staff recommended renewal of certification be granted to the following business entities:
Coconino County Public Fiduciary (Raena Honan)
Professional Community Services, Inc. (Audrey Hanks)
ARC/Guardianship Services Commission (Martha Brightwell)

Motion: Board moved to accept staff's recommendation.

Motion Proposals: First Mary Jane Baumgarten
Second Pamela Johnston

Motion Results: Pass

3-E: Review, discussion, and possible action regarding petition received from Vivian Hartless requesting the Board waive the ACJA § 7-202 subsection (E)(1)(b) requirement and permit Ms. Hartless to sit for the fiduciary certification examination.

Individuals Addressing the Board: Kimberly Siddall

Discussion: Staff determined the applicant did not qualify to sit for the examination based on ACJA § 7-202 (E)(1)(b)(2) as the applicant does not have the required one year of work experience. The Board reviewed Ms. Hartless' request to sit for the exam.

Motion: Board moves to waive the ACJA § 7-202 subsection (E)(1)(b) requirement and approves Vivian Hartless to sit for the fiduciary certification examination based on her professional experience and the need for certified fiduciaries in rural communities.

Motion Proposals: First Diana L. Clarke
Second Pamela Johnston

Motion Results: Pass

3-F: Review, discussion, and possible action regarding Inactive Status request received from certified fiduciary JR Rittenhouse, certificate number 20045.

Discussion: Staff recommends the Board accept the request and transfer Ms. Rittenhouse's certification to inactive status in good standing.

Motion: Board moved to accept staff's recommendation.

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

Motion Results: Pass

4) ADMINISTRATIVE ISSUES

4-A: Review, discussion, and possible action regarding proposed amendments to Arizona Code of Judicial Administration § 7-202.

Individuals Addressing the Board: Linda Grau and Nancy Swetnam

Discussion: Staff reported the public comment period ended on September 2, 2008. The Board discussed the public comments received which were provided to the Board for review in advance of the meeting. The Board discussed the proposal and Board Chair Shari Tomlinson opened the discussion for a limited call to the public on this issue.

Individual Addressing the Board: Lisa Price

Discussion: Ms. Price addressed the Board with concerns regarding the validity of the ACJA § 7-202 draft which was circulated for public comment. Ms. Price addressed concerns regarding the proposals impact on bonding requirements.

Individual Addressing the Board: Peter Frenette

Discussion: Mr. Frenette addressed the Board with concerns regarding the the trainee and designated principal provisions; asserting that if adopted, these provisions will discourage future formation of new private fiduciary entities.

Individual Addressing the Board: Candy Wheeler-Ruby

Discussion: Ms. Wheeler-Ruby addressed the Board with concerns the proposed amendments would result in an onslaught of new cases for the public fiduciary offices. Ms. Wheeler-Ruby indicated the trainee provisions would prove burdensome for the counties and would result in increased costs being passed on to the wards.

Board discussion: After hearing public comments, the Board discussed the proposed amendments.

Motion: Board moved to recommend the adoption of the proposed amendment to ACJA § 7-202, striking the phrase “in order to sit for the fiduciary examination ,” in ACJA § 7-202 (E)(1)(b) and removing the requirement a designated principal must server under the supervision of an established designated principal for a three year period in order to qualify as a designated principal.

Motion Proposals: First Shari Tomlinson
Second Diana L. Clarke

Motion Results: Pass

Motion: Board move to accept submission of proposed alternative language suggestions to be submitted to the Certification and Licensing

Division no later than 5 p.m. on September 25, 2008, for Board review and consideration at the October meeting.

Motion Proposals: First Diana L. Clarke
Second Mary Jane Baumgartner

Motion Results: Pass

4-B: Review, discussion, and possible action regarding the Regulatory Scope Subcommittee's Legislative Proposal.

Individuals Addressing the Board: Nancy Swetnam, Linda Grau and Judge Dean Fink

Discussion: Judge Fink reported the Regulatory Scope Subcommittee met on August 12, 2008 and forwarded the Legislative Proposal to the AOC Executive Office in advance of the August 20, 2008 deadline. Staff recommended the Board make a recommendation to the Arizona Judicial Council regarding the proposal. Board Chair Shari Tomlinson opened the discussion for a limited call to the public on this issue.

Individual Addressing the Board: Lisa Price

Discussion: Ms. Price addressed the Board noting the Arizona Fiduciary Board opposed additional regulation.

Individual Addressing the Board: Peter Frenette

Discussion: Mr. Frenette addressed the Board acknowledging he hadn't seen all the confidential dismissed complaints the Board had reviewed, but didn't believe the original legislation was not intended to cover the areas reached by the proposal.

Individual Addressing the Board: Bill Sims

Discussion: Mr. Sims addressed the Board with concerns the Legislative Proposal would result in unintended consequences for competent consumers who engage the services of certified fiduciaries.

Motion: Board moved to recommend the Arizona Judicial Council move forward with the Legislative Proposal.

Motion Proposals: First Diana L. Clarke
Second Pamela Johnston

Motion Results: Pass

CALL TO THE PUBLIC

Individuals Addressing the Board: Lisa Price

Ms Price inquired about a POA complaint matter in which a certificate holder was asked to submit a written response to a complaint. Ms. Price inquired about the status of the recruitment of candidates to fill the present vacancies on the Board.

Individual Addressing the Board: Candy Wheeler-Ruby

Ms. Wheeler-Ruby inquired about a complaint matter. Staff offered to follow up with Ms. Wheeler-Ruby after the meeting. Frenette addressed the Board with concerns regarding the content of the proposal.

ADJOURNMENT

Motion: Adjourn the meeting.

Motion Proposals: First Marlin "Kip" Anderson
Second Honorable Dean Fink

Motion Results: Pass

Time: 3:45p.m.
