



## **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

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### 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

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### 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

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### 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

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#### 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