

FIDUCIARY BOARD

Amended Meeting Agenda – Thursday, March 12, 2020

Arizona Supreme Court -1501 West Washington Street
Phoenix, Arizona 85007 - 10:30 A.M. Conference Room 109
General Inquiries Call: 602-452-3378 (Certification and Licensing Division Line)
Members of the public may attend meeting in person.

For any item listed on the agenda, the Board may vote to go into Executive Session for advice of counsel and/or to discuss records and information exempt by law or rule from public inspection, pursuant to the Arizona Code of Judicial Administration, Code Section 1-202(C).

CALL TO ORDERDeborah Primock, Chair

1) REVIEW AND APPROVAL OF MINUTES.....Deborah Primock, Chair

1-A: Review, discussion and possible action regarding the regular session minutes of the meeting held on January 9, 2020.

2) PENDING COMPLAINTS.....Division Staff

2-A: Review, discussion and possible action regarding complaint 19-0008 and 19-0009 involving license holders Gregory DeVico and Southwest Fiduciary, Inc..

2-B: Review, discussion and possible action regarding complaint 18-0053 and 18-0054 involving license holders Kelly Crane and Esteemed Life Solutions.

2-C: Review, discussion and possible action regarding complaint 19-0018 involving license holder Laurie Kuzdal.

3) INITIAL LICENSURE AND ELIGIBILITY.....Division Staff

3-A: Review, discussion and possible action regarding the following applications for initial individual and business licensure:

1. Sarah Crotty
2. Laura Green
3. Shelice Millett
4. Giovanni Maytonera
5. Diana Morrison

4) ADMINISTRATIVE ISSUES.....Division Staff

4-A: Presentation and discussion regarding complaint procedures and roles of Division staff and Board members in agendized complaint matters.

4-B: Review, discussion and possible action regarding proposed initial licensure and renewal fee increase.

CALL TO THE PUBLICDeborah Primock, Chair

ADJOURNDeborah Primock, Chair

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1) REVIEW AND APPROVAL OF MINUTES

1-A: Review, discussion and possible action regarding the regular session minutes of the meeting held on January 9, 2020.

A draft of the regular session minutes for the meeting of January 9, 2020 has been provided for the Board's review and consideration.

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2) PENDING COMPLAINTS

2-A: Review, discussion and possible action regarding complaint 19-0008 and 19-0009 involving license holders Gregory DeVico and Southwest Fiduciary, Inc.

On January 8, 2019, the Certification and Licensing Division (“Division”) received a written complaint against Arizona licensed fiduciary, Gregory DeVico, and licensed fiduciary business entity, Southwest Fiduciary, Inc.

The complaint contained two (2) allegations:

1. Gregory DeVico and Southwest Fiduciary, Inc., after all physical assets of the estate were sold, did not timely distribute the remaining cash assets to beneficiaries.
2. Gregory DeVico and Southwest Fiduciary, Inc., threatened to use estate funds to defend any actions taken against them by the beneficiaries, placing cash distributions at risk.

Please refer to the Investigation Summary and Probable Cause Analysis and Determination Report for full details of the Division’s investigation.

By way of background, in 2006, Southwest Fiduciary, Inc., was appointed as Guardian and Conservator for the Ward/protected person, and appointed Successor Trustee of the family trust. The Ward/protected person passed away on or about August 27, 2013.

The complaint alleges that as of September 30, 2016, all physical assets of the estate had been sold leaving a certain amount of cash remaining in a bank account for the fiduciary to distribute to entitled beneficiaries. Complainant said counsel for the fiduciary communicated to beneficiaries that the fiduciary’s office had filed the final accountings with the Superior Court on or about December 28, 2017.

Complainant believed that the fiduciary’s office was unduly delaying distributions to beneficiaries resulting in the filing of this complaint.

The complaint further alleges that in a letter to beneficiaries dated December 29, 2017, the fiduciary, by and through counsel, responded to questions and issues raised by one of the trust beneficiaries. In that letter, the fiduciary’s office stated, in part, that it appeared the noted beneficiary may be preparing to take some action against the fiduciary’s office. In response, the fiduciary indicated that estate funds would be used, if appropriate, should the fiduciary’s office need to retain counsel and defend itself against any possible action taken against the fiduciary’s office, potentially putting final distributions at risk.

Mr. DoVico and Southwest Fiduciary, Inc., deny causing any delay in distributions to beneficiaries. The fiduciary's office filed the requisite final accountings with the Court on or about December 28, 2017 and needed judicial approval of the final accountings before final distributions could be made to beneficiaries. Mr. DoVico said once the Court approved the final accountings in July 2019, the fiduciary's office timely made the final distributions accordingly.

Records demonstrated that Southwest Fiduciary, Inc., began making distributions to beneficiaries in October 2014 and continued making distributions to beneficiaries each year.

Estate assets were being sold and the remaining real property held in the trust was sold to one of the beneficiaries and his daughter on or about September 30, 2016. The fiduciary's office made cash distributions to the five (5) entitled beneficiaries on October 4, 2016, and on November 21, 2016.

By December 2016, the trust held cash assets of \$117,122.34. On or about March 10, 2017, the fiduciary's office made additional cash distributions to five (5) beneficiaries and by April 15, 2017, the trust had \$65,857.97 remaining to cover any pending estate taxes and/or other estate expenses.

In late December 2017, Southwest Fiduciary, Inc., by and through counsel, filed the final accountings. The Superior Court issued its review of the accounting in May 2019 and the Court approved the final accountings in July 2019.

The fiduciary's office made final distributions to entitled beneficiaries on or about August 30, 2019.

The Division's investigation has found no evidence that Mr. DoVico or Southwest Fiduciary, Inc., caused any undue delay in the process of making cash distributions to entitled beneficiaries.

As to Allegation 2, one of the beneficiaries may have previously threatened to file a complaint against Southwest Fiduciary, Inc., with the Arizona Attorney General's Office. In response to that concern, Southwest Fiduciary Inc., informed beneficiaries that the fiduciary's office would use estate funds, if appropriate, should the fiduciary's office need to retain counsel and defend any actions brought against the fiduciary's office. However, except for this complaint filed with the Division, none of the beneficiaries filed any other complaint or initiated legal action against the fiduciary's office.

Recommendation

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Gregory P. DoVico and Southwest Fiduciary, Inc. have not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint numbers 19-0008 and 19-0009.

It is further recommended the Board dismiss complaint numbers 19-0008 and 19-0009.

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2) PENDING COMPLAINTS

2-B: Review, discussion and possible action regarding complaint 18-0053 and 18-0054 involving license holders Kelly Crane and Esteemed Life Solutions.

Alberta Berryhill (“Ms. Berryhill”) was an elderly woman living with her son, complainant, Thomas Berryhill (“complainant”). Ms. Berryhill’s children had disputes concerning the handling of Ms. Berryhill’s assets. These disputes included allegations of misappropriation of assets. As a result of the disputes and perhaps other factors, the family sought to have a conservator appointed for Ms. Berryhill. Doctor reports support a finding that Ms. Berryhill was a vulnerable adult, Ms. Berryhill’s children agreed she needed a conservator and the Court in January of 2018 appointed Kelly Crane and Esteemed Life Solutions, LLC (“Crane”) as conservator.

After appointment of Crane, Ms. Berryhill continued to live with the complainant. One of Ms. Berryhill’s other children, complainant’s sister continued to live in a house owned by Ms. Berryhill. These arrangements led to allegations that Crane was not providing complainant with sufficient funds to assist Ms. Berryhill as she lived with him and that Crane did not take sufficient steps to assure complainant’s sister paid rent and repaid allegedly misappropriated assts.

In late 2018 and early 2019, these disputes and complainant’s allegations caused Ms. Berryhill’s situation to go back to Court. After considering further doctor reports and taking testimony, in February of 2019, the Court found that Ms. Berryhill was vulnerable and appointed Crane the as guardian.

Ms. Berryhill passed away in April 2019.

There were five allegations in this complaint.

1. Crane refuses to acknowledge ward, Ms. Berryhill no longer needs a conservator.

The Court found that Ms. Berryhill needed a conservator in January of 2018 and a guardian in February of 2019.

2. Crane failed to pursue complainant’s sister for \$60,000 of Ms. Berryhill’s funds.

Complainant alleged that his sister had misappropriated \$60,000 of Ms. Berryhill’s property prior to the appointment of Crane as the conservator. Complainant also alleges that Crane failed to take proper steps to recover the property.

The investigation demonstrated that Crane took few steps to attempt to recover any misappropriated funds. The investigation also determined that this was reasonable in light of the facts. Complainant’s sister filed a Chapter 13 Bankruptcy on May 24, 2018 Bankruptcy #2:18-bk-

05923-MCW. Her bankruptcy schedules indicate that her only income was unemployment insurance and she had minimal assets.

3. Crane failed in management of conservatorship assets.

Complainant alleges that Crane failed to properly manage a house that was owned by Ms. Berryhill. The alleged failure was not timely evicting complainant's sister from a house she had occupied since 1998. Complainant's sister was obligated to make rent payments and failed to do so. Crane did take steps to collect the rent and evict complainant's sister, but those steps were delayed by complainant's sister's bankruptcy.

In December 2018 and January 2019, Crane received an eviction order as well as a judgment for rent and fees owed during the time complainant's sister continued to stay in the house.

4. Crane refusal to advance money/pay expenses.

While there is evidence of disputes between the complainant and Crane concerning the timing of payment of medical copays, the request for additional information related to expenses such as veterinary bills and the need for receipts, there is no evidence of any inappropriate failure to pay a bill. The disputes appear to be the result of checks and balances on the expenditures.

5. The 2010 trust was replaced by a 2013 trust giving control to Ms. Berryhill's three grown children.

Complainant alleged that, pursuant to the terms of a 2013 trust, he and not Crane should have been appointed trustee. This issue was considered by the Court and on August 21, 2019 the Court confirmed that Crane's appointment was appropriate.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Kelly Crane and Esteemed Life Solutions, LLC have not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint numbers 18-0053 & 18-0054.

It is further recommended the Board dismiss complaint numbers 18-0053 and 18-0054.

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2) PENDING COMPLAINTS

2-C: Review, discussion and possible action regarding complaint 19-0018 involving license holder Laurie Kuzdal.

On July 23, 2019, Division received a complaint alleging Laurie Kuzdal was not affectively administering a special needs trust. The complainant was the recipient of the trust and alleged; Kuzdal consistently ignored requests by the complainant for basic living necessities such as food and medicine, severed all contact with the complainant, refused to pay for certain items specified by the trust and refused to provide the Social Security Administration with needed documents thus negating additional benefits to the complainant.

The matter was investigated and PC Evaluator Mike Baumstark ultimately determined that PC did not exist as to the allegations.

Recommendation:

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding Laurie Kuzdal has not committed the alleged act(s) of misconduct as detailed in the Investigation Summary and Allegation Analysis Report in complaint number 19-0018.

It is further recommended that the Board dismiss complaint number 19-0018.

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3) INITIAL LICENSURE AND ELIGIBILITY

3-A: *Review, discussion and possible action regarding the following applications for initial individual and business licensure.*

1. Sarah Crotty applied for initial individual fiduciary licensure. The applicant successfully passed the program examination and has submitted a completed application demonstrating she meets the minimum eligibility requirements for licensure. No information has been presented or obtained during the background check which would preclude licensure. The applicant has completed the required fiduciary professional training.

The Division recommends approval of initial individual fiduciary licensure for Sarah Crotty.

2. Laura Green applied for initial individual fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application demonstrating that she meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training. Ms. Green disclosed two-justice court cases that were that were filed in 2011 and 2013 in which she is listed as a defendant. Ms. Green also disclosed a 2017 superior court motor tort matter in which she was also listed as the defendant. Ms. Green also disclosed a 2007 DUI.

Ms. Green failed to disclose two 2016 justice court cases related to unpaid debt. Both have since been satisfied or adjudicated. Ms. Green has stated that she thought she had disclosed at least one of them and was not trying to hide anything from the Board.

The Division recommends approval of initial individual fiduciary licensure for Laura Green with the standard non-disclosure language.

3. Shelice Millett applied for initial fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application demonstrating she meets the minimum eligibility requirements for licensure. The applicant has also attended the fiduciary professional training. Ms. Millett failed to disclose a 2012 and 2016 superior court case related to traffic accidents in which she is listed as the plaintiff. Ms. Millett stated that she failed to disclose them because both matters were settled and dismissed by the Court.

The Division recommends approval of initial individual fiduciary licensure for Shelice Millett with the standard non-disclosure language with an effective date of June 1, 2020, pending positive confirmation by Division staff she pays the remaining \$125 application fee by May 29, 2020.

4. Giovanni Maytonera applied for initial fiduciary licensure. The applicant successfully passed the fiduciary program's examination and has submitted a complete application

demonstrating that he meets the minimum education and experience requirements. The applicant has also attended the fiduciary professional training.

To be considered for licensure and as outlined in the Arizona Code of Judicial Administration (“ACJA”) § 7-202(E)(1)(C)(2), applicants must be citizens of the United States of America (“U.S.”). Initially Mr. Maytonera submitted documentation suggesting that he was a permanent resident thus not meeting the above listed Code requirement. During a subsequent communication with Division staff, Mr. Maytonera was able to provide documentation and evidence of U.S. citizenship. Due to Mr. Maytonera meeting the minimum standards for licensure and no other issues being discovered in the investigation, the Division has amended their recommendation from denial to approval of fiduciary licensure for Giovanni Maytonera.

Division recommends the Board to grant fiduciary licensure to Giovanni Maytonera.

5. Diana Morrison applied for initial fiduciary licensure. The applicant successfully passed the program examination and has submitted a complete application. However, her application demonstrates that she does not meet the minimum eligibility requirements for licensure.

Based on Ms. Morrison’s educational background (GED), and pursuant to the Arizona Code of Judicial Administration (“ACJA”) § 7-202(E)(1)(b)(1), she is required to demonstrate that she has a minimum of three years, full-time equivalent work experience within the previous ten years specifically related to one or a combination of the fiduciary relationships of guardianship, conservatorship or personal representative, as defined in subsection (A), or trusts, where the applicant, in a non-familial relationship, worked and performed services in the administration of a trust, decedent’s estate, guardianship, or conservatorship in one or a combination of the following circumstances:

- (a) Under the supervision of a licensed fiduciary;
- (b) Under the supervision of a bank trust or trust company officer; or
- (c) Under the supervision of a licensed attorney whose major emphasis is in the area of probate, trust, elder, mental health, or disability law;

Ms. Morrison stated in her application that she has at least three years full-time equivalency working under the supervision of a licensed attorney as defined above in option (c). Third party verifications to Division staff represented that Ms. Morrison’s only worked 20% of her time in probate, trust, elder, mental health or disability law with the other 80% being in domestic issues related to family matters, thus not meeting the above listed Code requirements.

Based on the foregoing, the Division recommends denial of initial individual fiduciary licensure for Diana Morrison, pursuant to ACJA § 7-201(E)(2)(c)(1), for failure to meet the qualifications and eligibility requirements as outlined in ACJA § 7-202(E)(1)(b)(1).

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4) ADMINISTRATIVE ISSUES

4-A: Presentation and discussion regarding complaint procedures and roles of Division staff and Board members in agendaized complaint matters.

Staff will provide information at the meeting.

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4) ADMINISTRATIVE ISSUES

4-B: Review, discussion and possible action regarding proposed initial licensure and renewal fee increase.

Staff will provide information at the meeting.