

**Professional Fiduciaries Bureau**

1625 North Market Boulevard, Suite S-208, Sacramento, CA 95834  
P (916)574-7340 F (916)928-7988 | <http://www.fiduciary.ca.gov/>



**Professional Fiduciaries Bureau  
Advisory Committee Meeting  
July 26, 2010  
Department of Consumer Affairs  
Main Hearing room, S-102  
1625 N. Market Blvd.  
Sacramento, CA 95834**

**Committee Members Present**

Lisa Berg, CLPF - Chair  
Sharon O'Neill, Supervising Probate Court Investigator- Vice Chair  
Daniel Stubbs, CLPF

**Committee Members Absent**

Cynthia Morrow, Public Member  
Clark Parker, Public Member

**Staff Present**

Gil DeLuna, Acting Bureau Chief  
Angela Bigelow, Program Analyst  
Lauren Van Sant, Student Assistant

**Guests Present**

Joseph Arana, Adams & Associate  
G.V. Ayers, Senate B & P Committee  
Marilyn Bessey, PFAC  
Joe Calderaro, CSEA  
Sandra Carey, PFAC Advocate  
James C. Counts II, CPA  
Review  
Gary Duke, DCA Legal Counsel  
Carole Herman, Foundation Aiding the Elderly  
Jerry Kityk  
Barry K. Matulich, Trust & Estate-State Bar

Jackie Miller, PFAC Executive Director  
Scott Phipps, PFAC  
Gina Rodriguez, Spindell Publishing Inc  
Stella Shvil, PFAC President  
Art Swirsky, DCA Complaint Resolution  
Jeff Toney, DCA Legislative & Policy

Sharon Toth, PFAC  
Jane Valdez, DCA Complaint Resolution

**I. Call to Order**

Acting Bureau Chief Gil DeLuna called the meeting to order at 10:04 a.m.

## **II. Introductions**

Those in attendance introduced themselves

## **III. Vote for Advisory Committee Chair**

Acting Bureau Chief Gil DeLuna suggested that this would be a good time to vote for Chair of the Advisory Committee and a policy be set to determine the term of service for the Chair which typically is one year. Advisory Committee members stated Lisa Berg had been voted Chair and Cynthia Morrow Vice Chair at the 11/20/2008 meeting.

Duties of the chair would include running the advisory committee meetings, coordinating the work of the advisory members, working with the EO to develop the agenda, and establishing committees if necessary. Currently the Professional Fiduciaries Bureau (PFB) Advisory Committee has two vacant positions, a non-profit organization advocating on behalf of the elderly and a licensee position. Mr. DeLuna asked Mr. Duke to take the meeting through the process of voting. Mr. Duke said the process would be first to set-forth the nominations, making sure the nominee understands the Chair commitment and stated Robert's Rule of Order training is available if needed for the Chair.

- Mr. Duke suggested that the motion for nomination be made. Ms. Berg nominated Mr. Stubbs for Chair and Ms. O'Neill seconded the nomination. Ms. Berg nominated Ms. O'Neil for Vice Chair and Mr. Stubbs seconded the nomination. No one opposed. The motion was carried. Mr. Gil DeLuna welcomed Mr. Stubbs as Chair of the Professional Fiduciaries Bureau Advisory Committee, and Ms. O'Neil as Vice Chair. Mr. DeLuna stated the policy will be drafted by Mr. Duke. The Chair and Vice Chair duties have been noted.

## **IV. Approval of minutes from the January 19, 2010 meeting**

- Mr. Gil DeLuna stated the next order is the approval of the minutes for January 19, 2010. Mr. Stubbs requested Mr. DeLuna Chair today's meeting as the agenda was set prior to his nomination and the agenda involved some consequential issues. Mr. DeLuna provided time for the committee to review the minutes before voting. Mr. Stubbs motioned to approve the minutes as presented. Ms. O'Neill seconded the motion. No one opposed. The motion was carried.

## **V. Bureau Updates**

- Mr. Gil DeLuna state next on the agenda would be Bureau updates.

### **A. Registration of Exempted Entities-**

The first issue was registration for exempted entities such as, attorneys, Certified Public Accountant (CPA), and fiduciary businesses. Mr. DeLuna suggested possibly looking into registration for these entities would allow tracking of who is performing fiduciary duties.

Mr. DeLuna asked everyone present to share their ideas on this subject.

Mr. Counts stated the CPA profession would oppose having to register because CPA's are controlled by the Board of Accountancy. CPA's perform some Trust related work, there are times when a client becomes deceased and the CPA is left as the Trustee.

Mr. Duke stated that the requirement to register with the Department of Justice Registry was intended to identify all individuals performing fiduciary duties. The list became inactive when the Fiduciary Act required creation of the Professional Fiduciaries Bureau. The expectation was that a large percentage of those people would become licensed fiduciaries, unless they were exempt. There are just over 400 current licensed fiduciaries.

There are concerns with attorneys regarding the liability involved in becoming a conservator or a Trustee, would their insurance company cover and include the fiduciary practice. There are concerns regarding the laws that regulate attorneys and CPA's because the laws are different from the fiduciary practice.

Mr. DeLuna questioned should firms that perform fiduciary work be required to register. Mr. Duke stated that specifically it would be the individual that would be required to register, not the firm. There were comments that it would be a good idea so as to protect the public.

#### **B. Sunset Review Process-**

Mr. DeLuna stated documents required for the Sunset Review have been received from the Business and Profession Code Committee for budget and licensing information. A draft of this information was created and submitted for review by Executive, Agency, and the Governor's Office. The Business and Profession Code committee will determine if the PFB will continue.

#### **C. Unlicensed Activity-**

Mr. DeLuna stated that unlicensed activity is prevalent; however, very difficult to track. Department of Consumer Affairs (DCA) Division of Investigation (DOI) is in the process of looking into this to gain some intelligence, and will provide their findings in a report. Mr. DeLuna is also looking at a Cite and Fine program to be included in the Sunset Review and Strategic plan to be used to take immediate action.

#### **D. Consumer /Industry Outreach-**

Mr. DeLuna stated that due to lack of resources in the bureau, PFB uses DCA's Outreach program to get the word out to educate consumers.

- There was discussion about power of attorney and durable power of attorney and how it is written in current law. Attendees feel the law needs to be more specific regarding the different types of power of attorney's and how they are regulated.

- Mr. DeLuna stated PFB is working with the California District Attorney Association (CDAA). The District Attorney (DA) is willing to work with PFB and is aware of potential concerns, and will take on unlicensed activity cases.

### **VI. Reciprocity License**

- Mr. DeLuna discussed the need to license out of state professionals who practice fiduciaries work? Discussion included that some states do offer exams and licensure for

fiduciary practice in their states. The advantage would be that if a California fiduciary could practice in another state, it would allow the transition of the client's interest to be less difficult. The subject of a National Uniform Code is in discussion. Perhaps wait and see what the result of that subject reveals.

## **VII. DCA Updates**

- Mr. DeLuna informed that the budget change for enforcement positions was specifically for the healing arts boards and bureaus.
- DCA's current focus is to license individuals and create jobs.
- Board member training is available.
- Also, a survey is in the making for consumers and fiduciaries, to survey PFB's complaint process. It will be good to see what the survey feed back will be.

## **VIII. Public Comment**

- Discussion with respect to the elderly, disabled, and those that need protection. A comment was made that they are real pleased that the PFB is in place; however, there is concern with the lack of enforcement. Mr. DeLuna stated that due to the lack of funds the budget currently allocates for 1.7 positions. Currently, it is difficult to conduct investigations on fraud, abuse, and the entire due process formalities because of lack of resources. The Bureau is new and continues to move forward, and PFB has been making progress. Complaints are currently being reviewed.

## **\*\*Lunch Break 12:47 – 1:20**

## **IX. Strategic Planning**

- Discussed and began drafting a plan for the Bureau.

## **X. Adjournment**

- The meeting was adjourned at 3:25p.m. by Acting Chief DeLuna.