

**Professional Fiduciaries Bureau
Advisory Committee Meeting
April 21, 2011
Department of Consumer Affairs
Lake Tahoe Room, 1st Floor
2005 Evergreen Street
Sacramento, CA 95815**

Committee Members Present

Daniel Stubbs, CLPF- Chair
Sharon O'Neill, Supervising Probate Court Investigator- Vice Chair
Lisa Berg, CLPF
Donna Estacio, Public Member (Arrived at)

Committee Members Absent

Clark Parker, Public Member

Staff Present

Gil DeLuna, Acting Bureau Chief
Angela Bigelow, Program Analyst
Gary Duke, Department of Consumer Affairs Legal Counsel
Jenny Turner, Analyst
Tom Langtry, Analyst
Dave Thornton, Investigator

Guests Present

James C. Counts II, CPA
Sandra Carey, Representative for PFAC
Stella Shvil, PFAC President
Barry Matulich, Attorney
Cindy Kanamoto, DCA Representative
Sean Cogan, DCA Budgets
Hugh Slayden, Attorney
Jackie Miller, PFAC Executive Director

I. Call to Order – Chair

The meeting was called to order by Chair Daniel Stubbs, at 9:30am.

II. Roll Call – Chief

There were three members present and two members absent at time of Roll Call. Mr. DeLuna stated this does not constitute a quorum but the meeting did not have to be cancelled. Unfortunately, Ms. Estacio was not able to make her plane but would arrive later.

III. Introductions

Those in attendance introduced themselves.

IV. Swearing in – New Advisory Member

This item was tabled since Ms. Estacio had not arrived.

V. Approval of Minutes from the September 27, 2010 Meeting

Mr. Duke stated since a quorum was not established, this item will have to be deferred because this is considered to be an action. Mr. Stubbs asked if there was any public comment, hearing none, the item is deferred to the next meeting or until a quorum is established. Mr. DeLuna stated the Director would not be able to make it to the meeting to swear in the new member, so this item will be tabled until the next meeting.

VI. Bureau Updates – Chief

i. Status of the Office –

Mr. DeLuna is still Acting Chief of the Professional Fiduciaries Bureau, as the Governor has not made an appointment to this position yet. There is one full time staff which is Angela, and Dave a part-time investigator. To date there are about 535 licenses issued and processing time is very good. It takes about ten days processing time for a completed initial application to be approved and notified they are eligible to take the exam. If something is missing, it will take a little longer. When the budget passes, we look forward to having a full year of allocation at our disposal and with both loans being paid off, we can put that additional money into enforcement and outreach and other Bureau issues.

ii. Status of Sunset Review –

We testified March 21st in front of Senate Business and Professions Committee. They asked good questions and heard good testimony. It is still too early to know what will come out of the review but we will keep you posted on the outcome.

iii. Status of Regulations –

We submitted the Cite & Fine Regulations to the Office of Administrative Law early in April, and they were published April 15. It took longer than we wanted but wanted to make sure it was done right. Initially, we were going to combine the Cite and Fine Regulations with the Advertising Regulations, but we thought it might slow down the approval process and we are going to re-do the Advertising Regulations in a workshop this afternoon. Some of the highlights of the Cite and Fine regulations and clean-up of existing regulations are:

-This will amend 4422 as a technical clean up instead of using the word licensee, it will be changed to applicant.

-Pre-licensing education and continuing education amended 4446 added 2 additional approved providers. One is any long-term care Ombudsman Program certified by the Department of Aging. The other is the Internal Revenue Service-Office of Professional Responsibility approved program sponsor for Continuing Education for Enrolled Agents.

-Another amendment is to the Code of Ethics Subsection (f) & (g) of 4470 requiring an affirmative duty of the licensee to provide and arrange services in the best interest of the consumer.

-Subsection (g) of 4482 prohibits a licensee from recovering expenses associated with compliance or defending themselves against a citation issued by the Bureau.

-Next is Reporting Requirements this section specifies the licensees on-going reporting duties, specifically, the time-frame they are required to report within 15 days on an address or status change.

-We would be adding to Section 4602 to establish the Bureau's authority to issue Citations and establish a Citation format. Also, it would define a maximum administrative fine of \$5,000 that can be assessed by Bureau.

- Section 4604 specifies factors to consider when determining the amount of the Administrative Fine.
 - Section 4606 establishes the process to contest a Citation issued by the Bureau and how to hold an Informal Conference.
 - Section 4608 authorizes the Bureau to take Administrative action against the licensee when they fail to comply with the citation.
 - Section 4610 establishes an Order of Abatement procedure.
 - Section 4620 specifies substantially related criteria for license suspension or revocation.
 - Section 4622 specifies rehabilitation criteria for license suspension or revocation.
 - Section 4624 specifies disciplinary guidelines for enforcement actions.
- Finally, there will be a Public comment hearing on June 2, 2011 in Van Nuys many of our licensee base seems to be down South. If you would like to make a public comment it must reach us at the hearing or by 5pm that day.

Mr. Counts asked if Mr. DeLuna's hat is in the ring to be appointed as Chief of the Bureau.

Mr. DeLuna stated he has not applied for the position and the Governor is able to appoint anyone he wants to the position.

Mr. Counts also asked about the jump in the number of licensees to 535, and if Mr. DeLuna thinks this is a temporary, fast jump or a trend. Mr. DeLuna believes this is a growing trend and as our elder population grows so will the number of fiduciaries. He thinks this trend will continue based on speaking to California State University Fullerton and University of California Riverside that their programs are reaching capacity.

iv. Advisory Committee Training –

The Committee Members are treated the same as Board Members since the Committee is mandated in Statute. This means they are required to complete mandatory training; Board Member Orientation, Sexual Harassment Prevention, Ethics, Conflict of Interest. Enclosed in the meeting packet are forms for the mandatory training the Members will need to sign up for.

v. Outreach –

Mr. DeLuna stated he has been up and down the state speaking at various events. Elder Abuse is on the rise and partnering with other agencies will be the best resource to protect the consumers. Mr. DeLuna will be speaking at a Probate Conference and Professional Fiduciary Association or California Conference. The Bureau has also been partnering with the Contractors State Licensing Board, going to Consumer Senior Centers talking about the Bureau and how seniors can protect themselves. Also, Mr. DeLuna has reviewed the program at University of California Riverside, which is a very good program, and they are happy to continue the program. Mr. Stubbs commented Mr. DeLuna also spoke at Attorney appreciation dinner and it is still receiving compliments.

vi. Travel Claims / Per Diem –

Ms. Bigelow explained to the Committee Members about how to be reimbursed for travel and their daily per diem for all meetings attended for the Bureau.

vii. Budget Report –

Mr. Cogan presented and explained the budget for the Bureau. For the first couple of years we are trying to hit the mark of how much it will cost to run the Bureau, revenue needed to take in and it is estimated based on tried and true methods. The Bureau will pay off the last loan this year and we are well within that budget of 281,000. Some of the main things are costs like Attorney General's office

from enforcement, personnel and general expense. We will need to do budget change proposal (BCP) throughout the years for enforcement costs. On the expenditure report we are reverting about 14% of department budget and this will go into reserve fund.

Additionally, revenue this year so far we have received about 80% of our expected revenue. In the fund condition report the total revenue is \$298,000 then to \$399,000 and up. Because we are public agency we want to see that the Bureau is taking in as much as it is spending. As the reserve builds we may be able to hire more employees and spend more on enforcement. As we license more individuals and cite and fines are issued the revenue will increase. You don't want to see the reserve numbers go too high. Ms Berg ask for the months in reserve goal and Mr. Cogan states the PFB goal is a minimum of 3 months and a maximum of 24 months but 6-10 months is what we really want. If it goes above 24 we would look at reducing fees. Mr. Duke stated the law requires fee reduction if the reserve goes over 2 years. Mr. DeLuna asked for the deadline for BCP submission. Mr. Cogan stated the plans are done about 1 ½ years prior to the fiscal year and it is too late to submit one in for this year. If we develop one now it will be for fiscal year 12/13. Mr. Counts understands with the lack of history it is hard to project but feels we should be able to project more licensees in the future. He would also like the percentage of licensees not renewing. Ms. Bigelow stated about 20 have not renewed since beginning of program. Mr. Counts feels Bureau needs to expand personnel to be able to do more. Mr. Cogan said there will be higher revenue each year these are projections and will be adjusted each year. Ms. Berg asked if enforcement be creeping up as well and Mr. Cogan stated yes. It will be one of the first areas increased with BCP's. A member of the audience pointed out a data entry error on the spreadsheet. It was also asked, what the significance of the shaded area is and Mr. Cogan replied it is departmental billing and administrative service based on the programs personnel use and it is done for all programs within the Department of Consumer Affairs. Mr. Counts asked if this is basically overhead charges. Mr. Cogan stated is it executive costs, budgets, human resources, legal office, etc. Next year is not too detailed because there was not a BCP. This is a snapshot of how we create the budget.

VII. DCA Updates – DCA Representative

Cindy Kanamoto on behalf of Director Stiger provided updates on projects and matters of interest for the department. First, the Governor appointed a new State and Consumer Agency Secretary on March 22, 2011 her name is Anna Caballero. A hiring freeze was put into effect Tuesday, February 15th. Governor Brown issued a hiring freeze; however, there is an exemption for core functions needed to complete statutory missions. There is a process for submitting exemption requests which will be reviewed by the department, Consumer Services Agency, Department of Finance, and the Governor's Office. The Board or Bureau must show critical need in order to receive an exemption. Next, consumer protection enforcement mission measures will show how long from receipt of a complaint it takes the Board or Bureau to take disciplinary action. As for Appointments, the Department is requesting all board members to go to the Governor's web site to submit an application if they are interested. The department is very pleased with the Sunset review the Bureau has recently gone through and thank you to Gil DeLuna for all he does. The BreEZe project has received final proposals. The cost is higher than anticipated and department is in negotiation now with the vendors. It is anticipated start the project will begin August 11, 2011. Mr. Duke asked for description of BreEZe. Ms. Kanamoto explained it is a new technology system to replace two current databases for licensing and enforcement. Consumers will be able to go online to track their license applications. Gil will have someone from the BreEZe project team at next meeting. Mr. Counts asked if it is a relational database and Ms Kanamoto stated it is.

VIII. Legislative Update – Gil DeLuna

AB997

This bill clarifies the definition of a Professional Fiduciary and provides limited exemptions that would exempt charitable trusts that meet certain qualifications. A status hearing will be held April 26, 2011. And the department has taken no official position. The bill is opposed by the Professional Fiduciaries Association of California. Ms. Berg feels there should be a Professional Fiduciary on these boards. Ms. Shivil agrees with Ms. Berg. Mr. Counts stated there may be a problem getting volunteers to serve on the 401C because they cannot pay them. Ms. Carey stated it would be a hired consultant not a

board member. Mr. Matulich who worked on this bill and had concern. This is actually about the fact that they do not want to hire and pay a Professional Fiduciary when the trust they are handling, they will ultimately be the beneficiary of the trust. Mr. Duke stated the existing regulation statute is vague but there is further definition provided in Bureau regulations. Mr. Matulich stated Stanford's problem was about completing an application and reporting all cases they have ever had. They do not even have records of all the cases they have handled. The purpose of the law was to protect the consumer and it seems that everyone is trying to be exempted from the law.

AB1288

This bill extends the authority of Public Guardians or Conservators to take control of property and assets for 30 days. A status hearing will be held May 10, 2011. The department has taken no official position. Ms O'Neill suggested the board support this bill. Mr. Matulich stated the Trust and Estates Committee had concerns with the language of the bill as taking control of the assets could have severe tax consequences. Ms. O'Neill stated taking control means freezing assets as status quo. Ms. Berg agrees with Ms. O'Neill. Mr. Matulich is concerned that they will be able to grab assets that they would not have control over usually. Mr. Duke stated this bill does not directly affect the Bureau since public guardians are exempt in the Fiduciaries Act.

AB1324

This is a spot bill that serves as a placeholder should the author choose to insert something at a later time.

AB40

This bill is about Elder Abuse reporting which establishes a procedure for reporting requirements, investigation and prosecution of Elder abuse. This bill requires a person to be named as a mandated reporter to report to local law enforcement or Ombudsman. A status hearing will be held May 3, 2011. There are three opposing this bill. Mr. Counts stated the basic language is geared toward care facilities and doctors, but the first three lines are a sort of catch all to include everyone. Mr. Counts would like to see the bill expanded so Certified Public Accountants would be allowed to report abuse even though they are bound to client confidentiality. Mr. Counts also thinks the department should support this.

AB354

This bill would protect Estates and Trusts from wrongful taking using undue influence. No hearing date has been set. The BAR Association supports this bill and there is no opposition. Mr. Counts asked about the meaning of the word taking. Ms. Berg asked Barry if this was created to close up a loop hole in regards to caregivers and he believes it is.

SB542

This bill extends the sunset date for the Board of Accountancy and Professional Fiduciaries Bureau from January 1, 2012 to January 1, 2016. The bill also revises the exemption for Enrolled Agents by allowing them to only provide ancillary services to clients the Enrolled Agent has an existing professional relationship with and authorizes Bureau to instead of issuing a cite and fine or Statement of Issues to enter into a settlement with the licensee or applicant. No hearing date set. There are no parties opposing or supporting this bill. Ms. Carey stated hearing is set for this bill on May 2, 2011. Ms. Berg opposes an additional exemption for Enrolled Agents and Ms. Shivil and Ms. Carey agree with Ms. Berg. Mr. Counts questioned the meaning of an existing professional relationship. He does not feel it is defined in the bill.

SB103

The Author is Liu and requires that upon request of a member of a state body, that state body must hold an open or closed meeting by teleconference unless deemed too expensive by the chair of that body. It also requires any state body with a web site to provide live video of any meeting open to the public. Mr. Duke stated this is for all state entities. This bill would make it mandatory for all entities. Mr.

Duke stated the intent is towards cost savings so that people are not flying all over the state; however, this bill can actually limit public participation.

11:00am, 10 Minute Break

IX. Expert Consultant – Contract/Fee - Dave Thornton

This is in regards to the April 5th memo regarding reimbursement of expert consultants. From time to time during an investigation, it is necessary to utilize an expert consultant because a licensee is sometimes needed to render an opinion on acts such as gross negligence. Also it would cover incompetence which is a lack of knowledge or ability. Unless the investigator is a licensee his opinion would not stand up in the event of a hearing. The consultant would help by looking at the complaint to render opinion if such an act has occurred by a licensee.

Expert Consultants have been used by Boards and Bureaus for decades. In the past, most Boards and Bureaus enter into a contract without going through a formal contract process. The Department is looking for a way to streamline the contract process. Currently there is a bill SB541 by Senator Price going through legislation to include certain boards to exempt them from the current contracting process, but the author is reaching out to see if other Boards and Bureaus are interested in the same process. The Bureau would like advice from the committee of what a fair rate of reimbursement would be for an Expert Consultant. Mr. Thornton has checked with other Boards and Bureaus for their rates and listed for the committee those rates. These rates vary quite a bit depending on the type of license. Most Boards and Bureaus do not reimburse at prevailing rate. Mr. DeLuna is recommending reimburse for investigation of complaints set at \$75 for record review and report preparation, \$90 for testimony at hearing. and a maximum of \$720/day plus expenses. Mr. Stubbs stated complaints with difficult accountings would need a forensic accounting and wants to know if the Bureau has experience with forensic accountings. Mr. Thornton stated the Bureau would use professional fiduciary because review of this type should be a peer review. Mr. DeLuna stated the Bureau had to factor in our budget constraints when deciding on a rate of reimbursement, this does not reflect the profession compared to any other profession. Mr. Counts feels a forensic accounting would be needed for complaint received because of "garbage" accounting which needs to be reconstructed. Mr. Thornton stated this would have to be decided on a case by case basis. Mr. Thornton also stated we may be able to utilize contracts from other agencies in these instances. Mr. Stubbs asked Mr. Thornton to explain the process in retaining an Expert Consultant. Mr. Thornton stated the process is still being created. A manual is being created by Mr. DeLuna with criteria such as minimum standards being a valid license, no open complaints, no disciplinary action, and the criteria is still being developed. Another consideration would be that the Expert Consultant not have some type of relationship with the respondent. The goal would be to obtain someone unbiased. Mr. Slayden stated a competent expert will save the Bureau and professional fiduciary a lot of money. An Expert Consultant will make settlement much easier.

Mr. Duke stated the committee can provide advice on the process and reimbursement rate and the committee stated the Bureau should move ahead with the contract.

X. Formation of Sub-Committees – Gil DeLuna

We are looking for volunteers from the committee to chair the sub-committees

- Education/Outreach – Lisa Berg volunteered
- Enforcement – Dan Stubbs volunteered
- Licensing – Sharon O'Neill volunteered
- Legislative/Regulatory Affairs – is not filled at this time
 - a) Roles and Responsibilities – develop committees and timelines
 - b) Meeting Format - The meeting (due to budget constraints) will be done by teleconference. The meetings will be noticed to the interested parties list.
 - c) Reports – will be presented by the chair at the next meeting

XI. Future Meeting Dates

July 28th in San Diego the bureau will explore a venue and get back to everyone.

XII. Public Comment on Items Not on the Agenda

Ms. Carey feels it is critical that Mr. DeLuna continue on as Chief. Mr. Stubbs is incredibly impressed and does not want to see DeLuna leave. Ms. Shvil stated Mr. DeLuna has reached out to so many of us and it is much appreciated. Mr. Counts asked Ms. Estacio for a background. Ms. Estacio is currently Director of Government Relations for American Airlines on the West Coast. She has a general understanding of government and how it works and is looking forward to working with everyone.

XIII. Adjournment

The meeting was adjourned by Chair, Daniel Stubbs, at 12:05pm.