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**Professional Fiduciaries Bureau  
 Advisory Committee Meeting  
 January 23, 2013**

**Department of Consumer Affairs  
 1625 N. Market Blvd., 2<sup>nd</sup> Floor, El Dorado Room  
 Sacramento, CA 95834**

**Committee Members Present**

Marguerite Lorenz, Chair  
 Barbara de Vries, Vice Chair  
 Donna Estacio, Public Member  
 Aileen Federizo, CLPF

**Staff Present**

Gil DeLuna, Acting Bureau Chief  
 Dave Thornton, Investigator  
 Angela Bigelow, Program Analyst  
 Angelique Scott, DCA Legal Counsel  
 Jenny Turner, Analyst  
 Donna Marshall, Program Tech II

**DCA Staff Present**

Reichel Everhart, Board/Bureau Relations  
 Reyanna Garcia, Executive Staff  
 Tracy Rhine, Legislative & Policy  
 Scott Allen, Legislative & Policy  
 Robert de los Reyes, Budgets  
 Michael Gomez, Enforcement

**I. Call to Order – Chair**

The meeting was called to order by Ms. Lorenz at 11:00a.m.

**II. Roll Call – Gil DeLuna, Acting Bureau Chief**

There were four members present and a quorum established at time of Roll Call.

**III. Introductions**

Ms. Lorenz introduced the Advisory Committee members. Mr. DeLuna introduced the Bureau staff.

**IV. Approval of Minutes from the August 28, 2012 Meeting**

Ms Lorenz and Ms. Scott asked for some amendments. Ms. de Vries motioned to approve the minutes with amendments. Second by Ms. Estacio. Motion carried.

**V. Update from the Director's Office – DCA Executive Office**

Ms. Everhart introduced Reyanna Garcia, an analyst from the Executive Office. Ms. Everhart stated the executive office is working on ways to increase communication between DCA and the Board and Bureau Committee Members. One way of doing this is with an e-newsletter which is in process at this time. At this time information from the Executive Officer quarterly meeting will be forwarded to the Board/Bureau Chair. Ms. Everhart has been working with the Office of Appointments at the Governor's Office and they are working on critical appointments that are not at quorum at this time. Ms. de Vries asked if they have applications at this time and if not she can make some contacts. Mr. DeLuna stated the one position that has never been filled is the non-profit advocate for the elderly.

## VI. Legislative Update – DCA Legislative and Policy Review Office

Mr. DeLuna introduced Tracy Rhines, Deputy Director of the Legislative Policy Review unit. Ms. Rhines explained the unit analyzes legislation that can affect the boards and bureaus. She also went over legislation that will affect the bureau this year. First, SB1099 by Senator Wright, allows regulations to go into affect only four times a year. Second, AB1588 and AB1904 both are bills that are related to military members. AB1904 requires licensure be expedited for spouses of active military that have had to relocate. AB1588 requires renewal requirements to be waived for active military while they are away. The last bill is AB2570 on the prohibition of gag clauses and the DCA Legal Office is working on this at this time. More military bills will be coming this year. Ms. Lorenz asked if there were any comments on the marijuana bills and Ms. Rhines also deferred this to the DCA Legal Office.

## VII. Bureau Update – Gil DeLuna, Acting Bureau Chief

- Status of the Bureau – Mr. DeLuna stated the Advisory Committee is at quorum level now.
- FY To Date Statistics - The Bureau received 58 new applications, renewed 318 licenses, and issued 36 new licenses. A total of 667 licenses have been issued since the Bureau's inception. 577 licenses are current and active at this time. The Bureau received 50 complaints and closed 66. 192 average days to close a complaint. The Bureau issued 5 citations since June.
- Ms. Bigelow talked about some of the website updates. The website has been updated with the new laws. A page is also in the process to display all enforcement actions and citations issued by the Bureau. Lastly, the Bureau is working to clarify in the brochures and on the website exemptions from licensure. Ms. Lorenz asked about the enforcement page and if complaints would be made public. Ms. Bigelow stated complaints are not public record, the Bureau would only be posting if the Bureau takes an action against a licensee.
- Mr. DeLuna introduced Mike Gomez the Deputy Director of Enforcement. Mr. Gomez explained that he will assist the Boards and Bureaus with enforcement and help to streamline the enforcement process.
- Enforcement – Mr. DeLuna introduced Dave Thornton, Bureau Investigator to explain the enforcement process. Mr. Thornton gave information on his background with the Highway Patrol, DCA Medical Board Investigator, Chief Investigator for the Medical Board, Executive Director for the Medical Board, and now he works as a retired, part-time investigator. The Bureau is mandated to protect the public and that protection is paramount by having a fair and impartial enforcement program. The Bureau takes action against licensees if a violation is found to have happened. The types of complaints received by the Bureau are mainly received by family members and are about Professional Fiduciaries who are non-responsive, not listening to family input and the fiduciary being removed due to a complaint to the court.
- Complaint Process – complaints are received in writing by fax or mail, by email, or by phone and assigned to a consumer services representative (CSR). The CSR reviews the complaint with Gil and decides how to proceed from there. If it is more complex it will be assigned to an investigator for a field investigation. The CSR prepares a report that becomes part of the investigation. The investigator reviews the complaint, contacts complainant by phone or email, many times he/she goes out to interview them in person and reviews documents. Then he/she interviews any witnesses who may have knowledge for the investigation. Business and Professions Code Section 6560 allows the Bureau to request records from the licensee. He/she sends a request to the licensee by mail and follows up via email. Up to now all fiduciaries have been very cooperative with the investigations. Ms. de Vries asked if the investigator determines it is already being handled by the court. Yes, sometimes the complaint may be worked while there is a complaint in process with the court. The Bureau will determine if the fiduciary has been negligent

in their duties. The court operates under preponderance of evidence which is anything over 50%. The Bureau works under clear and convincing evidence which is much higher burden than the court. The Bureau will not interfere with the court but will do a parallel investigation. After gathering the documents the investigator determines which documents are pertinent. Then he/she will contact the fiduciary and interview the fiduciary. The complaint cannot be turned over to the fiduciary but they will be given a synopsis of the complaint. After all interviews are complete, it will be decided if the case needs to be reviewed by an expert consultant. Ms. Lorenz asked who the expert consultants are. Mr. Thornton explained it is a peer review and the expert consultants hold a professional fiduciary license. If the case goes to expert, they are asked to determine if the fiduciary has been grossly negligent, incompetent or breached a fiduciary duty according to Business and Professions Code Section 6584. Once the complaint has gone to an expert consultant, the Bureau Chief will make a decision if the case should be referred to the Attorney General's office for an accusation or if the Bureau should take any other type of action.

- Citation Process - Once a citation is issued, it is public record and will be posted on the Bureau's website. The licensee can request an informal hearing with the Bureau Chief. If the licensee is not satisfied with the result of the informal hearing, the licensee can request a formal hearing. Ms. Lorenz asked if the complainants have exhausted all other ways to complain and come to bureau just because they are not satisfied with the results from the court. Mr. Thornton stated the bureau is required to take the complaint and investigate no matter what. A case will not move forward unless there is evidence that the law has been broken. The process is similar for all enforcement actions taken by the Bureau. Ms. Lorenz asked about unlicensed activity. Mr. DeLuna stated we do receive allegations of unlicensed activity and it is a finable offense with a fine of \$5,000 and this fine would have to be paid prior to the person becoming licensed. Mr. Thornton feels the Bureau has a pretty aggressive enforcement program. Ms. de Vries asked what types of cases are being received. Mr. Thornton stated mainly fiduciaries not paying bills on time, incurring charges that are unnecessary, fiduciary overcharging to take the client out to lunch. Mr. DeLuna stated one of the main allegations is the fiduciary spending the trust money excessively or not describing the charges. Also, where the money is going and lack of communication between the fiduciary and family members. Ms. Lorenz stated lack of communication sometimes happens when the family member is not entitled to the information they are requesting.
- Mr. Gomez added the Division of Investigation always defers to the Bureau for the final decision, however, once they have the case if there is criminal action, the Division of Investigation will refer to the proper authorities.
- E-Newsletter – Mr. DeLuna stated the Bureau will be creating a newsletter mostly geared toward licensees with consumer protection issues. The newsletter will come out twice a year. The newsletter will go to our interested parties and be posted on the Bureau's website. Some of the topics that will be covered include a greeting from the Chair, Bureau Chief's report, preventive enforcement, legislative updates, disciplinary actions and citations, and how complaints are investigated. Mr. DeLuna asked if there is anything the committee members would like included to let him know. Ms. Lorenz stated this will be done prior to the next PFAC conference and be included in the handouts.
- Senior Portal – Mr. DeLuna stated the mission is to develop a resource for seniors. Several departments within the State worked together to create this. The State has created a page that is a one-stop shop for Seniors at [www.seniors.ca.gov](http://www.seniors.ca.gov).
- Reporting Unlicensed Activity – Mr. DeLuna stated if a fiduciary is working without a license, it can be reported to the Bureau, by e-mail at [fiduciary@dca.ca.gov](mailto:fiduciary@dca.ca.gov) or on the Bureau's website . It can also be reported by phone (916)574-7340.
- Regulations – Advertising and record retention have already been written and are going through the approval process. Next, the Bureau will work on regulations for approving continuing

education. Another regulation the Bureau will be working on is to establish a criteria and regulation for licensees to change their license status to either inactive or retired. Ms. Lorenz requested along with the continuing education regulations, that licensees who teach a course receive extra credits.

- Budget Report – DCA Budget Office – Mr. DeLuna introduced Robert De Los Reyes. Ms. Lorenz asked for any public comment.

Jackie Miller asked about the Statement of Issue and whether it would be on the website. Mr. DeLuna stated once the enforcement page is complete, Statement of Issues will be added to the website.

Daniel Stubbs spoke to the issue of unlicensed fiduciaries being appointed by the court. He stated he is running into this increasingly where the courts are allowing unlicensed persons to continue without filing accountings with the court and he is having problems with cases he is being called in to take over for the unlicensed persons. Mr. Stubbs would like the Bureau to get involved and he will turn over the names to the Bureau. Mr. Lorenz suggested the Bureau send notification to all courts with education about licensing requirements. Mr. DeLuna stated he speaks annually at the Court Investigators Conference and will bring this issue up at the next meeting.

Mr. De Los Reyes presented the Current Year Budget, the Proposed Governor's Budget, and the Current Fund Condition. Ms. de Vries asked where the reverted funds go and Mr. De Los Reyes Explained the funds revert to the Bureau's fund.

12:32-12:45 Break

#### VIII. Discussion on Good Practice for Fiduciaries – Chair

Ms. Lorenz shared a couple of concepts competitors have in terms of fees, fees on fees, and advertising. In regard to fees, there are many things to consider that the fiduciary is doing. In terms of fees on fees, there are many times a clause that encourages fiduciaries to defend/protect the trust and the cost of defending the trust is paid for by the trust. As far as advertising, it is the Bureau's understanding that there is no training on how to advertise for a new fiduciary. Ms. Lorenz suggested just having the license does not make the fiduciary trustworthy and that the best way to advertise is to make contacts and get referrals by showing that the licensee is trustworthy. Ms. Lorenz suggested a new fiduciary go to the court and introduce him or herself to attorneys and make contacts.

Next is being a good fiduciary. Communicating in writing is really helpful and equally fair with all beneficiaries. Also, accuracy in your work is important like paying bills on time. Sometimes there is a barrier to paying bills on time such as property needs to be sold to pay the bill and documenting the barrier is important. Communicating to the right people and not telling someone who is not entitled to the information anything they are not entitled to know. Also, avoiding conflicts of interest sometimes you may have to hire a different professional to do a certain job such as if the fiduciary also has a real estate license it would be a conflict of interest to be the fiduciary and real estate agent. Ms. de Vries stated the fiduciary should be the only person with check signing ability. Also, PFAC offers mentoring groups for new fiduciaries. Ms. Federizo asked if this is the only profession that charges fees on fees. Mr. DeLuna stated this is the only profession he knows of. Ms. Lorenz stated there are two different issues. One is that fiduciaries should not be charging their clients to talk with the Bureau because fiduciaries are defending their actions as licensees. If fiduciaries are defending the fees they are charging in court, they should charge the trust or conservatorship.

Mr. Stubbs stated your (fiduciaries') Income and Appraisal (I & A) is the way to take care of this in court. This way you are asking for your fees in advance.

Ms. Miller commented that fees paid out of the estate can lead to the license being taken away and if fiduciaries are not able to defend themselves they could lose their livelihood.

Mr. Desmond commented on PFAC's behalf. There's about 2500 bills introduced this year. There have been some consideration whether there should be state legislation on the state's role to protect consumers on "fees on fees" and "caps on fees". The driving force for that legislation is the protection of the consumer. The concern is that these fees could eat up all the funds. Also, a cap on fees is a possibility and whether there should be local rules of fees such as a schedule of fees for certain charges. The main focus of all the bills is protection of the consumer. PFAC would like to be able to enhance the protection of the consumer by, as an industry providing a schedule of fees.

Ms. Lorenz stated that no other profession has a cap on fees and she does not feel it would be appropriate to do this to fiduciaries. Budget tools and care plans should be created.

#### IX. Discussion on Licensing Requirements - Chair

Ms. de Vries asked about the failure rate going up in 2012/2013. Mr. DeLuna explained that an Occupational Analysis was done as required every 5 years and the test was updated. Mr. DeLuna explained how exams are evaluated and how the acceptable pass/fail rates are evaluated.

Ms. Lorenz stated she feels the work of a fiduciary is very complicated and some will be better at communicating and being a good fiduciary than others. She also feels the testing process and requirements are adequate. Ms. de Vries and Ms. Federizo feel the requirements are not adequate. Ms. de Vries and Ms. Federizo feel there needs to be more training on basic skills such as record keeping and computer skills. Ms. Federizo stated there should be required mentoring or supervision after the license has been issued.

Ms. Miller of PFAC commented if the licensing process is changed it would have to be legislatively mandated.

Ms. Scott will see whether the Bureau has authority to add additional prerequisites to fulfill the pre-licensing requirements and if it is possible to do it with a regulation or if it must be done by legislation.

Ms. Miller would like to see a degree in this field in the future.

Mr. Stubbs suggested the State and National create a new study exam since the exam has changed. Also, he suggested CSUF be contacted and notified there is a revised exam.

Ms. Scott stated the Business and Professions code section 6538 sets forth licensing requirements which includes the 30 hours pre-licensing education requirements which are to be approved by the Bureau. Instead of adding additional hours, under regulation 4440, which sets forth requirements, the Bureau can consider including mentorship as a part of the 30 hour educational requirement and not just limit it to classroom.

The committee was in agreement that the CSUF courses are not sufficient and should be looked at. The committee asked the Bureau to look at the curriculums of CSUF and UC Riverside. Mr. DeLuna will contact the administrators, get the curriculum, text books, and find out who the instructors are and create a report for the committee by the next meeting.

2:00-2:10 Break

#### X. Strategic Plan Update / Discussion – Acting Bureau Chief

Mr. DeLuna stated our current plan will expire this year. Mr. DeLuna explained Performance Based Budgeting (PBB). PBB will require all Strategic Plans be updated.

Ms. Bigelow explained the process and timeline for creating a new strategic plan. The planning will be done by the Training office at DCA. The deadline for creating a plan has to be done prior to January

2014. The draft plan does not have to be approved but at least submitted for approval. The committee decided it would be best to do a special session to focus only on the Strategic Plan.

XI. Future Meeting Dates and Agenda items

April 3, 2013 will be the next Advisory Committee Meeting at 11:00am in Van Nuys.

May 21 & 22, 2013 will be the Strategic Planning Meeting and will not be webcast. Ms. Lorenz motioned the Strategic Planning Meeting will not be webcast. Second, by Ms. Estacio. Motion carried.

Agenda items for the next meeting:

-CSUF Curriculum

-Committee Members will submit any additional items to Mr. DeLuna or Ms. Bigelow

XII. Public Comment on Items Not on the Agenda

No public comments.

XIII. Adjournment

Meeting was adjourned at 2:32pm.