



**Professional Fiduciaries Bureau**  
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**Professional Fiduciaries Bureau  
Advisory Committee Meeting  
August 28, 2012**

**Department of Consumer Affairs  
1625 N. Market Blvd., 1<sup>st</sup> Floor, Hearing Room  
Sacramento, CA 95834**

**Committee Members Present**

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

**Staff Present**

Gil DeLuna, Acting Bureau Chief  
Angela Bigelow, Program Analyst  
Gary Duke, DCA Legal Counsel  
Angelique Scott, DCA Legal Counsel

**DCA Staff Present**

Reichel Everhart, Executive  
Shayne VanOutryve, BreEZe  
Tommy Nhan, Budgets  
Awet Kidane, Executive  
Brandon Rutschmann, BreEZe

**I. Call to Order – Acting Bureau Chief**

The meeting was called to order by Mr. DeLuna, at 10:04am.

**II. Roll Call – Acting Bureau Chief**

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

**III. Introductions**

Mr. DeLuna introduced the new committee members and the new DCA Attorney, Angelique Scott. Mr. DeLuna thanked Mr. Duke for his work with the Bureau since inception. Mr. Duke distributed and explained the Bagley-Keene open meeting act. Those in attendance introduced themselves.

**IV. Information from the Director's Office**

Ms. Everhart welcomed the new committee members. Ms. Everhart explained the function of the Department of Consumer Affairs(DCA). Ms. Everhart also invited all members to attend the upcoming Board member orientation training in November.

Mr. DeLuna explained the function of an Advisory Committee and how the functions differ from a Board.

**V. Swearing-in Ceremony – New Advisory Committee Members**

New committee members Marguerite Lorenz, Barbara de Vries, and Aileen Federizo were sworn in by Mr. Kidane, Chief Deputy Director.

**VI. Election of New Chair and Vice-Chair**

Ms. Federizo nominated Ms. Lorenz for Chair, Ms. de Vries nominated herself for Chair, a vote was taken and Ms. Lorenz was voted as Chair for the committee by majority.

Ms. Lorenz nominated Ms. de Vries for Vice-Chair. Second by Ms. Federizo. A vote was taken and Ms. de Vries was voted as Vice-Chair for the committee by majority.

Mr. Duke stated that Acting Bureau Chief, Mr. DeLuna will facilitate the rest of this meeting.

## VII. Approval of Minutes from the October 13, 2011

There was a discussion about only one past member was present at this meeting. Mr. Duke stated usually members should not vote on approval of minutes unless they attended the meeting, however, in this case it is a matter of necessity so the minutes can be approved and posted. Ms. Lorenz motioned the minutes be approved as written; second by Ms. Estacio. Motion carried.

## VIII. Bureau Updates – Gil DeLuna, Acting Chief

- Status of the Bureau – Mr. DeLuna is still Acting Bureau Chief, one analyst and one retired annuitant. The Bureau has not been approved new positions at this time.
- FY 2011/2012 Statistics – Ms. Bigelow gave statistics for the last Fiscal Year. There were 105 applications received, 94 licenses issued, for a total of 630 licenses issued. There were 437 licenses renewed. There were 104 complaints received, 94 were closed, average days to close a complaint 127 days. The department target is to close complaints within 365 days.
- BOE/FTB – AB 1424 – Mr. DeLuna read and explained this bill. Mr. DeLuna stated that none of our licensees is on this list at this time.

Ms. Lamborn asked if a fiduciary takes over an estate and does not pay the taxes does that count as unpaid taxes. Mr. Duke stated this is only for personal taxes of the licensee.

Dr. Fettgather asked about the complaint statistics on how the complaint was closed. Mr. DeLuna stated a breakdown is not available at this time, however, this information will be available on the annual report when it is made available to the public.

Dr. Fettgather had questions specific to his complaint. Mr. DeLuna stated this is not the forum to comment on specific complaints, but he will be happy to speak to him at a later date.

Dr. Fettgather would like to have the procedure for handling complaints. Mr. DeLuna described the process of handling a complaint.

Dr. Fettgather asked for a written explanation for the closure of his complaint. Mr. DeLuna stated the Bureau calls both parties with the resolution of the complaint. Mr. Duke stated that complaints should be closed with a letter and that will need to be addressed.

Another comment was made but the public member did not come to the microphone so the comment was not audible.

- Citation Process – Mr. DeLuna presented a power point presentation to explain the process. Mr. Duke added that you do not lose your right to a formal hearing if you ask for an informal conference. Mr. Duke explained the issuance of a citation is not a disciplinary action and you are not admitting guilt if you pay a citation.

10:50 – 11:00 Break

## IX. Budget Report – Tommy Nhan, DCA Budget Office

Mr. Nhan presented a PowerPoint presentation. Mr. Nhan explained the actual budget for FY 2011/2012 including expenditures and revenue. Mr. Nhan also explained the budget for the current FY 2012/2013 the budget and expected revenue. Mr. Duke asked for an explanation of actual budgeted monies as opposed to the reserve fund. Mr. Nhan presented a snapshot of the next few years of estimated revenue.

## X. BreZE Project – Shayne Van Outryve, DCA Project Management Office

Mr. DeLuna gave an introduction/background and introduced Brandon Rutschmann who will be presenting instead of Ms. Van Outryve. Mr. Rutschmann presented a PowerPoint presentation. Mr. Rutschmann gave a background of the BreZE project for the committee and audience. Mr. Duke asked

for explanation of the acronyms and what a legacy system is for the benefit of the committee members as well as the audience. Mr. Rutschmann gave an explanation that the legacy systems are the systems used by DCA at this time (some are 30 years old) that BreEZe will replace.

Ms. Lorenz asked if a consumer will be able to check one person to see if that person has more than one license with DCA and Mr. Rutschmann replied yes. The system will also house photographs of licensees. Boards and Bureaus will make the decision as to what will be available once the system is in place.

Mr. Rutschmann explained the system will have alerts for staff when documents come in from applicants or consumers or when a due date has passed and these alerts will show up in an in-box for the employee.

The committee members would like to have input on how the license information will appear to consumers on the website. Mr. Rutschmann explained this is a Commercial off-the-shelf(COTS) program and there are some limitations. We can customize if necessary due to statutory requirements. There will be standards throughout DCA.

Application and renewal submissions will be able to be completed on-line. Credit card payments will be accepted for all transactions over the internet. Complainants can submit and track a complaint status on-line if the complainant is a registered user in the system. If the complainant wishes to remain anonymous, the complainant will not be able to track the status of the complaint. Real time updates instead of overnight batch updates as it is being done now.

Mr. Rutschmann explained the cost of this project and how the cost is distributed throughout DCA. PFB total cost over an 8 year period will be \$13,500. Once the project is completely paid for to the vendor, on-going cost for PFB will be approximately \$500/year.

Mr. Rutschmann explained we are at the beginning phase of the design phase. Ms. Bigelow has worked with the BreEZe team on preliminary configuration issues to make sure there are no hidden bombshells prior to the design phase beginning.

Mr. Rutschmann explained the Change Control Board for any changes needed on legacy systems prior to changing over to the BreEZe system. Also, how the Board or Bureau works with the team to set up the system for configuration, data verification, acceptance testing, and training.

Ms. Lorenz asked if there is an interface with law enforcement and BreEZe. Mr. Rutschmann explained there is an interface with Department of Justice(DOJ) for processing fingerprints with applicants. There is a possibility of interfacing at a later date with the Attorney General's Office.

11:40 – 12:33 Lunch

#### XI. Discussion on Professional Fiduciary Charges to Clients

Mr. DeLuna gave a background regarding a series of San Jose Mercury News Articles in July, 2012. Mr. DeLuna is asking for recommendations from the committee in regard to what is considered in the best interest of the consumer.

Ms. de Vries stated in regards to the San Jose Mercury News Articles, her view is that this was unique to the county of Santa Clara. She feels other counties look carefully at fees billed. Ms. Lorenz stated a fiduciary comes in the beginning as a clean-up crew and will have higher charges at the beginning of a case. Ms. Federizo also believes this is not common practice but needs to be discussed. Ms. Federizo feels training and education is needed for fiduciaries on what is appropriate. Ms. Lorenz stated this training is not done by California State University Fullerton.

Ms. Estacio feels the profession may be on defense now because of the articles and pending legislation, and asked how this should be handled now so as to protect the public view of the profession. Ms. de Vries and Ms. Lorenz stated they present their fee schedule to prospective clients. There is not a cap on fees that can be charged by a fiduciary, however, the laws of court will sometimes determine a reasonable fee. All members of the panel feel that there needs to be more communication between the

fiduciary and client as to what fees are charged and for what services. Mr. DeLuna stated that when the Bureau contacts a fiduciary in regards to a complaint that we need to have better communication that is in the best interest of the consumer on charges by the fiduciary.

Mr. DeLuna asked what needs to be done and what are the possible solutions.

Ms. de Vries stated there should be training for the courts in how to evaluate the bills and what is appropriate. This will be more oversight on the fiduciaries.

Ms. Lorenz feels a trust document should have the specifics of what will be charged as far as conservatorships. The fees should be discussed up front. Ms. Lorenz feels all fiduciaries should have a written fee schedule but that the fees should not be capped.

Mr. Duke stated a problem the Bureau is having is determining what is reasonable in regards to fees. Right now complaints are being reviewed on a case by case basis. The committee feels that there are already ample laws in effect for approval of fees.

Ms. Lorenz and Ms. de Vries feel the training at CSUF is not sufficient for new fiduciaries that do not have experience and that this should be addressed at our next meeting.

Ms. Shvil spoke about Judge King having asked Professional Fiduciary Association of California (PFAC) for their opinion on the articles. Some of the issues brought up are not happening in other counties. PFAC as an organization is discussing these issues at this time. On conservatorship cases, fiduciaries are not being paid for 18 months or more, then go into court and their fees are reduced even though the work has already been done. So bringing in the process earlier is something to be considered. PFAC is all about education and there has been discussion on all the new members who may not be trained enough. PFAC's goal is to reach out and educate more. PFAC would also like for the judges to be educated throughout the state. Also, Mr. Desmond has been reaching out legislatively in regard to the issue of capping fees and voiced the concerns PFAC has with this issue.

Ms. Lorenz stated PFAC now offers CLE credits.

Mr. Matulich feels one of the problems with these types of news articles, they cause changes that are not necessarily needed because of one or a couple of issues. Also, fees on fees issues are being heard about a lot now. It is not possible to defend these cases where the fees would not be more than the original fees that were charged because you need experts to defend the fees. It would be like asking the conservators to work for free. Current law is appropriate at this time as it is left up to the judges on a case by case basis to permit a reasonable fee. He stated there is a section in the accounting for unusual expenses which is the perfect place to put the \$3,000 birthday parties with an explanation of the fees.

Ms. Lorenz stated that there are court closures and consolidation going on at this time which will slow down the process and doubling the number of cases each judge is looking at.

Mr. Desmond Jr. stated that a benefit to the articles is the start of a conversation within PFAC and with the Judges about what is happening statewide and best practices.

Ms. Scott asked the committee members to remember there are procedures that need to be followed in regards to meetings of the members outside of the public meeting. The items need to be discussed in a public forum.

Mr. Duke stated the Bureau is really having a hard time with what is reasonable in fees when it comes to fiduciaries charging for speaking with the Bureau about a complaint. Ms. Lorenz asked for clarification on the complaint process and who actually has a standing to make a complaint. Mr. Duke stated we are asking for expertise on how the Bureau should handle the complaints. Mr. Matulich stated in non-court supervised cases, there are methods to object to fees through the court. Ms. Lorenz stated the Bureau should come up with a standardized list of questions to ask once a complaint is taken.

## XII. Strategic Plan Update/Discussion

Mr. DeLuna explained that the Action Plan was created but has not been put to a final vote yet. Mr. DeLuna asked the committee if a new plan should be created to reflect the current needs. Ms. Lorenz moved that the Bureau should work on a new action plan due to the BreEZe. Ms. Estacio asked about

the action plan that was worked on the last meeting. Ms. Bigelow explained that 3 of the members are no longer on the committee and many of the action items were not completed. It was decided a copy of the action plan would be forwarded to the new members to review and Mr. Duke stated this was not a violation of the open meeting act as long as there was not a meeting on it outside of the public format. Ms. Lorenz asked that this be added to the agenda for the next meeting. Ms. de Vries, second. The motion carried.

1:56 – 2:02 Break

### XIII. Future Meeting Dates and Agenda items

Committee Members agreed on the following future meeting dates: November 8 at 8am-1pm, March 19, and July 11.

### XIV, Public Comment on Items Not on the Agenda

Mr. DeLuna stated the following items will be added to the agenda for our next meeting:

- Competitors in terms of fees
- Complaint Process and development/refinement
- Concern with level of education for new licensees – Requirements and education
- Approval of education providers
- Possible trainee license
- Professional Fiduciary fees and fees on fees

### XV. Adjournment

The meeting was adjourned by Mr. DeLuna at 2:17pm.