

**BOARD OF SUPERVISORS MINUTES
GILA COUNTY, ARIZONA**

Date: August 25, 2015

MICHAEL A. PASTOR
Chairman

MARIAN E. SHEPPARD
Clerk of the Board

TOMMIE C. MARTIN
Vice-Chairman

By: Laurie J. Kline
Deputy Clerk

JOHN D. MARCANTI
Member

Gila County Courthouse
Globe, Arizona

PRESENT: Michael A. Pastor, Chairman; Tommie C. Martin, Vice-Chairman (via ITV); John D. Marcanti, Member; Don E. McDaniel, Jr., County Manager; Michael Scannell, Deputy County Manager; Bryan Chambers, Deputy County Attorney/Civil Bureau Chief; Marian E. Sheppard, Clerk of the Board; and Laurie J. Kline, Deputy Clerk.

Item 1 – CALL TO ORDER - PLEDGE OF ALLEGIANCE

The Gila County Board of Supervisors met in a work session at 10:00 a.m. this date in the Board of Supervisors' hearing room. Bryan Chambers led the Pledge of Allegiance.

Item 2 – REGULAR AGENDA ITEMS:

A. Information/Discussion regarding an update on the accomplishments and activities of the Gila County Public Fiduciary Department.

Tiffany Poarch, Public Fiduciary, and Laura Short, Deputy Public Fiduciary, presented a Microsoft PowerPoint slide presentation and provided information regarding the function, responsibilities, and best practices of the Public Fiduciary Department as follows:

Currently the Public Fiduciary staff is comprised of Tiffany Poarch, Public Fiduciary (licensed Principal); Laura Short, Deputy Public Fiduciary (licensed Fiduciary); Karen Miller, Services Specialist Senior (licensed Fiduciary); Patty Comstock, Services Specialist; Antonella Campos, Services Specialist; Adela Valenzuela, Finance Specialist; Stephanie Chaidez, Administrative Clerk; and John S. Perlman, Attorney at Law.

A fiduciary is someone who for a fee serves as a court appointed guardian or conservator for one or more persons who are unrelated to the fiduciary. A fiduciary accepts the responsibility for taking care of the needs or property of another person for the benefit of that person. The fiduciary serves in a role of trust. The person served by the fiduciary places trust in the fiduciary to manage his or her affairs solely for his/her benefit. The element of trust becomes crucial when the person receiving services is frail, vulnerable and incapacitated.

The office of the Public Fiduciary was established by the 1974 legislature to serve as a “fiduciary of last resort” for individuals and a decedent’s estate in need of guardianship, or conservatorship or public administration where there is no person or corporation qualified and willing to act in such capacity. Most of the clients of the Public Fiduciary are indigent or have limited assets. This result in the Public Fiduciary’s office having a caseload where there is little or no money involved, the behavior of the parties involved are too difficult, or the circumstances are complex or bizarre.

In Arizona there are several types of businesses that fall under the definition of Fiduciary, as follows: 1) Individuals - Those persons serving as licensed fiduciaries of an independent agency or business entity; 2) Business Entities - Licensed fiduciaries whose business operation has been filed with the Secretary of State and the Corporation Commission; 3) Government Fiduciaries - Arizona has fifteen county public fiduciary offices, divisions of county government and the Arizona Department of Veteran’s Services, a state agency; and 4) Non-Profit Fiduciaries - such as ARC (an advocacy group for the disabled), a guardianship program falls under the non-profit umbrella agency.

The professional fiduciary must be licensed with the Arizona Supreme Court individually and as a business entity, if applicable, prior to accepting court appointments. Licensure is granted by the Supreme Court through testing, and a fingerprint/background check.

Public Fiduciaries are appointed by the Board of Supervisors of each county. Cases are appointed to the Public Fiduciaries by Superior Court judges. Gila County service specialists and finance specialists must be licensed after completing three years of hands-on training, (or one year of training with a Bachelor’s Degree) under the direct supervision of the Public Fiduciary.

A referral is appropriate any time one feels they know of a vulnerable or incapacitated person who is a victim of abuse (physical, sexual, psychological, emotional or financial) or in danger of abandonment, neglect or self-neglect. Arizona Revised Statute (A.R.S.) §46-455 states a person who has been employed to provide care to an incapacitated or vulnerable person and who

causes or permits the life or health of the adult to be endangered is guilty of a Class 5 felony. Referrals come from a number of sources such as neighbors, friends, family members, self, caregivers, Adult Protective Services, law enforcement agencies, health department and other social service agencies. The Public Fiduciary, as the last resort option, seeks alternative agencies or individuals to serve. Family members always have priority if willing to serve. Chairman Pastor inquired as to the level of confidentiality that is maintained through the referral process. Ms. Poarch assured him that complete confidentiality is upheld and continued with the presentation. The fiduciary is responsible for gathering information to make a decision as to the need for appointment. An internal investigation is done through thorough contact and assessment of the referred case and a determination is made whether the potential ward:

- Will suffer a financial loss if their assets are not protected?
- Will benefit by having a fiduciary?
- Is at physical risk?
- Has exhausted all other suitable service providers?

Petition for Appointment: Legal orders are drawn up by the Public Fiduciary's attorney. A hearing is scheduled with the Superior Court. The judge appoints a court investigator, attorney, and physician to visit with the proposed ward (client). On the date of the scheduled hearing, a Superior Court judge reviews all reports, hears any necessary testimony (including that of the proposed ward, if available) and the petition is either approved or denied. Chairman Pastor inquired as to the reason a petition for guardian appointment would be denied and what happens if a petition is denied. Ms. Poarch stated that a petition is not made unless there is sufficient evidence of incapacity. The petition is usually accompanied by a referral from a physician stating that the person is incapacitated; therefore, would need guardianship. He then asked if there was a conflict with Mr. Perlman, (Public Fiduciary Attorney) since he has other obligations. Ms. Poarch stated that Mr. Perlman has made the Public Fiduciary his priority and there are no issues with the availability.

Mental Health Guardianship: Pursuant to A.R.S. §14-5312.01, a guardian can consent to psychiatric and psychological care and administration of psychotropic medications. Care and treatment must take place outside a level one behavioral health facility licensed by the Department of Health Services. Pursuant to A.R.S. §39-501, a guardian can consent for inpatient mental health care and treatment, including placement in a level one behavioral health facility. The court gives authority to the guardian to consent for the ward to receive inpatient mental health care and treatment. Chairman Pastor asked for clarification regarding a level one behavioral health facility. Ms. Poarch replied that it is a 24-hour lock-down facility. Jon Cornell, KQSS radio station

reporter, stated that when an elderly or disabled person doesn't want guardianship, could they stop the process? Ms. Short replied that every client that is petitioned for guardianship is represented by an attorney, and the attorney is there to represent the wishes of the client. If there is no need for guardianship, it is the responsibility of the attorney to convey the wishes of the client to the court. She added that at any time a client may request, through their attorney, to terminate the guardianship. Ms. Poarch added that if a guardianship is terminated, it's usually because a client has reached their goal of being able to function without guardianship. The client may have been incapacitated at the beginning of the guardianship and over the years gain improved capacity with regimented use of medication, gaining employment and participating in community services programs provided for them to help them succeed and function well in the community. Vice-Chairman Martin inquired if there are any cases of the Public Fiduciary taking back a client who has left guardianship. Ms. Poarch replied that there is only one case that she could think of which a mother took the guardianship over and has recently requested that the daughter be returned to the Public Fiduciary for guardianship. Vice-Chairman Martin inquired if the above mentioned level one facility is located in Gila County, to which Ms. Poarch replied that the level one facility is not located in Gila County, but there are facilities in Tucson, Phoenix, and Flagstaff that are available for Gila County to send clients; however, it is dependent on the availability of a bed. Vice-Chairman Martin inquired if there are issues as to accommodating family visitation of the client. Ms. Poarch stated that this is a factor, both positive and negative. She further clarified that with regard to the 14 plus mental health powers, there is the regular guardianship and the 14 plus mental health powers guardianship on top of that which lasts for one year; every year the case is brought back to the judge for re-appointment of mental health powers guardianship if necessary. Ms. Short added that after placement in a level one facility, the client's attorney is notified within 48 hours so that the client has representation. Chairman Pastor asked Ms. Poarch to provide him with the statistical information regarding the 14 plus mental health powers clients. Vice-Chairman Martin requested that anything provided to the Chairman be provided to all of the Board members, to which Ms. Poarch agreed.

Mr. Cornell inquired if the Public Fiduciary serves clients who live on the San Carlos Apache Tribe reservation. Ms. Poarch stated that she has received referrals for Native Americans; however, those clients do not reside on the reservation.

Public Fiduciary Statistics:

Globe	39	Queen Creek	1
Payson	11	Scottsdale	3

Tucson	1	Peoria	1
Apache Junction	2	Phoenix	9
Flagstaff	1	Mesa	7
Casa Grande	2	Sedona	1
Glendale	1	Mammoth	1
Guardian Only	57		
Guardian/Conservatorships	10		
Conservatorships	9		
Pending	2		
Decedent Estates	4		
Courtesy Visits	3		
Guardian Ad Litem	0		
Title 14+	9		

85 active cases

2014 –

32 Referrals: 13 denied, 9 Appointments,
7 Deceased, 5 Released

2015 – (8 Months)

15 Referrals (so far): 5 denied, 9 Appointments,
4 Deceased, 2 Pending Release

Chairman Pastor asked if a client needs to be placed in a level one facility and the placement is outside of the County, is consideration given to placing that individual near family members? Ms. Poarch replied that there is very little family involvement; however, the attempt is made to keep the client as close as possible to family. Vice-Chairman Martin inquired if 85 active cases is a large number. Ms. Poarch responded that the numbers for Gila County are average and that number has been the same for years. Ms. Short added that the client placed in Sedona was done so at the request of a family member in order to be close by for visitation. Ms. Poarch added that, at her request, the Public Fiduciary in Sedona provides courtesy visits to that local client. Ms. Poarch advised that she visits each client every other month.

Client Location Percentages: Globe 49%; West Valley 18%; Payson 14%; East Valley 13%; Casa Grande 3%; Tucson 1%; Sedona 1%; Mammoth 1%.

Expenses of Guardianship and Conservatorship: Filing fees charged by the Clerk of the Court; fees charged by the petitioner's (Public Fiduciary's) attorney; fees charged by the proposed ward's attorney; medical examination costs

(physician's report); court investigator costs; bond premiums (private fiduciary only).

Supervisor Marcanti inquired if any personal property of a client is used to pay for debts owed by the client. Ms. Short replied that personal property belonging to the client is given to the family if they can be located or it is donated. Ms. Poarch added that it depends on the value of the property; if it can be sold to help pay for their care, that is what is done. If it appears to be a family heirloom, it is held for a time in the hope that a family member will claim the item or items.

Ms. Poarch reviewed the fees charged by her office, which must be approved by the Gila County Board of Supervisors, approved by the Superior Court presiding judge, and approved annually by a Superior Court judge on each case. She added that fees are collected only when a ward's necessities have been met. Chairman Pastor inquired if the County could "write off" uncollected fees. Don McDaniel, County Manager, replied that it is not allowable to "write off" uncollected fees. Chairman Pastor inquired if Gila County's Public Fiduciary's fees are comparable to other counties, to which Ms. Poarch affirmed that they are comparable. She then reviewed the rights which are lost upon a court declaring a person to be incapacitated.

Ms. Poarch reviewed the process for assigning cases to case managers and the general principles that are utilized to make decisions on behalf of the client. She also reviewed the duties of a case manager.

Ms. Poarch explained that in some cases, an appointment made to the public fiduciary is due to an act of abuse or financial exploitation upon a vulnerable person. If there is evidence of abuse, unnecessary transfer of property or unexplained expenditures, the assistance of the county attorney for investigation and possible legal action will be sought.

Within 90 days after appointment, a conservator shall prepare and file with the court an inventory of the estate owned by the protected person on the date of the conservator's appointment, recording pictorially and indicating the fair market value. Ms. Poarch stated that sometimes there are cases of a person being a hoarder, and it is necessary to clean out the home (she provided photos of one hoarder's home). Chairman Pastor inquired if any other County departments offer assistance with cleanup. Ms. Poarch replied that clients receive utility assistance from the County Community Services Division, and the Sheriff's Office has offered trustees to help with moving large items out of clients homes.

Ms. Poarch explained that her office has many statutorily required reporting responsibilities for clients. A guardianship report is presented to the Superior Court each year, on or before the appointment date for every client which includes the client's address, caregiver name and contact information; name of case manager; number of visitations in the past year by Public Fiduciary's office; client's daily activities or employment; medical information/current condition/and name and contact information of physicians. In addition to the guardianship report, the Public Fiduciary must submit an itemized accounting to the Superior Court for approval which must include all income received; all expenditures with explanation of expense; any real property and its value Investments (CDs, burials, money market accounts); and any fees sought by the Public Fiduciary for services provided.

An explanation of the process was also provided regarding the appointment of a personal representative upon the death of a ward (client). A fiduciary is required to notify the court within 10 days of the client's passing. If after 40 days from the death of the ward no one has come forward to request to be appointed personal representative of the estate, the fiduciary shall petition the court to be appointed. If a qualified person is appointed as personal representative, the fiduciary shall enter a claim against the estate for services rendered and turn all assets over to the personal representative. A final accounting for the client must also be filed with the court. Once the final accounting is approved and all assets have been distributed, the fiduciary must file a Petition for Final Discharge.

Ms. Short explained the process for indigent burials. Currently, Gila County allows \$410 for a non-veteran burial and \$560 for a veteran burial. The Public Fiduciary's budget for indigent burials is \$3,000; however, last fiscal year approximately \$5,480 was spent. In 2014, Gila County received 8 applications and authorized indigent burials for 6 individuals. The cost of one burial was recovered by affidavit through a bank account as allowed by statute. In 2015, Gila County has received 12 applications and authorized burials for 10 individuals. Chairman Pastor inquired if it would be less expensive to authorize cremation rather than ground burial of deceased indigent clients. Ms. Poarch replied that the cost to the County is the same. Gila County doesn't allow cremation, but does allow family to authorize cremation to reduce the burden on the funeral home.

Supervisor Marcanti stated that with the checks and balances in place regarding the Public Fiduciary, he couldn't see where any mismanagement of funds could take place. Chairman Pastor stated that he now has a better understanding of the Public Fiduciary Department and he appreciated the presentation. Mr. McDaniel added that the subject of Public Fiduciary could potentially elicit emotions and difficulty and there is none. He added that it is

a tribute to Ms. Poarch's well-managed department. Chairman Pastor agreed. Vice-Chairman Martin stated that Ms. Poarch manages her department with compassion and grace and asked if there was anything the Board could do locally or at the State level to assist her. Ms. Poarch replied that usually the problems she encounters are legislative and that the Board of Supervisors has been very responsive to her needs, wants and concerns to manage the Public Fiduciary Department effectively.

Item 3 – CALL TO THE PUBLIC: Call to the Public is held for public benefit to allow individuals to address the Board of Supervisors on any issue within the jurisdiction of the Board of Supervisors. Board members may not discuss items that are not specifically identified on the agenda. Therefore, pursuant to Arizona Revised Statute §38-431.01(H), at the conclusion of an open call to the public, individual members of the Board of Supervisors may respond to criticism made by those who have addressed the Board, may ask staff to review a matter or may ask that a matter be put on a future agenda for further discussion and decision at a future date.

There were no comments from the public.

Item 4 – At any time during this meeting pursuant to A.R.S. §38-431.02(K), members of the Board of Supervisors and the County Manager may present a brief summary of current events. No action may be taken on issues presented.

Each Board member and the County Manager presented information on current events.

There being no further business to come before the Board of Supervisors, Chairman Pastor adjourned the meeting at 11:10 a.m.

APPROVED:

Michael A. Pastor, Chairman

ATTEST:

Marian Sheppard, Clerk of the Board