

Meeting Minutes

REGULATORY COUNCIL OF COMMUNITY ASSOCIATION MANAGERS

Department of Business and Professional Regulation, Professions Board Room
1940 North Monroe Street, Tallahassee, Florida 32399

Friday, November 30, 2012

I. CALL TO ORDER

Patricia Rogers called the meeting to order at 9:00 a.m.

II. ROLL CALL

Patricia Rogers, Chair

Kelly Moran, Vice Chair

Terence Brennan

David Beswick

Dawn Warren

Margaret A. Rogers - Excused Absence

Staff Present

Dr. Anthony Spivey, Executive Director

Terri McEwen, Government Analyst

Douglas Dolan, Assistant Attorney General

C. Erica White, Prosecuting Attorney

Belicha Desgraves, Assistant General Counsel

Kathleen Brown-Blake, DBPR Rules Attorney

III. APPROVAL OF MINUTES

Motion: Kelly Moran made a motion to approve the August 31, 2012 meeting minutes.

Second: David Beswick seconds the motion. Motion passes unanimously.

IV. CHAIR REPORT – Patricia Rogers

Patricia Rogers, Chair: We have a very full agenda today. It is very important we keep on topic and make sure we do not stray into other areas. I know sometimes we have a tendency to go back and look at things we have already discussed before. Unless it is really pertinent to the issue we are discussing, maybe we should try not to do that as much as we have. I think it would help us actually get our goals accomplished. We have some very important topics on the agenda that we need to go through today. Some of them are going to require decisions by the Council, some of them may not. The only way we will be able to make decisions is if we keep our focus and make sure we go through and thoroughly discuss them.

V. COUNSEL REPORT – Doug Dolan

Topic deferred to later in the meeting.

VI. PROSECUTING ATTORNEY REPORT - C. Erica White and Belicha Desgraves

C. Erica White: On the report you have, you should see a status code “35” that we implemented to show a case has been reviewed. I know in the past there has been some concern about the length of time it has taken. The computer system we use did not allow us to indicate we have reviewed a case even though we had. A status code “35” indicates that a case has been received and that we have reviewed it. Now we have not taken final action, but it lets you know as the Council that cases are moving through the process.

There are less cases and that is primarily because we have utilized a new process where we are not filing administrative complaints on unlicensed activity. We will explain the process we are using to deal with that. That is the reason we have so fewer cases. I would anticipate by your next meeting we should have even less.

Kelly Moran: We have one name that consistently over the last 6 or 7 years continues to appear on our report. I am concerned that this person is definitely a repeat offender and still holds a license, in my opinion should not hold a license.

C. Erica White: This particular case was closed. I am familiar with this person. The issue is we have a graduate discipline system. So, even if several complaints come in you have to almost have two or three cases where there is discipline before you can consider revocation. I know that a particular licensee, not just this specific one, may have multiple complaints, but if they did not result in an administrative complaint filed or discipline you can see the same name over and over again. I understand your concern. When we go through the explanation of the complaint process, you will see what legal does when we evaluate these cases.

Kelly Moran: Is there anything we can do as a Council that would help you revoke licenses for these repeat offenders?

C. Erica White: Your rules are really what we look to in terms of disciplinary action. The rules are somewhat specific about what we can revoke for. We often revoke licenses if there is just financial mismanagement without a gradual process. If there is financial misconduct, we usually revoke right then. We have to be able to justify the reason for revocation and the licensee can appeal that then we would have to go to a formal hearing. At which point the burden is on us to show we have enough evidence to revoke. If you look through your rules and you have the ability to amend those, if there is something in there you want to make more stringent then we can rely on that when doing disciplinary action.

Patricia Rogers, Chair: I noticed we only have 7 CAM Firm complaints. I was a little surprised there were so few.

C. Erica White: The only cases in your report are cases where probable cause has been found or if a case have been reviewed legally and we are going to file an administrative complaint. You will not see just cases we have received on CAM Firms, those are confidential. There are more than 7 cases against CAM Firms, you can not see them on this report because they are confidential, unless we believe we will find probable cause in a case.

Patricia Rogers, Chair: And that is something else we would have to change our rules or in statute?

C. Erica White: That is actually in the statute.

Kelly Moran: These other licensees in the legal report would be licensees that don't work for a management company? If they are in probable cause here, the firm would be in probable cause.

C. Erica White: Not necessarily. A lot of times we get a complaint against the CAM and CAM firm and they are the exact same complaint. The CAM Firm case you can't see, but the CAM case you can see. You just can't see the duplicate case. Very rarely do we get a complaint against the CAM Firm without filing a complaint against the designated CAM or qualifier for the CAM Firm. Technically we can not provide that report to you. Usually when the public calls in they are referring to a CAM Firm case, which I can't discuss. But, I usually can discuss the case against the CAM.

Patricia Rogers, Chair: And what statute is that?

C. Erica White: I can get that for you, Madam Chair.

Patricia Rogers, Chair: I don't know if we want to address that change, but it is certainly something we want to review.

VII. EXECUTIVE DIRECTOR – Dr. Anthony B. Spivey

1. Financial Statements; Period Ending September 30, 2012

Dr. Anthony Spivey read the information from the Financial Statements.

Operating Account balance = (\$51,679) negative balance

Dr. Anthony Spivey: I looked at this account and compared it to the last year time period. I noticed at the end of the quarter last year you had a negative balance as well. One thing that sticks out is that the expenses for General Counsel are actually down. That is basically attributed to the process in place now by moving all of these cases away from legal back to the investigators because they are minor issues. It is actually a good thing that the Department has moved those cases away from legal where they can be handled at a lower level and still get the attention that they need.

Kelly Moran: As a Council we are still concerned that we have this negative balance even after we received our renewals this year. Do you see this number turning positive anytime soon?

Dr. Anthony Spivey: If it stays on the current trend for the current quarter. You will actually cut your expenses in legal cost by approximately 200 thousand dollars.

Kelly Moran: Do we expect any additional revenue from renewal?

Dr. Anthony Spivey: No, they are pretty much in. The renewals do go out 90 days prior to the renewal period. Pretty much everyone who will pay has paid the renewal fee.

Patricia Rogers, Chair: Do we have a trend of fewer fines? Are we fining less CAM's?

Dr. Anthony Spivey: With fines some will pay and some won't pay and then we need to send them to collections to get the money.

Unlicensed Activity balance = \$137,447

2. Division of Regulation Quarterly Complaint Report

Handout reviewed by Council Members

Patricia Rogers, Chair: Is there any way of getting a better sampling of what the complaints are, what areas?

C. Erica White: Most of what I see is unlicensed activity, failure to provide access to records is a high number of complaints and failure to follow the governing documents of the association. Those are about 80% of cases we receive. As I stated before it is duplicative against the CAM and the CAM Firm.

Patricia Rogers, Chair: That information is helpful to us as a Council when directing our educational material.

Belicha Desgraves: Chapter 468.4365, Florida Statutes that refers the availability of records and disciplinary proceedings in relation to CAM's being public record and CAM Firm's not.

Patricia Rogers, Chair: We can direct our efforts to our education brochures to specifically address those concerns.

V. COUNSEL REPORT – Doug Dolan and Kathleen Brown-Blake

SERC (Statement of Estimated Regulatory Cost) checklists are obligated to be completed for each and every rule that is proposed prior to sending to the Joint Administrative Procedures Committee (JAPC) and the Office of Fiscal Accountability and Regulatory Reform (OFARR). With the help of the Division of Regulations we have completed SERC checklist for all the rules you voted on last time.

Rule 61E14-5.001 – Citation Rule

The checklist indicates there will be an increase in fees to those who are issued citations, approximately 30 issued a year. The total increase cost is estimated \$7,500.

Terence Brennan: On this rule, I have a comment on a section of this rule that I am a little concerned with.

Kathleen Brown-Blake: The language of the rule was already approved at the last meeting.

Terence Brennan: My concern in paragraph 6, once the citation becomes a final order the citation and complaint become public record. Since the statute that was cited makes complaints public record at the moment they were filed. This language suggests the citation is not public record until the complaint process is completed, it would seem to be in conflict with the statute by being more restrictive.

Patricia Rogers, Chair: If I remember our discussion before, this was added for the CAM Firms.

Kathleen Brown-Blake: A rule will never supersede a statute.

Patricia Rogers, Chair: Why would you only think there would be 30? I would think that it would be a lot more people.

Kathleen Brown-Blake: We consulted with the Division of Regulation that goes out and start the complaints. There are about 200 new cases a year, I think there are going to be a number that are handled with a cease & desist for unlicensed activity, there will be a number sent to mediation, or provide a notice of non-compliance and some that we handle by citation. When I asked them to break down the number of citations would be, this is what was provided. They are the ones in the field so they would be the ones to make the best educated guess.

Patricia Rogers, Chair: I hope they are wrong, I hope they catch more people. There are more people doing things wrong.

Motion: David Beswick made a motion that a SERC is not required for the proposed Rule 61E14-5.001.

Second: Kelly Moran seconds the motion. Motion passes unanimously.

61E14-5.002 - Mediation Rule

Mediation is cost free to licensees and the public. It was estimated about 40 cases going to mediation on average.

Patricia Rogers, Chair: Will they be using private mediators.

Kathleen Brown-Blake: No, we have mediation in house. The Division of Regulation has mediators.

Patricia Rogers, Chair: How is there no cost then?

Kathleen Brown-Blake: It is no cost to licensees and the public. When doing a SERC checklist you never consider the cost to the Department or the State. You consider the cost to those individuals the rule will be applied against.

Motion: Kelly Moran made a motion that a SERC is not required for the proposed Rule 61E14-5.002.

Second: David Beswick seconds the motion. Motion passes unanimously.

Rule 61E14-5.003 - Notice of Non-Compliance

No estimated cost to the licensee or to the public. The Division of Regulation has estimated approximately 80 issued a year.

Motion: Kelly Moran made a motion that a SERC is not required for the proposed Rule 61E14-5.003.

Second: David Beswick seconds the motion. Motion passes unanimously.

These rules will now be sent to the OFARR and then have to wait 7 days for publication of the language. About 56 days later, if we do not receive comment from JAPC or the general public, the language will be adopted. If we do receive comment from JAPC or the public the language will be brought back to the Council for consideration.

VIII. COUNCIL DISCUSSION TOPICS

1. Complaint Categories / Process

C. Erica White presented power point presentation of the Office of the General Counsel complaint process.

C. Erica White: The review of our case happens after the Division of Regulation. When we are looking at complaints, what we are looking for is evidence that supports the allegation of the complaint filed by

the constituent. What we usually find is that there is an allegation, but nothing that ties anything beyond the allegation to proving that.

Public Comment:

Dennis Warren: A complaint I filed that did not necessarily follow the paths that was described there. I do want to point out a few things that could be avenues to revise in the Department. These cases deal with election violations.

C. Erica White: We can not impose discipline on election issues.

Dr. Anthony Spivey presented power point presentation on complaint process on where to file with the Division of Regulation.

2. Access to Public Records Policy

Dr. Anthony Spivey presented power point presentation on how to request CAM public records through the website.

Motion: Terence Brennan made a motion for the Council to discuss the Department to modify the threshold to validate cases for that should show on the website.

No Second. Motion dies.

3. Public Information Brochure

Motion: Kelly Moran made a motion that the next public information brochure encompasses the Professional Standards of Conduct for CAM's.

Second: Dawn Warren seconds the motion. Motion passes.

4. Discussion on Mediation - Addressed during complaint process presentation.

5. Background / Drug Testing

Council voted and this topic will not be discussed and removed from the agenda.

6. Unlicensed Practice Of Law

Patricia Rogers, Chair: At the last meeting we adopted the letter that Dr. Spivey sent on behalf of the Department to the Florida Bar Committee. There are conversations going on both sides of the issue. There are organizations that are concerned that the Council needs to take a higher profile on how we deal with this. I agree that the Council should be taking a stand on what CAM's can and can't do.

Dawn Warren: I think it is very important that we monitor any legislation that comes out that refers to the unlicensed practice of law. We need to be very involved in that legislation and make sure it is represented appropriately.

Dr. Anthony Spivey: At this time we are not aware of any legislation filed regarding this profession.

David Beswick: This is definitely something that needs to be watched. Legal fees in my condo last year were outrageous.

Mathew Green from Community Association Institute (CAI): Back in September the industry was successful for having 24 of the 28 struck off the record. We have four remaining issues; modify limited proxy, documents concerning the rights of an association to approve new prospective owners, drafting of pre-arbitration demands and identifying through review the instruments owner receive pre-lien letters. CAI is planning on holding a dialogue on January 11th in Orlando at Celebration for stakeholders to hash out any differences on these four items.

Patricia Rogers, Chair: I think this is very important, especially on this issue that we all come together and work as a team. It is important that legislators see that this important issue, and that all groups in this State come together to work on this important issue.

Kelly Moran: I think it is great that you are having this forum. We don't want to see the two industries at war because both industries need each other desperately. It is extremely important that we work with the attorneys and come to some common ground. We do appreciate CAI's support of your larger manager population.

Patricia Rogers, Chair: Managers are in a very unique position and in a very unique profession. We are called upon to make interesting decisions and understand the law while not interpreting the law. That is a fine line managers have to walk and it takes a specific appreciation by attorneys that is greatly lacking. I see that many times with documents they write, they do not understand community associations as well as managers do. Maybe through this process we can educate the attorneys on this topic.

Patricia Rogers, Chair: Tony, if anything does come up can you relay that information to the Council?

Dr. Anthony Spivey: We can do a tentative date for a conference call?

Patricia Rogers, Chair: If the forum is January 11th maybe we can do it January 18th to discuss legislation proposals if everyone is available. I remind the Council members that if you do attend the January 11th dialogue you are doing so as individuals and not as members of the Council.

7. Professional Standards of Conduct (Code of Ethics) -

Patricia Rogers, Chair: The way our CAM Professional Standards work is based upon the law. In order for us to change the perception of the profession we need to change and at least have a statement of professional standards. These are professional standards that CAM's need to be meeting.

Kelly Moran: Our standards have to be in the law or administrative code. It would be an exercise of futility if we create standards and we hope you follow these.

C. Erica White: You already have professional standards in your rules. You can amend your current rules.

Doug Dolan: Do you want to open that for discussion at the next meeting?

Patricia Rogers, Chair: We are going to go through some of them.

Doug Dolan: If we are going to modify the rule then we would have to notice that.

C. Erica White: You need to notice if you are going to modify or have a discussion of the rules. That was not noticed for today.

Kelly Moran: If we are going to modify the standards, what consequences if any, does that pertain to the disciplinary actions?

C. Erica White: Your current rules are very broad, it is not defined. We don't charge under that because it is not defined. If you were to define that it would assist us to better charge for disciplinary actions. Right now we can't because it is not a defined term.

Kelly Moran: If we are updating our professional codes that they have barring on disciplinary and the entire process of disciplining CAM[']s for violations. My recommendation is to take our current professional code of standards and our rules and further define that so it's not as broad as it currently reads. We already have a basis, lets just work on defining and becoming more specific.

Doug Dolan: Would you like to notice the rule for development for the next general meeting? (February 8, 2013)

Motion: Kelly Moran made a motion for the February 8th meeting to discuss proposed changes to the rule for Professional Standards of Conduct.

Second: Dawn Warren seconds the motion. Motion carries unanimously.

IX. FUTURE MEETING DATES

January 18, 2013 – Telephone Conference on legislative language filed

February 8, 2013 – Telephone Conference

May 8, 2013 – Telephone Conference – conflict and will need to be rescheduled

August 16, 2013 – Telephone Conference (proposed)

November 15, 2013 – Tallahassee (proposed)

X. OLD BUSINESS – None

XI. SUGGESTED TOPICS FOR THE NEXT MEETING

1. Rule Development
2. Financial Updates
3. Training Requirements for Investigators
4. Public Information Brochures
5. Unlicensed Practice of Law relating to Community Association Managers

XII. ADJOURNMENT

Motion: David Beswick made a motion to adjourn the meeting.

Second: Kelly Moran seconds the motion.

Meeting adjourned at 12:35 p.m.