

N.D. State Board of Accountancy

Meeting Notes: Jan. 26, 2009

Participants: Harold Wilde, Ron Johnke, Rick Lee, Nikki Schmaltz, George Kelly, Mandy Harlow, Jim Abbott, Stan Sandvik, Steve Cates.

The meeting began at 4:06 pm.

MINUTES (9/12/08, 10/6/08, 11/24/08)

The minutes were approved (motion: Nikki, second: George, unanimous).

Stan joined the meeting at about 4:10.

FINANCIAL REPORT (Dec. 31, 2009)

Disbursements were approved [checks 12627 to 12826] (motion: Rick, second: Ron; carried unanimous)..

Jim will do some forecasting work re future fees; Harold indicated a preference for adjusting the fee so as to provide some surplus and avoid changing the fee for 5 years.

MOBILITY LEGISLATION

Harold spoke on behalf of the bill, at the Capitol. The bill received unanimous approvals from the committee and the House. John Mongeon also spoke in support of the legislation. The colored U.S. map was impressive.

OTHER BUSINESS

Jim had prepared a memo concerning the administration of peer review. The plan is to use a \$100 late fee when firms do not cooperate; this will be reviewed with committee and the Society Board, and they will come back to the Board. Perhaps there should be an agreement with the Board covering administration of the reviews. The Board will be assigning an observer. Jim pointed out that plans call for turning over uncooperative firms to the Board, and using the current fee structure without a drop in fees as had been discussed earlier.

Stan spoke about the member / non-member fee issue. There will be many more reviews involving more staff time. Harold commented that the Board would ask for 3 to 4 years of revenue and expenses. Staff time has not been allocated. The Board will be notified of the next peer review meeting; Stan felt a board member could be present. Stan left the session at about 4:30

RENEWAL PROCESSES

We could consider increasing the re-instatement fee. Jim will add a note to a rules change file re. this issue. The Board was agreeable with using the two processes -- automatically reclassifying out-of-state non-renewals as "involuntary relinquished" and initiating revocation for in-state non-renewals. Jim will check with legal counsel about using a re-instatement fee and/or late fee for the "involuntary relinquish" category.

Harold had talked with legal counsel, who indicated that the Board could not use Executive Session for handling complaint discussion.

Bob Pearson would like support for NASBA president-elect. The Board was agreeable with supporting him for the role; action was deferred to the next meeting.

COMPLAINTS

Rick moved to defer 2008-5; second by Ron ; carried unanimous.

Legal counsel had indicated that the complainant has no legal standing to speak before the Board on the case.

Ron moved to defer action on 2007-2, to the next meeting; second by George; carried unanimous.

Harold and Jim will provide a summary of the issues in both of these cases.

2008-6

Harold read a letter from a recent complainant concerning access to records. We received a letter today from the CPA indicating that the CPA felt able to handle the practice, and that a potential sale is on hold until 4/15/09.

We will prepare an agreement with the CPA, requiring that access be repaired immediately (mailboxes cleared, office open 9 to 5). A \$1000 fine will be levied if a client is unable to reach the CPA during normal business hours. Performance on these terms will be monitored and the CPA agrees to that. The CPA must immediately satisfy the record access concern of the recent complaint, and is to provide proof of mailing the requested items. The CPA is to complete the remaining CPE obligation in February. Jim will prepare the agreement, pass it through Harold, and also ask legal counsel whether the agreement should come from legal counsel.

2006-7 and 2006-12 were closed on motion by Ron, second by Nikki; carried unanimous;

Jim will finish the issues chart for 2008-5, and provide it to Harold (then to Ron) for review. Harold preferred to first prepare the issues chart, then ask the investigator why such issues were not addressed. Jim suggested documenting board member time given to analyzing this case.

The complainant (2008-5) joined the meeting, and was informed that the case has been deferred to 2/28. Although there is not a legal standing, he could call in to the meeting.

When a Board member possesses Board material in an email format, does this open them up to inspection of their office computers? Jim and Harold will visit with legal counsel on this matter. Is it only the Board email that is an open record, or would their other records be subject to review? Mention was made of using a standard protocol that all correspondence goes through the board office. Also mentioned was for now, not sending complaint information by email. Also mentioned was not including board email addresses on the letterhead.

Answers to this records access issue will be obtained and circulated quickly.

The meeting adjourned at approximately 5:25.

Secretary

Date

N.D. STATE BOARD OF ACCOUNTANCY
Meeting Notes: 2/28/09 10 am

Location: 400 Demers Ave. (Brady Martz office)

The meeting began at 10:07 am. Participants were Harold Wilde, Ron Johnke, George Kelly, Rick Lee, Nikki Schmaltz, Jim Abbott. Present for parts of the meeting were Jason Wahl, Laurel Moeckel (by phone) and Jack McDonald (by phone).

MINUTES (1/26/09): approved on motion by Lee, second by Schmaltz, carried unanimous.

CASE 2008-5

Wilde reviewed a 2/18/09 response from one of the defendant CPAs; all three of our concerns were adequately addressed. Wilde addressed the points in the Complaint Analysis chart; there were no objections raised by the group. Item 8: apparently the CPA was in contact with the entity's audit committee chair (the CPA's supervisor) on some issues. Item 24: the Supreme Court determined that the payments were bonuses; the jury had to make their own decision, which was to consider them to be bonuses. Item 29: there were several instances where the CPAs did consult the AG's Office.

Our investigator took issue with the report language, but Wilde did not consider this to be a legitimate concern; alternative language is not prohibited. Johnke reported on a Feb. 26 conversation with our investigator. Regarding how issues were selected for attention, the investigator went through the bulk of the complaint, and tried to focus on violations of standards or ethics. Matters of intent, personal attack, "he-said / she-said", and subjectivity (disrespect) were left out. He issued letters to the CPAs asking about the selected issues. Adequate support was provided by the CPAs. In a performance audit, one is to use a cause & effect approach, and the investigator could not see all the elements of this approach; and it is not mandated that they all be included in the audit report. The investigator considered there were no material issues, more so a matter of interpretation of standards.

The complaint did not meet a "clear and concise" standard but we still examined it. After substantial attention to the case we found no evidence the CPAs acted improperly. Johnke moved to dismiss the case; second by Lee. No comments are to be issued to the CPAs. We will have legal counsel prepare the responses. Motion carried unanimously. Wahl left the meeting at this time.

CASE 2007-5

We initially dismissed this case, due to insufficient evidence. We received further information, including from a CPA who worked for Merrill Lynch as a broker. He indicated that brokerage firms do not act as administrators of pension funds; whereas CPAs and individuals do. There was a document signed by the defendant as Administrator. Also, the company name on the letterhead indicated involvement in retirement services.

Harold lead the group through the 6 area of the Complaint Analysis. Item 1 is probably negligence, but not warranting more than an admonishment. The CPA should have been more forthright in responding to the Board. It appears he anticipated not attending the client meeting. Item 2: we were told we would receive the 5500 forms when found; that has not happened. In today's climate, if you don't have proof, the sense is that you didn't complete the action. It does not appear the forms were prepared. Item 3: we knew earlier of a modest fine; the CPA's attorney recommended not appealing, which appeared to be sound advice. The fine was quite

low, as to imply slight negligence. However, we later learned of a sizeable court cost assessment, and an attorney recommendation to not challenge; this seems to suggest potential negligence. Item 1 is dismiss-able, but issues 2 through 6 are valid.

There was discussion with the CPA's legal counsel. The 5500s haven't been located. We dismissed the case earlier, so one would not keep searching for them. Wilde indicated that the CPA had been dismissive of the Board; his attorney felt the CPA was not intending to be such. All other clients were sent 5500s. They do recognize there are issues. The court cost assessment was minor -- \$10,000 of a total \$300,000; not significant (on further discussion, it was unclear what the costs were, and may have been \$70,000). However, the court found 3 areas of fault, significant CPA failures. Moeckel was asked to disconnect. The Board agreed to the discipline to be proposed, and spoke with its counsel by phone. Wilde will serve as Board negotiator.

Re. 2008-6, legal counsel will attempt to reach the CPA, and if unsuccessful will initiate revocation.

NASBA ENDORSEMENT

The group did not act to endorse a candidate for NASBA president-elect.

EXAM COMMENT

Wilde indicated an interest in seeing the demonstrated value of the exam simulations. Do they truly differentiate candidate qualifications? Lee expressed a desire to focus on testing minimum entrance requirements, testing only those elements, and then leaving the workplace to determine candidate capabilities; it is tough to get the test passed once you begin working. Jim will share these sentiments.

NEXT MEETING: May 29, 2009, at 1 pm, in Williston, at the office of Voller, Lee, Sues & Assoc.

CANDIDATE QUESTION

There was no objection to allowing certification of an individual under the 120 standard, given they met that qualification by 12/31/99 and passed the exam by 2004.

ADJOURNED, at approx. 1:22 pm.

Secretary

Date

N.D. STATE BOARD OF ACCOUNTANCY
Meeting Notes: 4/30/09 11 am [conference call]

The meeting began at about 11:10 am.
Participants were Harold Wilde, Ron Johnke, George Kelly, Mandy Harlow, Jim Abbott.

2009-10 RENEWAL FEE

There was no objection to a renewal fee of \$75. The thinking is to not increase it again for a few years, and to monitor the situation as time goes on.

NASBA MEETING

Harold will be attending the Oklahoma NASBA regional meeting.

JOINT SOCIETY/BOARD MEETING

Nikki and Harold will represent the Board at the annual Board / Society joint meeting, with authority to commit the Board.

NEXT MEETING

The group will not meet May 29 as had been planned, but will meet in early July, in the east.

COMPLAINTS

Jim will contact legal counsel again in a few days, asking that a 5-day deadline be given for the defendant's attorney response (case 2007-2). Jim will also update the Board in about 10 days on the status of cases 2007-2 and 2008-6.

Adjourned at 11:29 am.

Secretary

Date

N.D. State Board of Accountancy
Meeting notes: 7/6/09 11 am.

Participants were Nikki Schmaltz, Rick Lee, Ron Johnke, Harold Wilde, Jim Abbott, Mandy Harlow. The meeting began at 11:17 am, with Harold presiding.

MINUTES

2/28/09 and 4/30/09 minutes were accepted, on motion by Ron, second by Nikki; carried unanimous.

OFFICERS

Harold and Ron will continue their current office roles, on motion by Rick, Nikki second; unanimous.

FINANCIAL MATTERS

Disbursements were approved on motion by Rick, second by Nikki; carried unanimous.

Jim will check with legal counsel about the LPA board member provision (whether it would refer to people in good standing or in practice. There was some sentiment in favor of having a public member on the Board. Jim will check into how the State Bar selects their public members,

No changes were made to the proposed budget. The equipment budget is \$2000. No changes were made by the Joint Task Force in full time staff salaries. There was discussion re the payroll sharing percentage; it was agreed that the time study work addressed by the Joint Task Force will not be done.

Jim will report in the future on the status of our net worth vs. target.

We will issue a notice to licensees notifying them about meeting notes being on our website. We will also send the NDSA a copy of our meeting summaries, for their use.

Harold expressed thanks to Mandy, about the positive feedback he has heard about contacts with the office. Rick moved adoption of the budget; second by Ron; carried unanimous.

LAW CHANGES

Jim reported on various changes that were included in the mobility bill.

PEER REVIEW UPDATE

Jim reported on activities of the Society's Peer Review committee, including increased fees, technical reviewer acceptance of clear engagement reviews. The group agreed that instead of having a board oversight person attending the PR meetings, we would instead ask for a written report on the program, and invite the Chair to participate in a Board meeting. The group was agreeable with one time changes in the due dates of the new peer review firms to coordinate with their preferred practice year end date.

CANDIDATE QUESTIONS

We will not accept LOMA credits in lieu of university education for Syed Shahabuddin; these credits are not accepted by UND. We will allow an extension of the lifespan for one exam section for Bernd Gause, in light of exam site problems. [Break]

We may want to have a second attorney appointed before the next Legislative Session.

COMPLAINTS

2009-1: Closed, on motion by Rick, seconded by Nikki; carried unanimous. 2009-2 and 2009-3 will be closed. 2009-4 will be kept open for the time being. 2008-6: Rick moved to begin the revocation process; second by Ron; carried, unanimous. 2007-2: An agreement has been signed with the accountant, including return of the CPA certificate, and other measures. Advertising cases will be handled by staff, when the party agrees to comply with requirements.

Adjourned at 1:33 pm.

Secretary

Date

North Dakota State Board of Accountancy
Meeting Notes: Nov. 13, 2009

Participants: Harold Wilde, Rick Lee, Nikki Schmaltz, Ron Johnke, George Kelly, Mandy Harlow, Jim Abbott. The meeting began at 11:47, with Wilde presiding.

MINUTES

The minutes of 7/6/09 were approved, on motion of Nikki, seconded by Rick and carried..

FINANCIAL REPORT

There has been a reduction of about 7% in the number of licensees, but licensee revenue is still ahead of budget. Rick moved to approve the expenses (checks 13037 to 13263, June 1 to Oct. 31); seconded by George and carried unanimous. Jim is pursuing the issue of duty segregation.

NASBA ANNUAL MEETING

Various issues were addressed. Rick will contact Tom Sadler for more details about a \$10M lawsuit related to a compilation engagement. It was suggested that such information be included in the DakotaCPA newsletter. Jim mentioned fees in South Dakota, and three recommendations he had made, regarding the international administration of the CPA Exam. There is a proposal to allow reviews to be conducted without full independence, but citing the related reason. There is a title use fight in NC or SC.

CANDIDATE QUESTIONS

There was no objection to reinstatement of James Hamel. Such applications will be brought to the Board.

NEXT MEETING: To be set later.

[BREAK]

INSURANCE ACTION

Ron moved the following motion: *We will offer to staff members all employee-paid insurance programs available through NDPERS. Staff members will need to meet the qualifications of any program they choose to purchase. We hereby amend our flex plan accordingly.* Nikki seconded the motion; carried unanimous. Jim will check on entering the State flex plan.

COMPLAINTS

2009-5. Rick moved to ratify the closure of the case; second by George; carried unanimous.

2009-4. Ron moved to close the case; seconded by Rick; carried unanimous.

2008-6. Rick moved to revoke the CPA's certificate; second by Ron; carried unanimous.

There was mention of a Society-run advocacy program run to assist a practice in times of special need. .

Harold, Jim and Mandy will work on rule change wording regarding:

- raise late fees and perhaps begin revocation procedures July 31
- having an inactive status (checking with other states was suggested)
- changing the reinstatement section concerning Board meeting action.

ADJOURN: Approx. 2:30 pm.

Secretary

Date