

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY**

CERTIFICATE HOLDER/LICENSEE INFORMATION	Certificate Holder:	Gary Warner
	Certification Number:	20193 & 20135
	Certificate Holder:	Gregory Sulzer
	Certification Number:	20632 & 20135
	Business Name:	Arizona Department of Veteran's Services
	Certification Number:	20135
	Type of Certificate/License:	Fiduciary

COMPLAINANT	Name:	J. Donald Boren
--------------------	--------------	-----------------

INVESTIGATION INFORMATION	Complaint Number:	11-007
	Investigators:	Pasquale Fontana
		Jeff Agraviador
		Eric Thomas
		Anne Hunter

Complaint Received:	May 23, 2011
Complaint Forwarded to the Certificate Holder:	June 1, 2011
Certificate Holder/Licensee Received Complaint:	June 4, 2011
Response From Certificate Holder:	June 28, 2011
Period of Active Certification/Licensure:	March 30, 1999 to present
Status of Certification/License:	Valid
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Available
Report Date:	November 20, 2013

ALLEGATIONS:

1. ADVS submitted a fraudulent Report to Court to Probate Court in Maricopa County.
2. ADVS billed Bovine's estate for guardianship services despite Bovine being his own guardian.
3. ADVS did not provide Bovine a copy of his 2010 income tax returns and may not have filed his tax return.
4. ADVS did not provide Bovine a copy of the inventory of estate assets.
5. ADVS did not provide complainant ("Boren") and Bovine access to review Bovine's ADVS file despite Boren being named Agent for Bovine under a signed Power of Attorney document.

ADDITIONAL ALLEGATIONS:

As the initial five allegations listed above were being investigated, the complainant made several additional allegations. These additional allegations made by Boren included one allegation regarding visits to the ward, while all the remaining additional allegations centered generally on financial matters. Some of the additional allegations regarding financial matters were non-specific, such as allegations of “unsatisfactory accountings” and “financial fraud,” and some were specific, for example, “the ward’s attorney charged for unauthorized services.” Listed below are the allegations (allegations 6 and 7) that were specific enough for investigators to investigate. Because some of the allegations regarding financial matters were vague, investigators reviewed all of the annual accountings that were filed with the court, as well as the court accountant’s reports, in order to determine whether Boren’s vague allegations warranted further investigatory work. This review of the accountings, and the court accountant’s reports, did not indicate a need for further investigation. Also, the allegations specifically regarding the attorneys were not investigated as the AOC has no regulatory authority over attorneys.

6. ADVS did not visit the ward on a regular basis.
7. ADVS did not reimburse the ward for late fee, and disconnect/reconnect fees when the ward’s power was shut off, even though it appears that the power shut off was due to ADVS not paying the bill timely.

Also, during the course of the investigation it was determined that ADVS did not file a complete inventory. Therefore the following additional allegation is noted:

8. ADVS did not file a complete inventory.

List of sources for obtaining information: (Investigative, records, outside resources, etc.):

1. Written complaint and documentation submitted by complainant J. Donald Boren (“Boren”).
2. Written response and documentation submitted by certificate holder Gregory Sulzer (“Sulzer”), Fiduciary Manager for Arizona Department of Veterans’ Services (“ADVS”).
3. Review of applicable Certification and Licensing Division (“Division”) records.
4. Review of applicable sections of Arizona Revised Statutes (“ARS”), Arizona Codes of Judicial Administration (“ACJA”) § 7-201 and § 7-208, Arizona Supreme Court Rules, Arizona Court Rules of Probate Procedure.
5. Review of applicable Maricopa County Superior Court records pursuant to Case No. PB 2007-002649.
6. Review of ADVS Fiduciary Division Fee Schedule.
7. Interview with a Salt River Project (“SRP”) customer service representative.
8. Interview with ADVS Fiduciary Lori Braddock (“Braddock”).

PERSONS INTERVIEWED:

1. SRP Customer Service Representative
2. ADVS Fiduciary Lori Braddock
3. Complainant J. Donald Boren

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION:

- **Licensing information** - ADVS became a licensed fiduciary entity effective March 30, 1999. ADVS has renewed its fiduciary license without interruption and is currently active through the certification period which ends on May 31, 2014. Sulzer became a licensed fiduciary on September 10, 2009 and voluntarily surrendered his license on May 10, 2012. Sulzer became the named designated principal for ADVS on September 18, 2009 and resigned as designated principal on November 1, 2011. Gary Warner ("Warner") became a licensed fiduciary on March 30, 1999 and renewed his fiduciary license without interruption until March 10, 2011 at which time he was granted inactive status. Warner's license expired on May 31, 2012. He served as acting Principal Fiduciary until September 18, 2009.
- **Background of probate case** - ADVS was appointed Conservator for Bovine on December 5, 2007 pursuant to Probate Cause No. 2007-002649. ADVS signed the Letter of Acceptance on December 17, 2007.
- **Background of complaint** - On May 23, 2011, Boren submitted written complaint 11-0007 alleging primarily that ADVS knowingly submitted a fraudulent Report to Court in response to a Maricopa County Superior Court Minute Entry dated May 17, 2010. In the complaint Boren stated:

In view of the action of ADVS, it is requested that non-ADVS personnel conduct both a financial and comprehensive records audit.

Boren provided additional allegations in writing on June 21, 2011, including the allegations that Bovine was being billed for guardianship services and that ADVS had failed to provide Bovine with a copy of his 2010 tax return. On July 7, 2011, Division Investigator, Eric Thomas ("Thomas") spoke with Boren. He provided additional information about his complaint and indicated he would provide the Division this information in writing. Since that time Boren has provided additional information to this office in writing on September 16, 2011, December 14, 2011, October 1, 2012, and March 8, 2012.

- **Response to complaint** - On June 27, 2011, Sulzer, Fiduciary Division Manager for ADVS, submitted a written response to the complaint. Sulzer stated in part:

ADVS was duly appointed in 2007 the conservator only for George Bovine pursuant to the above-entitled matter. No person known to ADVS is appointed Mr. Bovine's guardian. By the Court's minute entry of May 26, 2011, the Court found Mr. Bovine's disability, on which the Court earlier found the need for the conservatorship and for which the conservatorship was ordered by the Court, has ceased. The Court ordered termination of the conservatorship. Accordingly, ADVS is preparing its final account in the Matter.

Sulzer further noted in part that:

J. Donald Boren, aka, J.D. Boren (the "Complainant") is not known to ADVS as an attorney nor authorized to represent another party. Complainant has wrongfully attempted to meddle in and obstruct ADVS' appointment by his unwarranted demands to this agency, as fiduciary and his improper filings to the Superior Court. By his actions, Complainant has attempted to second-guess the validity of the Superior Court findings and decisions in the matter. The issues raised by Complainant were addressed by the Superior Court and found to be baseless.

Regarding Boren's request for a comprehensive records audit, Sulzer replied in part:

The relief sought by Complainant is a duplication of the oversight already in place by the Arizona Supreme Court. Additionally, yearly accountings by ADVS in this matter are approved by the Superior Court.

In his response, Sulzer said that Boren believed Bovine had capacity to handle his own financial affairs and that Boren reported using a power of attorney document to obtain information from Salt River Project ("SRP") regarding Bovine's electric service account. Sulzer acknowledged in part:

He (Boren) further claimed ADVS submitted a false and fraudulent report regarding the electric service account to the Court in May, 2010. Complainant request ADVS to relinquish the conservatorship and to pay unspecified costs regarding the service account, with the indirect suggesting he would carry his claim to U. S. Senator, John McCain. I informed Complainant that I would refer his request and comments to the Director and to ADVS' attorney of record in the Matter.

Sulzer further noted in his response that Boren went to the ADVS Fiduciary Division office on June 20, 2011 demanding to have access to Bovine's records but ADVS denied his request. Boren then contacted the State of Arizona Ombudsman Office ("AOO"). Sulzer reported that ADVS spoke with Kathym Marquoit ("Marquoit") of the AOO the following day. After consulting with legal counsel, Sulzer stated that ADVS was prepared to provide Bovine's attorney, Rodney Matheson ("Matheson") with Bovine's records. Sulzer reported that Boren came to ADVS on June 23, 2011 again demanding access to Bovine's records. Sulzer denied Boren access but advised that ADVS was preparing Bovine's records and would provide such to Bovine's attorney of record. On June 23, 2011, ADVS received an email correspondence from the Office of the Attorney General ("OAG") in response to Boren contacting that office.

Sulzer closed the formal response writing that:

The Complaint is but a continuance of Complainant's interference with the conservatorship. What Complainant could not do before due judicial process he attempts to discredit and demean administratively. No other action is needed by this body.

- **Regarding Allegation #1 - ADVS submitted a fraudulent Report to Court to Maricopa County Superior Court with the intention of deceiving Judge Karen O'Conner ("Judge O'Conner"), George Bovine ("Bovine"), and others in violation of ACJA § (J)(2)(f): *The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts -***

On April 12, 2010, Bovine's Court-appointed attorney, John Worth ("Worth"), filed a "RESPONSE TO ACCOUNTING" in Superior Court stating:

George Bovine does not object to the accounting filed by his conservator. He reports, however, a recent problem. His power was cut off because his conservator failed to pay the bill. The conservator resolved the matter right away and has given assurances that it won't happen again.

A Maricopa County Superior Court Minute Entry dated May 17, 2010 sets out in part:

IT IS ORDERED that the Conservator shall submit a written report to the Court explaining why Mr. Bovine's power went off; why his bill wasn't paid; how it was resolved; and what steps were taken to remedy the situation. The report is due no later than May 28, 2010.

Susan B. Court ("Court") attorney for ADVS submitted the required written "REPORT TO COURT" dated May 27, 2010. The reply stated in part:

- 1) *The protected person, George Bovine, who acts as his own Guardian, called the Conservator on March 18, 2010, to report that his electricity had been shut off by Salt River Project ("SRP") for non-payment. Human Services Specialist, James Gomon, took the call and immediately contacted SRP.*
- 2) *The SRP representative informed Mr. Gomon that Mr. Bovine had changed the billing address from ADVS to his home address, and the bills had been sent to Mr. Bovine directly since January 2010.*
- 3) *Mr. Gomon requested that the power be turned back on. SRP refused to turn the power back on until the bill was paid in full. Mr. Gomon immediately had a check cut by ADVS and personally hand delivered the check to the SRP office. The clerk at SRP then called a supervisor and instructed them to turn the power back on.*
- 4) *Mr. Bovine reported back to ADVS Human Services Specialist, Shena Rivers, before Mr. Gomon returned to the ADVS office, that the power had been turned on within two hours of his report to ADVS. Mr. Bovine also reported that he had been receiving the SRP bills, but had not notified ADVS of the change of address, nor had he provided those bills to ADVS for payment.*
- 5) *James Gomon instructed SRP to change the billing address back to ADVS as it had been paid by ADVS since the inception of the conservatorship. Since March, 2010, the Conservator had paid all bills on time upon receipt from SRP.*

Because this allegation was not addressed in the response to the complaint, AOC investigator Agraviador called ADVS to interview James Gomon and Shena Rivers and was informed by Human Services Manager Lori Braddock that neither individual was still employed by ADVS. Braddock told Agraviador that she started working at ADVS in September 2012 and that neither employee was working there when she started. Braddock told Agraviador she does not know their whereabouts. Agraviador asked Braddock if she was aware of the allegation that ADVS submitted a fraudulent report to the court regarding Bovine's SRP bill, and she stated that she was aware. Braddock did not offer an explanation or indicate she had any documentation to refute the allegation.

On November 26, 2012 Division Investigator, Pasquale Fontana ("Fontana") contacted SRP and spoke with a customer service representative regarding billing and invoice information. The representative advised that, in every case, the customer service address appears on the top left of the monthly account summary and the billing and mailing address appears on the bottom left of the statement. Any changes to the billing address would be reflected on the statement accordingly. SRP was unable to provide any further or specific account information citing privacy laws. In reviewing the monthly SRP statements Boren provided to the

Division covering the period beginning October 15, 2008 to June 14, 2011 inclusively, Fontana did not observe any changes in the billing address and each monthly statement appeared consistent, with the exception that beginning in April of 2010 the suite number for the ADVS address was changed from 160 to 100.

- **Regarding allegation #2 - ADVS billed Bovine's estate for guardianship services despite Bovine being his own guardian -**

In a correspondence from ADVS to the Maricopa County Superior Court dated April 2, 2009, line item #5 states in part that Bovine pays "\$60 for guardianship services." Investigators reviewed the annual accountings submitted to the court dated from December 5, 2007 through May 30, 2011. There were no entries indicating that Bovine was charged a guardianship fee or ever received guardianship services. The information in the correspondence dated April 2, 2009 appears to be an error.

- **Regarding allegation #3 - ADVS did not provide Bovine a copy of his 2010 income tax returns and may not have filed his tax return -**

A correspondence from ADVS titled "1040/1041 ~~Filing Statement~~" dated December 31, 2010, for client name "George Bovine" has two line items checked. [REDACTED
social security
number]

One line item states, "DOES NOT MEET THE SPECIFIED MINIMUM AMOUNT OF TAXABLE GROSS INCOME THAT REQUIRES THE FILING OF A FEDERAL AND/OR STATE INCOME TAX RETURN".

The other line item states, "WILL NOT BE FILED FOR THE ABOVE TAXPAYER FOR THE YEAR ENDING DECEMBER 31, 2010".

It is unknown if this information was provided to Bovine.

- **Regarding allegation #4 - ADVS did not provide Bovine a copy of the inventory of estate assets -**

Arizona Revised Statutes ("ARS") § 14-5418(B) states: The conservator shall provide a copy of the inventory to the protected person if the protected person can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides. The conservator shall keep suitable records of the conservator's administration and exhibit the records on request of any interested person.

According to Susan Court, ADVS attorney, they send the inventory to the ward's attorney and not directly to the ward. Per court records (in OnBase), on June 8, 2009 in a *Response to Court Accountant's Report and Recommendation* an amended inventory and appraisalment and amended first annual accounting was filed with the court. Mr. John

Worth, attorney for Bovine, as well as Bovine himself, was listed on the filing as one of several people that were noticed.

- **Regarding allegation #5 - ADVS did not provide complainant Boren and Bovine access to review Bovine's ADVS file despite Boren being named Agent for Bovine under a signed Power of Attorney document -**

According to ADVS' response to the complaint, the power of attorney was "negated by Mr. Bovine's incapacity and the court-appointed conservatorship for Mr. Bovine as a protected person." Therefore, ADVS was under no legal obligation to grant Boren access to the Bovine files. ADVS did agree to forward the files to Bovine's Court Appointed Counsel, Rodney Matheson ("Matheson"), and according to Boren's subsequent letters, some documents were provided to Matheson, although Boren maintains that Bovine's entire file was not forwarded to Matheson.

Boren provided copies of two different documents: a "Power of Attorney" dated September 23, 2010 and an "Authorization for Release of Veteran's Business, Financial, Psychiatric, Psychological and Medical Records" dated June 21, 2011. The "Power of Attorney" document was signed by Bovine and authorized Boren to "act for and in my behalf, in matters required to obtain independent living." It also stated that "I would like Mr. Boren to serve as my adjunct representative with Mr. Worth." The "Authorization" document was also signed by Bovine and authorized Boren to "inspect, review and obtain my client file, business, social security (SS), Veteran's Administration (VA), medical records, legal and related information regarding psychiatric, psychological or neurological testing or treatment." Hunter reviewed the documents and spoke with Lori Braddock, acting designated principal at ADVS. According to Braddock ADVS does not release wards' information even when presented with a Power of Attorney. As stated in the response to the complaint, the power of attorney was "negated by Mr. Bovine's incapacity and the court-appointed conservatorship for Mr. Bovine as a protected person." Therefore when presented with the Power of Attorney dated September 23, 2010, ADVS did not release any records to Boren. The "Authorization" dated June 21, 2011 however, was presented to ADVS after Bovine's conservatorship with them had been terminated and he was no longer a protected person. According to email records provided by ADVS' designated principal at the time, Greg Sulzer, he consulted with ADVS attorneys and was advised to release Bovine's records to his attorney, Rodney Matheson. According to both parties (Sulzer and Boren) records were released, however Boren maintains that not all records were made available.

- **Regarding allegation # 6 - ADVS did not visit the ward regularly.**

ACJA § (J)(2)(f) requires the fiduciary to notify the court within 10 days of a ward's change in location or death, which necessarily requires regular visits or contact. Copies of case notes obtained from the complainant indicate that from July 15, 2008 through July 29, 2010, ADVS staff conducted regular visits and/or telephone calls with Bovine. Division Investigator Anne Hunter ("Hunter") called ADVS and requested case notes

from December 2007 through July 2008, and August 2010 through May 2011 when the conservatorship was terminated, however ADVS was not able to provide the case notes.

- **Regarding allegation # 7 - ADVS did not reimburse the ward for late fees, and disconnect/reconnect fees when the ward's power was shut off, even though it appears that the power shut off was due to ADVS not paying the bill timely.**

A review of the ward's SRP bills from November 2008 through June 2011, showed that a monthly bill was mailed to ADVS for each of those months and that the following months had a "previous balance" as well as a late payment fee listed:

- March 2009 (\$4.81)
- September 2009 (\$4.81)
- November 2009 (\$4.81)
- December 2009 (late fee only of \$5.41)
- March 2010 (\$5.41)
- April 2010 (\$5.41)
- May 2010 (late fee of \$5.41, delinquent disconnect charge of \$70.24, and reconnect charge of \$21.61)

The total late fees and charges for disconnect/reconnect for the months listed above is \$127.92.

A review of the annual accountings indicated that the ward was not reimbursed by ADVS for the late fees, delinquent disconnect charge, or reconnect charge that occurred between March 2009 and May 2010.

- **Regarding allegation #8 - ADVS did not record pictorially and establish and maintain accurate records of all real and personal property as required by ACJA (J)(4)(b).**

ACJA requires that *the fiduciary shall provide stewardship of the property for safekeeping and, at a minimum, record pictorially and establish and maintain accurate records of all real and personal property.* A review of court records shows that the initial inventory and appraisal as well as the amended inventory and appraisal listed only financial assets and not real or personal property owned by the ward. According to the ADVS acting designated principal (Braddock), the ward did not own any real property and the personal property was not recorded because at the time of ADVS' appointment in 2007 it was common practice in the fiduciary community to complete a inventory of all the ward's assets, including personal property, but use that inventory only internally and provide the court an inventory listing only financial assets and bank accounts. Investigators requested a copy of the "internal inventory" however ADVS did not provide one.

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ALLEGATION ANALYSIS REPORT and PROBABLE CAUSE
EVALUATION and DECISION**

CERTIFICATE HOLDER INFORMATION	Certificate Holders: Certification Numbers: Business Name: Certification Number:	Gary Warner 20193 & 20135 Gregory Sulzer 20632 & 20135 Arizona Department of Veteran's Services 20135
INVESTIGATION INFORMATION	Complaint Number: Investigators: Report date:	11-007 Eric Thomas Pasquale Fontana Jeff Agraviador Anne Hunter November 20, 2013

ANALYSIS OF ALLEGATIONS:

Allegation #1 – ADVS submitted a fraudulent Report to Court to Probate Court in Maricopa County.

According to ACJA (J)(2)(f): *The fiduciary shall not knowingly file any document with the superior court or present testimony to the superior court which is misleading, inaccurate, false, or contains misstatements, misrepresentations or omissions of material facts.* A review of Bovine's SRP billing statements dated from October 15, 2008 to June 14, 2011 indicated that there were no changes in the billing address and each monthly statement was consistently addressed to ADVS. Additionally, in responding to the complaint ADVS did not provide any documentation proving that the address had been changed on the SRP billings, as noted in its report to the court. From the documentation available, it appears that the Report to Court was inaccurate and misleading. Therefore ***allegation 1 is substantiated.***

Allegation #2 – ADVS billed Bovine's estate for guardianship services despite Bovine being his own guardian.

Although the paper work dated April 2, 2009, indicated that Bovine was being billed sixty dollars (\$60.00) per month for guardianship services, a review of the annual accountings submitted to the court dated from December 5, 2007 through May 30, 2011 shows that ADVS never

charged for guardianship services or collected any fees for guardianship services. Therefore, *allegation 2 is not substantiated.*

Allegation #3 – ADVS did not provide Bovine a copy of his 2010 income tax returns and may not have filed his tax return.

According to documents obtained from ADVS, Bovine did not earn enough income to qualify for filing his taxes for the 2010 tax year, so there was no need to file a tax return. Therefore, *allegation 3 is not substantiated.*

Allegation #4 – ADVS did not provide Bovine a copy of the inventory of estate assets.

Arizona Revised Statutes § 14-5418(B) states: *The conservator shall provide a copy of the inventory to the protected person if the protected person can be located, has attained the age of fourteen years, and has sufficient mental capacity to understand these matters, and to any parent or guardian with whom the protected person resides.* According to records obtained from the Superior Court OnBase document storage system, both the ward and the ward's attorney were noticed and provided copies of the inventory by the court upon the filing of the amended inventory on June 8, 2009. In addition, according to ADVS' acting principal (Braddock), ADVS' attorney stated that in all cases she either provides a copy of the inventory to the ward's attorney or to the ward directly. Considering that the inventory appears to have been provided at least to the ward *and* the ward's attorney, *allegation 4 is not substantiated.*

Allegation #5 – ADVS did not provide Boren and Bovine access to review Bovine's ADVS file despite Boren being named Agent for Bovine under a signed Power of Attorney document.

Boren apparently demanded access to Bovine's ADVS files, stating he held Power of Attorney for Bovine. However, the Power of Attorney dated September 23, 2010 did not ask for access to records, and was in any case essentially negated by Bovine's incapacity and the court appointed conservatorship for Bovine as a protected person. In addition, an "Authorization" document was provided to ADVS after the termination of Bovine's conservatorship and ADVS' designated principal, after consulting with ADVS' attorneys, did release Bovine's records to his attorney at the time. It appears that Boren did receive Bovine's records at some point after the termination of the conservatorship, and that there was no violation of administrative code. *Therefore, allegation 5 is not substantiated.*

Allegation #6 – ADVS did not visit the ward regularly.

Although code, statute, or rule does not specifically lay out a provision for visitation of a ward by a conservator, the ACJA code of conduct requires the fiduciary to make decisions on behalf of a ward, and these decisions cannot be undertaken without regular contact with the ward. Also ACJA § (J)(2)(f) requires the fiduciary to notify the court within 10 days of a ward's change in location or death, which necessarily requires regular visits or contact. As

ADVS could not produce proof of visits or contact with the ward from August 2010 until the termination of the conservatorship in May of 2011, *allegation 6 is substantiated.*

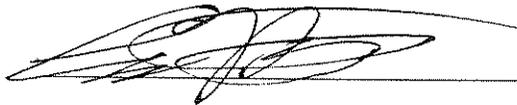
Allegation # 7 - ADVS did not reimburse the ward for late fees, and disconnect/reconnect fees when the ward's power was shut off, even though it appears that the power shut off was due to ADVS not paying the bill timely.

A review of the ward's SRP bills showed that from March 2009 through May 2010 there was a total of \$127.92 in late fees and charges for disconnecting and reconnecting the power. A review of the annual accountings indicated that the ward was not reimbursed by ADVS for the late fees and other charges. *Therefore, allegation 7 is substantiated.*

Allegation #8 – ADVS did not record pictorially and establish and maintain accurate records of all real and personal property as required by ACJA (J)(4)(b).

A review of court records shows that the initial inventory and appraisal as well as the amended inventory and appraisal listed only financial assets (bank accounts) and not real or personal property owned by the ward. ADVS could not provide a more detailed inventory listing any real and/or personal property. *Therefore, allegation 8 is substantiated.*

SUBMITTED BY:



11/26/13

Anne Hunter, Investigator
Certification and Licensing Division

Date

DECISION OF THE PROBABLE CAUSE EVALUATOR:

Having conducted an independent review of the facts and evidence gathered during the course of the investigation of complaint number 11-0007, the Probable Cause Evaluator:

requests division staff to investigate further.

determines probable cause does not exist the certificate holder has committed the alleged acts of misconduct as to Allegation(s):

2, 3, 4, 5.

determines probable cause exists the certificate holder committed the alleged acts of misconduct as to Allegation(s):

1, 6, 7, 8.

Mike Baumstark

Mike Baumstark
Probable Cause Evaluator

12/5/13

Date

**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
ORDER OF THE BOARD**

**LICENSEE
INFORMATION**

**Licensee:
License Number:**

Arizona Department of
Veterans' Services
20135

RECOMMENDATION TO THE BOARD FIDUCIARY ("BOARD"):

It is recommended the Board accept the finding of the Probable Cause Evaluator and dismiss Allegations 2, 3, 4 and 5 of complaint number 11-0007. Regarding Allegations 1, 6, 7 and 8, it is recommended the Board enter a finding ADVS committed the alleged acts of misconduct detailed in the Investigation Summary and Allegation Analysis Report in complaint number 11-0007.

It is recommended the Board enter a finding grounds for disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (F)(4)(b), (J)(1), (J)(2)(a) and (J)(2)(f) and Arizona Rules of Probate Procedure, Rule 30(A)(1).

Mitigating Factor:

1. Delays in investigations. Division records reflect complaint number 11-0007 was received on May 25, 2011. [ACJA § 7-201(H)(22)(b)(1)(l)]

Aggravating Factor:

1. Prior disciplinary history. Division records reflect this is the 4th complaint since 2007 which has come forward to the Board with recommendations for formal disciplinary action. [ACJA § 7-201(H)(22)(b)(2)(a)]

Complaint Number 07-0027:

On July 9, 2009, the Board entered findings ADVS violated ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (F)(3), (J)(1), (J)(2), (J)(2)(a), (J)(2)(d), (J)(2)(e), (J)(3), (J)(3)(b), (J)(3)(c), (J)(3)(d), (J)(3)(g), (J)(3)(p), (J)(4), (J)(4)(b), (J)(4)(d), (J)(4)(h), (J)(4)(i), (J)(4)(j), (J)(4)(l), (J)(7) and ARS 14-5312(A)(2), 14-5418, 14-5424(C)(2) and Pima County Local Rule 9.2(e). The Board moved for formal disciplinary action for misconduct involving ADVS' failure to timely make necessary repairs to the ward's residence; failure to properly monitor taxes and bank accounts; failure to adequately monitor attorney's fees or to get court approval of the attorney's fees; failure to timely file annual accountings and inventories; and failure to place their name, title and certification number on documents filed with the Court. On November 12, 2009, the Board and ADVS entered a consent agreement resolution of the formal disciplinary action that included an acknowledgement of the misconduct and ordered the following sanctions:

- Censure to ADVS
- No less than 2 years of probation

- Quarterly reporting regarding the status of each ADVS appointment
- Re-review of the ward's accountings
- Submission of the attorney's fees for Court review and approval
- Assessment of costs of the investigation and the related disciplinary proceedings

Complaint Number 09-0001:

On April 8, 2010, the Board entered findings ADVS and former designated principal Gary Warner ("Warner") violated ACJA § 7-201(F)(1), ACJA § 7-202(E)(3)(a), (E)(3)(c), (F)(1) and (J)(7) moved for formal disciplinary action for misconduct involving ADVS' failure to monitor its attorney's actions regarding ADVS' Personal Representative appointment in Superior Court in Pima County case number G22065. No consent resolution having been offered in this matter, Notice of Formal Statement of Charges was filed and served and ADVS filed an Answer and requested a hearing. ADVS subsequently withdrew its request for hearing and on November 18, 2010, the Board issued a final order with the following findings and sanctions:

- Censure to ADVS
- Letter of Concern to Warner
- \$100.00 per found violation civil penalty imposed against Warner
- \$100.00 per found violation civil penalty imposed against ADVS
- Assessment of costs of the investigation and the related disciplinary proceedings

Complaint Number 09-0003:

On November 12, 2009, the Board entered findings ADVS, Warner and former ADVS employee Glenn Hall ("Hall") violated ARS § 14-5315, 14-5419(A), 14-5428(C), ACJA § 7-201(F)(1) and (F)(4), ACJA § 7-202(E)(3)(f)(1)(a), (E)(3)(f)(1)(b), (E)(3)(f)(1)(c), (F)(1), (J)(2), (J)(2)(a), (J)(2)(e), (J)(3)(b), (J)(3)(q), (J)(3)(m), (J)(4), (J)(4)(d), (J)(4)(j), and (J)(7). The Board moved for formal disciplinary action for misconduct involving failure to pay the ward's care home bill; failure to communicate with the facility regarding arrearages; failure to file a timely Report of Guardian and Annual Accounting; filing an inaccurate accounting with the Court; Warner's failure to actively and directly supervise ADVS staff; and Hall's failure to provide requested relevant case notes during the investigation. No consent resolution having been offered in this matter, Notice of Formal Statement of Charges was filed and served and ADVS filed an Answer but did not request a hearing. On May 10, 2010 the Board issued a final order with the following findings and sanctions:

- Censures issued to ADVS, Warner, and Hall
- Ten hours of mandated additional continuing education for Warner and Hall
- Assessment of costs of the investigation and the related disciplinary proceedings

Proportionality Analysis:

The stated purpose of the Fiduciary Program includes protecting the public through professional and competent performance in accordance with all applicable statutes and court rules. In prior matters involving similar misconduct, the Board and the Administrative Director have accepted voluntary surrender a license in lieu of discipline, issued Letters of Concern, Censures, ordered probationary terms with specified conditions, mandated continuing education and development and implementation of policies and procedures, assessed costs and imposed civil penalties.

In this matter, ADVS filed a fraudulent report with the court, did not properly manage payment of the ward's utility bills resulting in an interruption of electric service and late fees, and failed to file a complete inventory. Considering the mitigating and aggravating factors, it is recommended the Board issue a Censure to ADVS, pursuant to ACJA § 7-201(H)(24)(a)(6)(b), and assess costs of the investigation and any related disciplinary proceedings pursuant to ACJA § 7-201(H)(24)(a)(6)(j).

SUBMITTED BY:


Anne Hunter, Manager Date 1/3/14
Certification and Licensing Division

FINAL DECISION AND ORDER:

The Board having reviewed the above Investigation Summary, Allegation Analysis Report, finding of the Probable Cause Evaluator, and Recommendation regarding complaint number 11-0007 and the Arizona Department of Veterans' Services, license number 20135, makes a finding of facts and this decision, based on the facts, evidence, and analysis as presented and enters the following order:

- requests division staff to investigate further.
- refers the complaint to another entity with jurisdiction.
Referral to: _____
- dismisses the complaint, and:
 - requests division staff prepare a notice of dismissal pursuant to ACJA § 7-201(H)(5)(c)(1).
 - requests division staff prepare a notice of dismissal and an Advisory Letter pursuant to ACJA § 7-201(H)(5)(c)(2).
- determines grounds for discipline exist demonstrating the certificate holder committed the alleged act(s) of misconduct and:
 - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through informal discipline, pursuant to ACJA § 7-201(H)(7) and issue a Letter of Concern.
 - enter a finding the alleged act(s) of misconduct or violation(s) be resolved through formal disciplinary proceeding, pursuant to ACJA § 7-201(H)(9).

- requests the certificate holder appear before the Board to participate in a Formal Interview, pursuant to ACJA § 7-201(H)(8).
- orders the filing of Notice of Formal Charges, pursuant to ACJA § 7-201(H)(10).
- enters a finding the public health, safety or welfare is at risk, requires emergency action, and orders the immediate emergency suspension of the certificate and sets an expedited hearing for:

Date, Time, and Location: _____

adopts the recommendations of the Division Director.

does not adopt the recommendations of the Division Director and orders:

The Board accepts the finding of the Probable Cause Evaluator and dismisses Allegations 2, 3, 4 and 5.

As to Allegation 1: Grounds for formal disciplinary action exists pursuant to ACJA § 7-201(H)(6)(a) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), and (J)(2)(f). Considering the findings of the investigation, the statements provided by ADVS and the complainant, the Board moves for the filing and service of Notice of Formal Statement of Charges to include proposed sanction of a Censure.

As to Allegations 6, 7 and 8: Grounds for informal discipline exists pursuant to ACJA § 7-201(H)(6)(a) and (H)(7) for acts of misconduct involving ACJA § 7-201(F)(1), ACJA § 7-202(F)(1), (J)(1), (J)(2)(a) and (J)(4)(b) and Arizona Rules of Probate Procedure, Rule 30(A)(1). Considering the findings of the investigation, the statements provided by ADVS and the complainant, the Board issues a Letter of Concern. The Letter of Concern shall include additional language requesting ADVS reimburse Mr. Bovine for late fees incurred related to Allegation 7 in the amount of \$127.92 plus 10% simple interest.



 Deborah Primock, Chair 11/8/14
 Fiduciary Board Date