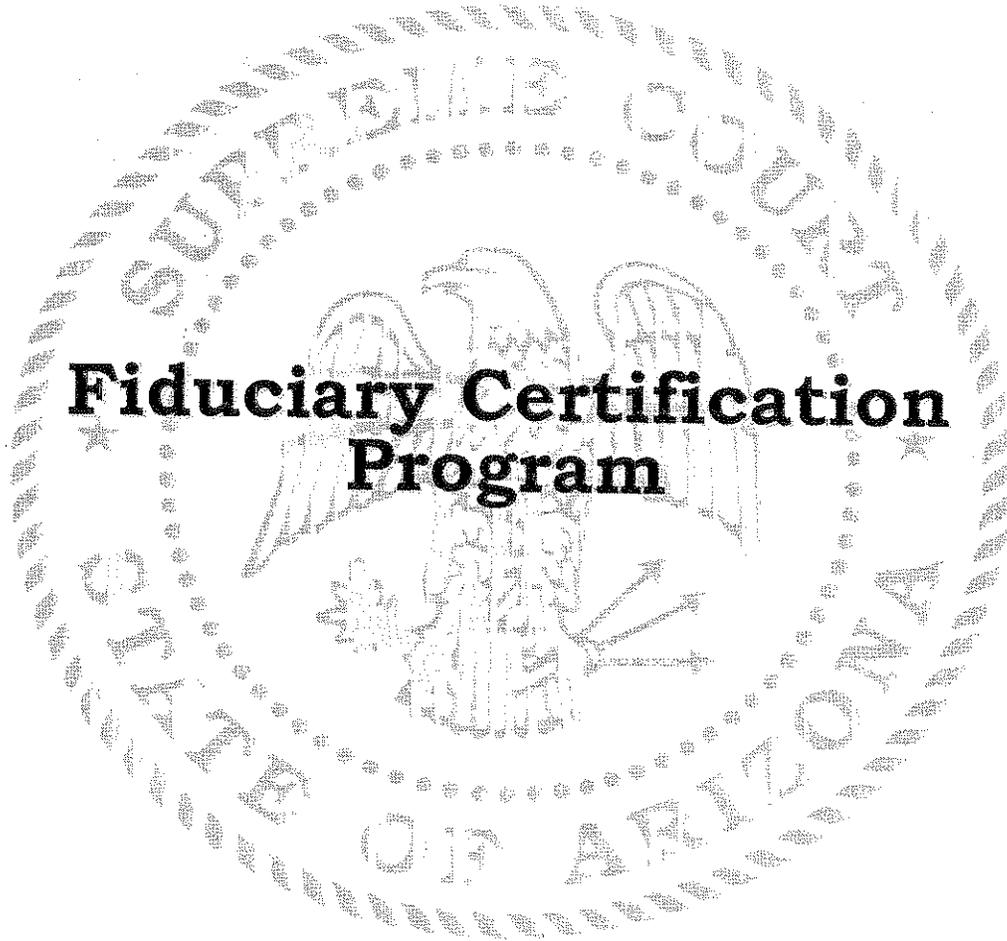


Arizona Supreme Court
Administrative Office of the Courts



Compliance Audit

Southwest Fiduciary, Inc.

May 2005



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Charles E. Jones
Chief Justice

David K. Byers
Administrative Director
of the Courts

June 9, 2005

Gregory Dovico, Principal
Southwest Fiduciaries, Inc.
13211 North 103rd Ave., Suite #1
Sun City, AZ 85351

RE: Fiduciary Compliance Audit

Dear Mr. Dovico:

Enclosed is the final compliance audit report for the Southwest Fiduciary, Inc.

Thank you for the cooperation and assistance during the compliance audit process exhibited by you and your staff. Their hard work throughout the audit process has been appreciated. To the extent the fiduciary audit process will assist the court to ensure the safety, health and welfare of individuals and estates entrusted by the court to your management, we have benefited from our audit of Southwest Fiduciary, Inc. I hope Southwest Fiduciary, Inc. and your clients will equally benefit.

If you have any questions, please let me know at (602) 364-2378.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Swetnam".

Nancy Swetnam, Director
Certification and Licensing Division

Enclosures

Copy: Honorable Karen L. O'Connor, Presiding Probate Judge, Maricopa County
Dave Byers, Director, Administrative Office of the Courts
Mike Baumstark, Deputy Director, Administrative Office of the Courts

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Disclaimer

This final report represents the information and conditions encountered at the point in time of the audit and does not purport to represent conditions prior to or subsequent to the performed audit. The information presented does not represent an endorsement or denunciation of the audited fiduciary or business.

After this report is distributed to the audited fiduciary, presiding judge of the county and, if a public fiduciary, the county supervisors, it becomes public record.

EXECUTIVE SUMMARY

Executive Summary

Southwest Fiduciary, Inc.

Compliance Audit Report

The Arizona Supreme Court, Fiduciary Certification Program conducted a compliance audit of Southwest Fiduciary, Inc. pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of September 21, 2004 through November 15, 2004 the Fiduciary Program audited the fiduciary activities of the Southwest Fiduciary, Inc. ("SFI") and its certified employees. The following is a summary of the audit findings.

Finding #1 – Certification Number

SFI submitted documents to the Superior Court in Maricopa County without the fiduciary's certification and business's certification numbers on court documents.

SFI agreed with the finding and will include their certification numbers on all new court document submissions.

Finding #2 – Late Filings

Statutorily required reports on fiduciary clients were submitted to the court after the due dates.

SFI agreed with the finding and stated they do not routinely file reports on a delinquent basis.

Finding #3 – Accuracy

Inventory and Appraisements, Annual Accountings and Annual Reports of Guardian were inaccurately prepared and/or documented.

SFI both agreed and disagreed with the examples of the finding. However, SFI states corrective action has been taken through the utilization of a specific computer software program, increasing staff oversight and closer follow-up and double-checking work product.

Finding #4 – Documentation

SFI did not keep suitable records of the administration of client cases and exhibit those records upon request.

SFI both agreed and disagreed with the examples of the finding. However, SFI states corrective action has been taken through the utilization of a specific computer software program, requesting documents from counsel, increasing staff oversight and closer follow-up and double-checking work product.

Finding #5 – Inventory

Examples were found of SFI not listing in reasonable detail and indicating the market value of estates as of the date of appointment or date of death of each item listed on an inventory.

SFI disagreed with the finding; however, SFI has taken corrective action to ensure their files are more accurate and documented to eliminate non-compliance.

Finding #6 – Supplementary Inventory

Property subsequently discovered and not included in an original inventory and appraisal was not provided to the court in a supplemental inventory.

SFI disagreed with the finding; however, SFI states corrective action has been taken through the utilization of a specific computer software program, increasing staff oversight and closer follow-up and double-checking work product.

Finding #7 – Securing Assets

The assets of a client were not secured physically.

SFI disagreed with the finding; however, SFI states corrective action has been taken through the utilization of a specific computer software program, increasing staff oversight and closer follow-up and double-checking work product.

Finding #8 – Diligence

Fiduciary clients' financial interests were compromised by late payments and a lack of timely attention to bank accounts.

SFI both agreed and disagreed with the examples of the finding. However, SFI states corrective action has been taken through the utilization of a specific computer software program, increasing staff oversight and closer follow-up and double-checking work product.

Finding #9 – Certified Staff

Three SFI staff positions have primary responsibility for client caseloads of court appointed fiduciary clients and are not certified.

SFI disagreed with this finding. SFI states the positions report directly to the CEO who is certified and the positions are limited in scope regarding the decisions staff are permitted to make concerning the clients. SFI is now characterizing these individuals as "Trainees" utilizing the definition described in the Arizona Code of Judicial Administration § 7-202(F)(7).

Finding #10 – Compliance

Each finding was illustrative of not meeting Arizona Code of Judicial Administration ("ACJA") Code of Conduct, Standard 7 on Compliance which requires a fiduciary to perform all duties and discharge all obligations in accordance with Arizona law and the administrative rules, court orders, administrative orders, ACJA § 7-201: General Requirements and § 7-202: Fiduciaries.

SFI agreed with this finding. SFI has taken the following steps: implementation of and continual update in training of the *Time Matters* (computer software) program, increased staff oversight allowing cases to be followed more closely and to double check all work products for accuracy, due diligence, documentation, conformity, timeliness and compliance and will continue to update staff at work sessions and staff meetings on the importance of compliance.

The Fiduciary Program Auditor charts compliance with each audit finding and verifies completion of each corrective action.

FINAL REPORT

Southwest Fiduciary, Inc. Compliance Audit Report

Objective

The compliance audit of the Southwest Fiduciary, Inc. was conducted pursuant to the Fiduciary Program's responsibilities as set forth in A.R.S. § 14-5651, Arizona Supreme Court Administrative Order No. 2003-31 and the Arizona Code of Judicial Administration ("ACJA") § 7-201: General Requirements and § 7-202: Fiduciaries¹.

The objective of the compliance audit was to determine compliance with applicable statutes, Arizona Supreme Court orders and rules and the Fiduciary Program codes, ACJA § 7-201 and § 7-202.

Methodology

In preparation for the compliance audit, preliminary survey questions were requested and responded to by Southwest Fiduciary, Inc. The responses were reviewed and compiled to assist in the development of case file samples. In addition, information was requested from the Superior Court in Maricopa County to verify court appointment information including inventory filings, annual accountings and guardianship reports.

In order to test for compliance, the program has developed and currently utilizes a set of fiduciary compliance attributes consisting of Arizona statutes, Arizona Supreme Court rules and Fiduciary Program Certification codes, ACJA § 7-201 and § 7-202. Compliance with these requirements was tested by staff interviews, observation and reviewing samples of client case files.

A stratified sampling approach was used. The selected samples of court appointed client case files were designed to provide conclusions about the accuracy, validity and timeliness of transactions, internal controls and compliance with the fiduciary attributes utilizing a cross-section of samples of court appointment types. Client case files were selected by type of appointment, length of appointment, type of required client protection and initiation or termination of appointment during the review time frame.

Beginning September 21, 2004 and prior to beginning the onsite fieldwork, the auditor reviewed the selected client court files from the Superior Court in Maricopa County and conducted internal controls interviews with Southwest Fiduciary, Inc. staff.

¹ Arizona Code of Judicial Administration, Fiduciary Certification, effective January 1, 2004

Southwest Fiduciary, Inc. Compliance Audit Report

During the period of September 21 through November 15, 2004, the Fiduciary Program of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court, conducted the onsite compliance portion of the audit of the Southwest Fiduciary, Inc. office. The onsite compliance audit consists primarily of fiduciary client case file review. The audit also included the fiduciary activities of the principal, certified and uncertified staff.

Scope

Southwest Fiduciary, Inc. was the court appointed fiduciary on 110 guardian, conservator, combination guardian/conservator and personal representative cases during the audit period.

The compliance audit team reviewed a sample of seventeen (17) of the case files of court appointments and terminations, focusing on the internal controls, processes, timeliness and accuracy of client case administration during the last two years through June 30, 2004.

Summary

Greg DoVico, the principal of Southwest Fiduciary, Inc. was appointed successor for a number of difficult court appointments from the Superior Court of Maricopa County. The previous court appointed fiduciary eventually had their personal and business fiduciary certification revoked. As with all professional fiduciaries who are certified, the Administrative Office of the Courts (AOC) recognizes the innate difficulties of court-appointed caseloads, especially those in which the fiduciary serves as a successor fiduciary.

Southwest Fiduciary, Inc. staff extended professional courtesies and cooperation to the audit team during the course of the audit. There is a climate of compliance exhibited from management down through line staff. Good internal controls were demonstrated including an audit committee and the appropriate segregation of duties.

The compliance audit found non-compliance in the areas of inventory and appraisements, accountings, guardianship reports, documentation and fiduciary program rules. These findings are discussed as follows.

Southwest Fiduciary, Inc. Compliance Audit Report

<p><i>Finding # 1</i></p> <p style="padding-left: 20px;">➤ <i>Certification Number</i></p> <p><i>Related Attributes:</i></p> <p><i>Arizona Code of Judicial Administration § 7-202(F)(5)</i></p> <p><i>Requirement</i></p>	<p>Documents submitted to the Superior Court in Maricopa County did not include the fiduciary's certification and Southwest Fiduciary, Inc. (business) certification numbers on court documents.</p> <ul style="list-style-type: none"> • Client files # 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 & 17 <p>Southwest Fiduciary, Inc. must include the required certification numbers on all documents submitted to the superior court.</p>
<p><i>Auditee's Response</i></p>	<p>"Agree with these findings."</p>
<p><i>Corrective Action</i></p>	<p>"The business practice of including the fiduciary's number and more recently, the certification number for the principal is now being included on all court documents. Letters have been sent to all attorneys that represent us. They have been told that in the preparation of all future documents, the certification number for Southwest Fiduciary, Inc. (the business), and also the certification number of the certified fiduciary must be included." (Completion Date) "Notice to counsel: 2-7-05"</p>

Southwest Fiduciary, Inc. Compliance Audit Report

<p>Finding # 2</p> <p>➤ Timeliness</p> <p><i>Related Attributes:</i></p> <p>A.R.S. § 14-3706 A.R.S. § 14-5315(A) A.R.S. § 14-5418(A) A.R.S. § 14-5419(A)</p> <p><i>Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (2)(e)</i></p> <p><i>Local Rules & Customs of Practice in Arizona Superior Court Probate Matters, Maricopa County, Rule 5.7(c)</i></p> <p>Requirement</p>	<p>Statutorily required reports on fiduciary clients were submitted to the court after the due dates.</p> <ul style="list-style-type: none"> • Late Inventory & Appraisalment – Client files # 2, 4, 7, 9, 11, 12, 13, 15 & 16 • Late Annual Accounting Reports – Client files # 3, 5, 9, 11, 13 & 15 • Late Annual Report of the Guardian – Client files # 1, 11 & 13 • Estate Management Plan – Client files # 3, 5, 7 & 9 • Proof of Restriction – Client files # 5, 9, 15 & 17 <p>The fiduciary must submit the inventory and appraisalment, annual accountings, guardianship reports, estate management plans and/or proof of restriction on/or before the statutorily or local rule required due date for each client. Submission dates stated in a court order are required to be submitted by the date specified.</p>
<p>Auditee's Response</p>	<p>“Southwest Fiduciary, Inc. does not routinely file reports on a delinquent basis.”</p> <ul style="list-style-type: none"> • <u>Late Inventory</u> -- Client files # 2, 4, 7, 9, 11, 12, 13, 15 & 16 <p>“Agree with this finding.”</p> <ul style="list-style-type: none"> • <u>Late Annual Accountings</u> <p>Client # 3 – “Agree with this finding.”</p> <p>“On or about October 22, 1999, Southwest Fiduciary was appointed on seventy (70) troublesome cases from Fiduciary Services, Inc.,</p>

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which included the case on XXXXXX. After a three-year period of time, both Southwest Fiduciary and our attorney were made aware of the appointment through a Nunc Pro Tunc Order by the court. Southwest Fiduciary corrected this matter as soon as we were made aware of this situation and has implemented corrective action to insure that this does not occur in the future by closer follow up of our cases.”

Clients # 5, 9, 11, 13, 15 – “Agree with these findings.” As set forth in response to Finding #1, every attempt has been made to get documents to the court within the statutory time limits (*sic*), the above delays in late filings are not only due to fiduciary delays, but also due to attorney delays. Southwest Fiduciary has implemented a Time Matters program, which includes a tickler system to initiate a reminder, insuring that annual accountings are filed on a timely basis. Additionally, as noted above, we have told our attorneys the absolute need to file in a prompt fashion or to request an extension of time on all court documents.”

- **Late Annual Report of the Guardian**

Client # 1 – “Agree with this finding.”
“Agree that the annual Guardianship Report was to be filed 5-31-03 and was not filed until 6-2-03 by our attorney, two days late. While you are correct that we were late, please note that 5-31-03 was a Saturday and the next business day was 6-02-03.”

Clients # 11, 13 – “Agree with this finding.”
“The Guardian Reports were filed with the Annual Accounting, which caused them to be late in filing. Southwest Fiduciary has implemented a Time Matters program, which includes a tickler system to initiate reminders insuring that filings of guardian reports, accountings, etc. are filed on a timely basis.”

- **Late Estate Management Plan**

Client # 3 – “Agree with this finding.”
“As was previously explained under Late Accountings for *Client # 3*, neither the court nor Southwest Fiduciary had knowledge of the appointment until nearly three years had passed. Consequently, all reports were late. Southwest Fiduciary has implemented a Time Matters program, which includes a tickler system to initiate a reminder insuring that annual accountings are filed on a timely basis. Additionally, as noted above, we have told our attorneys the absolute need to file in a prompt

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fashion or to request an extension of time on all court documents.”

Clients # 5, 7, 9 – “Agree with these findings.”

“While every attempt has been made to get documents to the court within the statutory time limits, the above delays in late filings are not only due to fiduciary delays, but also due to attorney delays. Southwest Fiduciary has implemented a Time Matters program, which includes a tickler system to initiate a reminder insuring that annual accountings are filed on a timely basis. Additionally, as noted above, we have told our attorneys the absolute need to file in a prompt fashion or to request an extension of time on all court documents.”

- **Proof of Restriction**

Clients # 5, 9, 15, 17 – “Agree with this finding.”

“While every attempt has been made to get documents to the court within the statutory time limits, the above delays in late filings are not only due to fiduciary delays, but also due to attorney delays. Southwest Fiduciary has implemented a Time Matters program, which includes a tickler system to initiate a reminder insuring that annual accountings are filed on a timely basis. Additionally, as noted above, we have informed our attorneys the absolute need to file in a prompt fashion or to request an extension of time on all court documents.”

Corrective Action

“Time Matter Program has been implemented and continuously updated which includes a tickler system; additionally SFI has advised all counsel that they are required to file in timely manner or request extension of time.” (Completion Date) “Time Matters: April 2001, Notice to Counsel: 2/7/05”

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Finding #3

➤ Accuracy

Related Attributes:

*Arizona Code of
Judicial Administration
§ 7-202, Appendix A,
Code of Conduct,
Standard (2)(f), (4)(j)
and (5)(h)*

The inventory and appraisements, annual accountings and annual guardianship reports required by the court were inaccurately prepared and/or documented in the sampled cases:

- The date of birth was consistently inaccurate on the guardianship report – Client file # 1
- The account summary page report on gains and losses did not agree with the supporting schedule -- Client file # 2
- \$1,100 was not included on the inventory -- Client file # 4
- The personal property were not listed on the inventory -- Client file # 6
- The Bank Midwest bank account was not listed on the inventory -- Client file # 8
- The client's personal property was shown as a transfer when liquidated -- Client file # 8
- The *Strong* account date of death balance did not match the inventory -- Client file # 10
- A car was not listed on the inventory -- Client file # 11
- The sale of a motor home was recorded as a transfer -- Client file # 11
- Interest in another estate was not listed on the inventory. The personal property did not appear until the second annual accounting -- Client file # 13
- There was a math error on the amended accounting (Schedule 2) -- Client file # 14
- Liens against real or personal property were not disclosed -- Client file # 15
- The value of a promissory note did not change even though payments were received during the accounting period -- Client file # 15
- A Northern Trust Checking account as reported on the First & Final Accounting did not match the amount reported on the filed Inventory -- Client file # 15
- The fiduciary fee statements submitted by Southwest Fiduciary Inc. were inaccurate -- Client file # 15:
 - The detail in *Timeslips* was accurate but the summary was wrong.

Requirement

The fiduciary must ensure any document filed with the superior court is complete, accurate and understandable.

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Auditee's Response

“In response to some of the findings below, Southwest Fiduciary would like to clarify that after discovered assets are a result of inadvertent omissions and/or information becoming available to us at a later date, i.e. 1099 forms, annual dividend checks, premium or bill invoices, etc., and the inventories must be and are amended accordingly.”

Client # 1 – “Agree with this finding.”

“On October 22, 1999, Southwest Fiduciary was appointed on all cases for the now defunct Fiduciary Services, Inc. Records that were in existence were transferred to Southwest Fiduciary. The assumption was that basic information was correct. Unfortunately, this assumption was wrong as was reflected in the inconsistencies of the birth date. We believe that the implementation of the Time Matters Program will reduce these errors and inconsistencies.”

- Report Gains/Losses

Client # 2 – “Disagree with this finding; unfounded.”

“Contrary to this finding, the accounting summary page report shows a \$3500.00 gain, which is also reflected on Schedule #2 in the same amount.”

Auditor Response – FINDING STANDS. After review of the client file materials, the finding will not be changed. The copy of the accounting summary page the auditor has shows \$3,500 for gains and losses yet Schedule 2 has gains and losses listed at \$4,500.

- Cash (\$1100) was not included on the inventory.

Client # 4 – “Disagree with this finding.”

“Please clarify further as we have no knowledge of the \$1100.00 in cash not accounted for.”

Auditor Response – FINDING STANDS. The inventory states \$2,285.34 in the bank account. A bank statement from Bank of America # XXXX-2678 from September 9, 2003 shows a balance of \$3,385.34.

“**ADDITIONAL NOTE:** A supplemental inventory was not done as we relied on notification to interested parties; as was provided to them in a timely manner in accordance with ARS §

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14-3708. As you are well aware of, this case has experienced numerous delays in the administration of the estate, due to the lack of cooperation by an heir. We believe that the implementation of the Time Matters Program will reduce these errors and inconsistencies.”

- Personal property not on inventory.

Client # 6 – “Disagree with this finding.”

“This was an after discovered asset and there was no property listed on the inventory. However, beneficiaries were notified of the after discovered asset in accordance with ARS § 14-3708.”

Auditor Response – FINDING STANDS. Personal property listed on inventory was not listed in ‘reasonable detail’ (ARS § 14-3706).

- Bank Midwest account not listed on inventory.

Client # 8 – “Disagree with this finding; unfounded.”

“This account was an asset of the Trust and not an asset of the probate estate. Consequently, it should not, and was not, listed as an asset of the probate estate since by it’s (sic) titling, the asset was not probatable.”

Auditor Response – FINDING STANDS. A March 15, 2001 court order required SFI to re-title the account into the name of the estate.

- Client’s personal property shown as transfers when liquidated.

Client # 8 – “Disagree with this finding.”

“In the accounting system used by Southwest Fiduciary, the “transfer” function leaves a traceable and recognizable audit trail. The transfer mode takes less time than two separate entries, reduces the likelihood of errors and leaves a better “trail”.”

Auditor Response – FINDING STANDS. The liquidation of an asset does not constitute a financial transfer. It would be either a gain or a loss and reported accordingly.

- Strong account date of death balance did not match inventory.

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Client # 10 – “Disagree with finding; unclear as to reference.”
“If the reference made is to the inventory filed on 8-9-99; it is correct that the date of death value does not match, because we were conservator prior to our appointment as Personal Representative. The inventory is as of the date of appointment for the Conservator. The date of death values, which are shown on the First and Final Conservator Accounting, the First Probate Accounting and the Probate Inventory, are identical. Therefore, we must disagree with the finding.”

Auditor Response – FINDING STANDS. The Strong Funds statement for the date of death value dated October 19, 1999 indicates a balance of \$ 71,736.64. The inventory and appraisal for the estate filed after the date of death shows a value of \$ 73,082.80 and the original inventory and appraisal for the conservatorship shows a value of \$ 71,630.27.

- Car not listed on the inventory.

Client # 11 – “Disagree with this finding.”
“After our investigation, we ascertained the vehicle was an after discovered asset. Consequently, it was not on the inventory. However, it was reported on the First Accounting as an after discovered asset.”

Auditor Response – FINDING STANDS. The car was included on the previous conservator’s inventory and appraisal. Insurance for the car was being paid.

- Sale of the motor home recorded as a transfer.

Client # 11 – “Disagree with this finding”
“See response to client #8 above reflecting rationale of transfers.”

Auditor Response – FINDING STANDS. The liquidation of an asset does not constitute a financial transfer. It would be either a gain or a loss and reported accordingly.

- Interest in *another estate* and personal property not listed on inventory. Personal property does not show up until 2nd accounting.

Client # 13 – “Disagree with this finding.”

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“While we appreciate your bringing this our attention, this specific finding is outside the scope of the audit time frame. The First accounting incorporated the period of 7-12-99 to 8-31-00 and the 2nd accounting incorporated the period of 7-1-00 to 8-31-01.”

Auditor Response – FINDING STANDS. While this finding is outside the scope of the audit, client files are reviewed from the beginning of court appointment to ensure all subsequent (scope period) information is accurate. This inaccuracy would have the effect of reverberating through subsequent accounting periods.

- Math error on amended accounting (Schedule 2).

Client # 14 – “Agree with this finding.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Liens against real or personal property were not disclosed.

Client # 15 – “Agree with this finding.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Value of promissory note did not change even though payments were received during accounting period.

Client # 15 – “Disagree with this finding.”

“Southwest Fiduciary received one or two payments from Condor Freight for the promissory note. Upon information and belief, the default provisions of the note included interest. Consequently, it is accurate to reflect a zero reduction of the note.”

Auditor Response – FINDING STANDS. A court is not presented a clear picture of the client’s estate if interest and principal (among other credits and debits) are not accurately reflected in accountings.

- Northern Trust Checking acct #5832 as reported on the First & Final acct. did not match the amount reported on filed Inventory.

Client # 15 – “Disagree with this finding.”

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	<p>“We agree that the First and Final Accounting of the “previous conservator” did not match the inventory. However, while efforts were made to verify this figure with the previous Conservator, Southwest Fiduciary was unable to do so. Therefore, we chose to use a figure that we were able to verify by using bank records.”</p> <hr/> <p><i>Auditor Response – FINDING STANDS.</i></p> <hr/> <ul style="list-style-type: none"> • Details in <i>Timeslips</i> is accurate; summary is wrong. <p style="padding-left: 40px;">Client # 15 -- “Disagree with this finding.”</p> <p>“The summary of fees includes all fees and costs incurred and billed during the time period, whether paid or not. The accountings show “paid” which is our standard practice.”</p> <hr/> <p><i>Auditor Response – FINDING STANDS. Fees charged during the 2nd accounting were for three employees. Two were correct but one was incorrect (charged 66.9 hours when actual hours were 66.2). In addition, only fees approved by the court can be taken and reported.</i></p>
<p><i>Corrective Action</i></p>	<p>“Time Matters Program has been implemented and continuously updated to eliminate errors omissions and other inconsistencies. In addition, SFI has increased our staff members who are following the cases more closely and double checking all work products.”</p>

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Finding # 4

➤ *Documentation*

Related Attributes:

A.R.S. § 14-5418(B)

By statute a fiduciary must keep suitable records of the administration of client cases and exhibit those records upon request. Suitable records include conformed copies of client court documents and documentation which includes decision-making and tracks the disposition, storage, disbursement and appreciation of items in a client's estate. Examples of missing documentation are:

- The 1st and Final Accounting did not include a Bank One account -- Client file # 2
- Conformed copies of the petitions for accountings were missing -- Client files # 2 & 7
- Over a three year period, nineteen deposit slips for a client's pension were not documented in the client's file -- Client file # 3
- Documentation of the client's stock and its value was not in the file -- Client file # 3
- Documentation confirming the payoff of a note was not in the file -- Client file # 3
- Disposal of the client's personal property was not documented -- Client file # 3
- The court ordered estate distributions were not documented in the client's file -- Client file # 4
- The client's personal property was not valued or documented in the client file -- Client file # 7
- The client's personal property was not on the inventory but was on the former personal representative's inventory. The final accounting did not reflect the loss from the auction thereby not documenting for the court an accurate picture of whether all of the estate has been accounted for -- Client file # 8
- The bank transfers were not properly recorded and supported with documentation -- Client file # 10
- Bank accounts could not be traced or the statements were missing and the appraised value of the home documentation was missing -- Client file # 11
- Real property, car and motor home titles were not in the client's file -- Client file # 11
- Liens against the real and personal property were not disclosed -- Client file # 11
- Evidence of recorded letters in the recorder's office were not in the client file -- Client files # 5, 8 & 11
- The proof of interest earned from a financial institution or proof of direct deposit was missing from the client file --

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<p><i>Requirement</i></p>	<p>Client file # 11</p> <ul style="list-style-type: none"> • An invoice for the Thunderbird storage unit was missing from the client's file -- Client file # 11 • Bonds which were reduced were not in the file -- Client file # 13 • The proof of a Bank One Savings account was not found nor was the Proof of Restriction -- Client file # 13 • Proof of homeowner insurance was not in the client file -- Client file # 13 • Documentation detailing any of the fiduciary's decision making for the sale of stock or for the investments was not in the client's file -- Client files # 7 & 13 • The disposal of the New Mexico property was not documented -- Client file # 13 • Documentation distinguishing between the trust and conservatorship assets was not in the client's file -- Client file # 13 • The personal property and stock were not accurately reported on the inventory -- Client files # 12 & 16 • Descriptions of the jewelry and the trailer was not in the client's file or on documents submitted to the court -- Client file # 14 • There was no documentation to establish the \$936 value for the Eloy property -- Client file # 14 • Documentation of the bond, the 401K plan, the time-share, the Big River Development, the sale of stock, the vehicles and the appraisals for real property could not be found in the client's file -- Client file # 15 • The documentation supporting the decision-making regarding client investments was not found in the client file -- Client file # 15 • Evidence of the client's stock was found but the file did not indicate its market value or the difficulty of finding the issuer - - Client file # 16 <p>Southwest Fiduciary, Inc. must develop a systematic process for documenting the administration of a client's estate and/or care to include all assets, transactions, activities and decision-making for each court appointed client.</p>
<p><i>Auditee's Response</i></p>	<ul style="list-style-type: none"> • Accounting does not include Bank One account. <p style="text-align: center;">Client # 2 – “Disagree with this finding; unfounded.”</p> <p>“Exhibit A of the Annual Accounting, the Bank One High Balance</p>

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Savings Account, notes that "...it is to be distributed according to Schedule 8 of the proposed schedule of distribution..." is clearly indicated. This was a First and Final Accounting as this was a probate accounting. We were unable to locate anywhere in the Arizona Revised Statutes, any citing that specifically or otherwise, indicates that annual accountings are required on the probate of a decedent's estate. If this is incorrect, kindly point out the statute that requires annual accountings, so that we may be in compliance in the future."

Auditor Response – FINDING STANDS. Annual accountings are not statutorily required on the probate of a decedent's estate; the finding is for lack of documentation of the Bank One account on the final accounting not a requirement to file an annual accounting.

- Conformed petitions for accounting missing.

Client # 2 – Disagree with this finding; unfounded
"We were unable to locate anywhere in the Arizona Revised Statutes, any citing that specifically or otherwise, indicates that annual accountings are required on the probate of a decedent's estate. In fact, the Arizona Probate Code Manual's section entitled "Special Procedures" states, "...Interim formal accountings are generally, not required or recommended..." Additionally, in the Order to Personal Representative executed by Southwest Fiduciary, there is no indication that there is a mandatory requirement to file interim accountings."

Auditor Response – FINDING STANDS.

Client # 7 – "Agree with these findings."
"While our files contain the documents, they are not conformed copies. Southwest Fiduciary has taken the necessary action to change this procedure by instructing our attorneys to provide us with a court filing "stamped" copy of the front page of the accountings; demonstrating that they have been duly filed with the court."

- Over a 3-year period, 19 deposit slips for client pension are not documented in client file.

Client # 3 – "Agree with this finding."
"As discussed and addressed above on previous findings regarding Client # 3, Southwest Fiduciary was not aware of it's (sic) appointment on this client until far later than our initial appointment"

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date. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- No documentation of client stock and its value.

Client # 3 – “Disagree with this finding.”

“The value of the stock was worthless; therefore, no value was established. Documentation is with attorney of record.”

Auditor Response – FINDING STANDS. Documentation should have been present establishing the stock’s lack of value.

- Documentation confirming payoff of note not in file.

Client # 3 – “Disagree with this finding.”

“Documentation regarding pay-off is not in our file. Documentation is with the attorney of record who collected the debt.

Auditor Response – FINDING STANDS

- Personal property disposal not documented.

Client # 3 – “Disagree with this finding.”

“This was the essence of the court’s intervention. Family members claimed the protected person did not have personal property. The Probate Court determined in 2004 that the client indeed had no personal property, save a broken dresser, file cabinet, TV and VCR (working condition unknown), minimal clothing, and miscellaneous items, which were turned over to son. Some of the items were turned over to the client on June 29, 2004 and the balance on December 6, 2004. Receipts are in the file for the turnovers.

Auditor Response – FINDING STANDS.

- Court ordered distributions are not documented in client file.

Client # 4 – “Disagree with this finding.”

“The distributions are noted in the client’s file. One March 31, 2004, distributions of personal property were made to the beneficiaries and the beneficiaries executed informal “lists of the personal property” acknowledging their receipt of these items at the time of distribution.

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On or about May 26, 2004, formal receipts were prepared and forwarded to the counsel for the heirs. Two of the heirs executed and returned the receipts, which were filed with the court on or about October 12, 2004. As you knew, another heir failed to comply with the request by Southwest Fiduciary and our attorney, to sign the receipt. As of this date, this heir has remained uncooperative in executing and returning her receipt for filing with the court.”

“On or about July 14, 2004, a partial distribution was made to two heirs in the amount of forty thousand dollars (\$40,000.00) each. A letter and a receipt were sent to them with the check. The receipts were again signed and returned to Southwest Fiduciary, which was filed with the court. With regards to the third heir’s \$40,000.00 distribution, it has been accounted for. Her distribution check was not sent because she has yet to provide the required W-9 (form to provide heir’s Social Security Number and information as to her current address.) Since Southwest Fiduciary has a responsibility to insure taxes have been paid, she will receive distribution less estimated taxes owing.”

Auditor Response – FINDING STANDS.

- Personal property not valued or documented.

Client # 7 – “Disagree with this finding.”

“On the initial inventory and First and the Second Accountings, there is a “control value for home furnishings and personal items” in the amount of \$1,000.00. A formal appraisal was not made because the personal property had been extremely “trashed”. Documentation is in case notes in Time Matters.”

Auditor Response – FINDING STANDS

- Personal property not on inventory but on former PR’s inventory and documentation of disposal not found in file.

Client # 8 – “Disagree with this finding.”

“This was a highly contentious case. Personal property was one of the issues in question. Contrary to the assertion that no documentation of disposal exists, it should be pointed out that Wayne Patrick Auctioneer’s extensive sale records are contained in the file. Those sales records were shared with Auditor Cindy when she brought a file into the undersigned’s office. The sales records were immediately located and reviewed with her. Additionally, it should be noted that

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an heir was present at the time of the estate sale.”

Auditor Response – FINDING STANDS.

- Bank statements supporting bank transfers were missing.

Client # 10 – “Finding is unclear.”

“It is unclear as to which statements are referenced. Additional information is required in order to address this finding.”

Auditor Response – FINDING STANDS.

- Bank accounts could not be traced or statements missing and appraised value of home documentation is missing.

Client # 11 – “Agree with this finding.”

“Research reveals that two statements are missing from the file. This is due to misfiling. The account was reconciled on Quick Books and with the current statements. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Titles for real property, car and mobile home are missing.

Client # 11 – “Agree with this finding as to the “real” property; disagree as to finding regarding “personal property”.

“Personal property in this case refers to household items, which cannot be “titled”. With regards to the title for the “real property”, we were unable to locate any title. The car and the motor home were sold and titles were transferred. Nevertheless, the car, while not listed on the inventory, was listed on the first accounting as an “after discovered asset”. It was sold during the 2nd accounting. The motor home was on the inventory, carried through on the accountings and was sold in the 3rd accounting. Records indicating the transference of title are located with the Arizona Motor Vehicle Department. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

Auditor Response – FINDING STANDS.

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- Liens against personal or real property was not disclosed.

Client # 11 – “Agree with this finding.”

“Unable to confirm that liens were disclosed. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Records of recorded letters in the recorder’s office are missing.

Client # 5 – “Disagree with this finding; unfounded.”

“Letters of Appointment and Order Appointing Successor Conservator were recorded with the Maricopa County Recorders Office on November 17, 1999 at 2:36 p.m. This was less than 30 days from Southwest Fiduciary’s appointment as Successor Conservator.”

Auditor Response – FINDING STANDS.

Client # 8 – “Disagree with this finding; unfounded.”

“Contrary to this finding, in the client’s file, are the recorded letters of appointment. The exact notation for the recordation was June 29, 2001 at 11:29 a.m. Moreover, on April 2, 2003, Judge Mundell approved Southwest Fiduciary’s proposed sale of the Balboa Street property. Subsequent to this action, the amended approval for sale was recorded and the sale was completed through Chicago Title.”

Auditor Response – FINDING STANDS.

Client # 11 – “Agree with this finding.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Proof of interest earned from financial institution or proof of direct deposit missing.

Client # 11 – “Disagree with this finding; unfounded.”

“Question unclear since there are bank statements and deposit vouchers in the file to confirm proof of receipt and deposit.”

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Auditor Response – FINDING STANDS.

- Invoice missing for Thunderbird Storage Unit.

Client # 11 – “Disagree with this finding; unfounded.”
“Thunderbird Storage does not send out invoices. We use a scheduled payment system wherein Accounts Payable sets up a tickler system with payment cards and payments are sent out automatically on a monthly basis, without an invoice.”

Auditor Response – FINDING STANDS.

- Bonds which we reduced were not in file.

Client # 13 – “Disagree with this finding; unfounded.”
“Bond information is always kept in a separate file with Certified Letters of Appointment. This may or may not have been clarified with the auditors at the entrance interview. A separate file cabinet contains all certified documents, as well as certified death and birth certificates, bond certificates and other important documents. Copies are not kept in the general file. They can be found in the “Certified” file. A copy of Client # 13’s reduced bond is in that file.”

Auditor Response – FINDING STANDS. The auditors requested all files/documentation relating to the fiduciary administration for each client file selected. This request was made on more than one occasion.

- Proof of Bank One Savings Acct not found nor Proof of Restriction.

Client # 13 – “Disagree with this finding as to savings account; agree as to the finding regarding the filing of a Proof of Restriction.”
“The Bank One Bank Statements were in the financial part (checking and savings accounts were included on same statement. The court order restricted the real properties, more specifically, the Sun City property, which was restricted by the recording of our Letters. When the Sun City property sold in 2002, the proceeds was deposited into the Bank One Account and Southwest Fiduciary inadvertently did not file a formal Proof of Restriction with the financial institution although the Bank One account was included in the bond calculations.

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Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

Auditor Response – FINDING STANDS.

- No proof of homeowners insurance.

Client # 13 – “Agree with this finding.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Documentation on how real property was titled is missing.

Client # 13 – “Agree with this finding.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and double-checking work product.”

- Decision making documentation for sale of stock or for investments, missing.

Client # 7 – “Agree with this finding.”

“The client’s financial and investment statements are thoroughly and carefully reviewed by the principal of Southwest Fiduciary and any decisions made in connection with the sale or purchase of stock or the investment of client’s monies, are made by him. These decisions are based upon his experience and expertise in banking and with full consideration of the current financial markets and current and long-term needs and welfare of the client.”

“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and documentation of action taken regarding decision making.”

Client # 13 – “Agree with this finding.”

“The client’s financial and investment statements are thoroughly and carefully reviewed by the principal of Southwest Fiduciary and any decisions made in connection with the sale or purchase of stock or the investment of client’s monies, are made by him. These decisions are based upon his experience and expertise in banking and with full consideration of the current financial markets and current and long-term needs and welfare of the client.”

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“Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and documentation of action taken regarding decision making.”

- New Mexico property disposal not documented.

Client # 13 – “Disagree with this finding; unfounded.”
“The file contains correspondence to and from the realtor in New Mexico explaining the disposal of this property, as it was Indian land and reverted back to the Native Americans.”

Auditor Response – FINDING STANDS.

- Could not distinguish between Trust and Conservatorship assets.

Client # 13 – “Agree with this finding.”
“We agree that the accounting does not reflect which assets were in the Trust and which were Conservator assets. Although bank statements do reflect how the accounts are titled (i.e., Conservator or Trust), corrective action has been taken to bifurcate assets.”

- Description of jewelry and trailer not in client file or on documents submitted to the court.

Client # 14 -- “Disagree with this finding; unfounded.”
“On the amended inventory of April 2, 2002, the value of the trailer (which was out of the county and no further information known) was listed thereon. The costume jewelry was listed as \$1.00. It was discussed, disclosed and distributed at a family meeting held in Phoenix at attorney Paul S. Harter’s office and receipts describing the jewelry was executed by the recipient at this meeting. After further review of ARS §14-3706, it is respectfully suggested that this was acceptable.”

Auditor Response – FINDING STANDS.

- Personal property not accurately reported on inventory.

Clients # 12 & 16 – “Disagree with this finding.”
“At the time that the Inventory and Appraisal was prepared, Southwest Fiduciary’s policy was that of listing “household and

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personal furnishings” at a control value of \$1.00, which has been the local custom in Maricopa County for decades. It has been determined that time and time again, the personal property value does not justify the cost of an exhaustive appraisal. A review of ARS §14-3706 suggests that this practice is justified. If the local custom has changed, this fiduciary did not receive official notification of it.”

Auditor Response – FINDING STANDS. A review of ARS § 14-3706 does not indicate the practice is justified. A certified fiduciary must comply with statute, code and local rule.

- No documentation to establish \$936 value for Eloy property.

Client # 14 – “Disagree with this finding.”

“The \$936.00 represented past due taxes. There is documentation to all beneficiaries memorializing the decision by all beneficiaries to allow a single family member to pay the past due taxes and receive a deed for the Eloy property as this was an undivided interest.”

Auditor Response – FINDING STANDS. Past due taxes are not representative of a property’s market value.

- Documentation on bond, 401K plan, Time Share, Big River Development, Northern Trust account, sale of stock, vehicles and appraisals for real property could not be found:

Client # 15 – “Response to each finding individually as follows:”

“**Bond:** Disagree with finding. Our bond information is always kept in a separate file with our Certified Letters of Appointment. This may or may not have been clarified with the auditors at the time of the entrance interview. A separate file cabinet contains all certified documents as well as certified death and birth certificates, bond certificates and other important documents. Often copies are put in the general file, but they are always in our “Certified” file. A copy of the Thompson bond is in that file.”

Auditor Response – FINDING STANDS. The auditors requested all files/documentation relating to the fiduciary administration for each

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client file selected. This request was made on more than one occasion.

“401K Plan: Agree with Finding. The 401K Plan was with Condor Freight Lines. Condor eventually filed bankruptcy and other than correspondence referring to the 401K Plan, there is no other documentation. SWF attempted to collect the funds; however no funds were ever realized. It is our understanding that payment has since been made to Client # 15 for back monies owed. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and more thorough documentation placed in the file.”

“Time Share: Disagree with Finding. There was a separate folder in the file containing documents and information on the Time Shares (one in California, the Lawrence Welk Villas, and one in Puerto Villarta, Mexico). Recent communication is also in the file evidencing copies of all documents provided to the new Conservator/Guardian for Client # 15. There is also correspondence in the file to show Southwest Fiduciary’s attempt to sell the Time Shares, first to Dr. Ekren (brother of client) who initially showed interest in the properties; later contact was made with realtors whose specialty was Time Share units. They have been since been turned over to Dr. Ekren for sale and/or disposal.

Auditor Response – FINDING STANDS.

“Big River Development: Disagree with Finding. There was a copy of a plot map in the file on this property. There was also correspondence to Dr. Ekren (Successor Guardian/Conservator) dated 2-4-04 explaining that this was Colorado River Indian Tribe land. There was never a deed since it was leased Indian land. There had been an appraisal, which was sent to Dr. Ekren when he took over the estate. A copy was not kept for our file.”

Auditor Response – FINDING STANDS. This is an example of where a fiduciary documents, even if it is just for the file, the recording of, decisions and disposition of an asset.

“Sale of Stock: Disagree with Finding. All the stock was in the husband and wife’s name jointly or in wife’s name solely. There was no stock held solely in husband’s name. The stock belonging to husband and wife was held jointly in a Merrill Lynch account and was

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liquidated as funds were needed for their needs and expenses. The remaining stock was in the sole name of wife, which has been turned over to her Successor Guardian/Conservator.”

Auditor Response – FINDING STANDS.

“**Vehicles:** Disagree with finding. The file contains a receipt for the donation of the 1984 Chrysler LeBarron, which was donated on or about January 2002 to the National Charity Foundation, in the State of California including other correspondence relative to the donation of this vehicle and it’s condition. The second vehicle was a 1953 Chevy, which we understood to be a “junker”. The car was still titled in the name of wife’s late mother and to the best of our knowledge and belief, was located on the land in North Dakota. (The files contains an e-mail message dated 10-2-01 attesting to the vehicle being on the N.D. property.) The property and the vehicle, were subsequently turned over to the Successor Conservator for wife.”

Auditor Response – FINDING STANDS. This is an example of where a fiduciary documents, even if it is just for the file, the recording of, decisions and disposition of an asset.

“**Appraisals for real property:** Agree with finding that there are no appraisals for the North Dakota property, the Peoria, Arizona property, or the two (2) time share units. There was, however, an appraisal for the San Pedro property in the file. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and proper documentation in the file.”

- Documentation detailing decision making regarding investments was not found.

Client # 15 – “Agree with this finding.”

“The client’s financial and investment statements are thoroughly and carefully reviewed by the principal of Southwest Fiduciary and any decisions made in connection with the sale or purchase of stock or the investment of client’s monies, are made by him. These decisions are based upon his experience and expertise in banking and with full consideration of the current financial markets and current and long-term needs and welfare of the client. Corrective action has already been implemented to insure that this does not occur in the future by closer

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follow up and documentation of action taken regarding decision making.”

- Evidence of stock was found but the file did not reference where the investment was held, its market value or the difficulty in finding the issuer.

Client # 16 – “Disagree with this finding; unfounded.”
“The file contains a memo dated August 21, 2002, by staff member, the Executive Assistant, listing each stock held in ward’s name. At that time, it was determined what stock was held in book shares and what stock was issued in actual certificates. This information was also listed in our accounting program. Actual stock certificates were in our fireproof safe.”

Auditor Response – FINDING STANDS.

Corrective Action

“Corrective action includes request of our counsel to provide copies of all conformed documents, increase in staff members, closer follow-up and double checking of work product an implementation of *Time Matters* and *Quick Books* Programs. While SFI has always separated client’s assets as to Conservatorships and Trusts assets, SFI is monitoring cases where there are dual assets more closely and ensuring that they are properly bifurcated.”

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<p><i>Finding # 5</i></p> <p>➤ <i>Inventory</i></p> <p><u><i>Related Attributes:</i></u></p> <p><i>A.R.S. § 14-3706</i> <i>A.R.S. § 14-3708</i> <i>A.R.S. § 14-5418(A)</i></p> <p><i>Requirement</i></p>	<p>Arizona statute requires a fiduciary to list with reasonable detail and indicate the market value of an estate as of the date of appointment or date of death of each item listed on the inventory.</p> <ul style="list-style-type: none"> • The personal property was listed at a nominal control value from the inventory through the accountings -- Client files # 3, 10, 11 & 16 • The stock valuation detail was not listed on the inventory -- Client file # 3 <p>The fiduciary must provide detail on an inventory to avoid erroneous or misleading information to either the court or interested parties.</p>
<p><i>Auditee's Response</i></p>	<ul style="list-style-type: none"> • Personal property listed at a nominal control value from inventory through accountings <p style="text-align: center;">Client # 3 – “Disagree with this finding.”</p> <p>“Problems and issues with our client, Client # 3, have been discussed and addressed above in previous findings.”</p>
	<p style="text-align: center;"><i>Auditor Response – FINDING STANDS.</i></p>
	<p style="text-align: center;">Client # 10 & 11 – “Disagree with these findings.”</p> <p>“While Arizona Statutes require Arizona Fiduciaries to list market values of the estate, unless otherwise noted, most personal property has a nominal value, i.e. approximately \$.10 on the dollar or less. Unless the items are antiques, heirlooms, collectables, etc., routinely a nominal value is given to the personal property, i.e. \$1.00, \$10.00, etc. Additionally, it would be cost prohibitive to appraise personal property that appears to have very little value. However, Southwest Fiduciary will make a diligent effort to better describe personal property and the value placed upon it.”</p>
	<p style="text-align: center;"><i>Auditor Response – FINDING STANDS.</i></p>
	<ul style="list-style-type: none"> • Stock valuation detail is not documented. <p style="text-align: center;">Client # 3 – “Disagree with this finding.”</p>

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“Our attorney researched and advised that the stock was worthless. While it was not documented in our file, documentation is in the possession of Attorney Larry Schafer, as well as court records. As a result, we believed no further documentation was needed.”

Auditor Response – FINDING STANDS.

Corrective Action

“SFI fully explained the cases noted under this finding and believed to be in compliance with Arizona Statutes, specifically with regards to market value of an estate. However, SFI has taken corrective action to assure that our files are more accurately and completely documented in the future to eliminate non-compliance.”

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<p><i>Finding # 6</i></p> <p>➤ <i>Supplemental Inventory</i></p> <p><u><i>Related Attributes:</i></u></p> <p><i>A.R.S. § 14-3708</i></p> <p><i>Requirement</i></p>	<p>Client property subsequently discovered and not included in the original inventory & appraisalment was not provided to the court in a supplemental inventory.</p> <ul style="list-style-type: none"> • A Bank Midwest Money Market Account was discovered after the inventory was filed but a supplemental inventory was not filed-- Client file # 8 • A supplemental was not filed to reconcile differences between original conservator and successor beginning estate values – Client # 11 <p>If any property not included in the original inventory comes to the knowledge of a fiduciary or if the fiduciary learns the value or description indicated in the original inventory for any item is incorrect or misleading, the fiduciary must make a supplementary inventory and file it with the court.</p>
<p><i>Auditee's Response</i></p>	<ul style="list-style-type: none"> • A Bank Midwest Money Market Account was discovered after the inventory was filed but a supplemental inventory was not filed. <p style="text-align: center;">Client # 8 – “Disagree with this finding; unfounded.”</p> <p>“The Bank Midwest Savings Account was a Trust asset; not an asset of decedent’s probate estate.”</p> <hr/> <p><i>Auditor Response – FINDING STANDS. SFI was ordered by the court to re-title the account from the trust into the estate.</i></p> <hr/> <ul style="list-style-type: none"> • A supplemental was not filed to reconcile differences between original conservator and successor beginning estate values. <p style="text-align: center;">Client # 11 – “Disagree with this finding.”</p> <p>“Southwest Fiduciary can confirm values used as the beginning balances of the inventory. To further clarify our policy, attempts are made to verify the ending balances that previous conservators report; however, if Southwest Fiduciary’s attempts cannot verify such balances, our policy is not to use unsubstantial values, but will use actual balances, which are verifiable.”</p>

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<i>Auditor Response – FINDING STANDS.</i>	
<i>Corrective Action</i>	<p>“<i>Time Matters</i> Program has been implemented and updated to eliminate omissions, errors and other inconsistencies. In addition, SFI now utilizes <i>Quick Books</i> in our A/R Dept. and has increased out staff members who are following the cases more closely and double checking all work products to prevent any future non-compliance.”</p>

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<p><i>Finding # 7</i></p> <p>➤ <i>Securing Assets</i></p> <p><u><i>Related Attributes:</i></u></p> <p><i>A.R.S. § 14-5417</i></p> <p><i>Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (5)(b)</i></p> <p><i>Requirement</i></p>	<p>Assets of clients were not marshaled and secured either physically or timely.</p> <ul style="list-style-type: none"> • Assets (coins) were found unsecured in a client's file -- Client file # 4 <p>The fiduciary must take reasonable steps to marshal and secure the property and income of the protected person's or decedent's estate as soon as possible. The fiduciary appointed as a conservator must observe the standard of care of a prudent man dealing with the property of another and if the fiduciary has special skills or expertise (i.e., certification) he is under a duty to use those skills.</p>
<p><i>Auditee's Response</i></p>	<ul style="list-style-type: none"> • Assets (coins) were found unsecured in a client's file. <p>Client # 4 – “Disagree with this finding; unfounded.”</p> <p>“The coins were not unsecured but were in a secured area marked “pending”. When the file was turned over to the auditors, it appeared that the coins were in a regular file in the general file cabinet. It was explained to the auditors at the time the file was turned over to them by the Estate Administrator that the coins were secured with the file. The keys to the secured area were in the “locked key cabinet”, under dual control. Additionally, these circulated coins, which had no numismatic value, had been inventoried and accounted for.</p> <hr/> <p><i>Auditor Response – FINDING STANDS.</i></p> <hr/>

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Corrective Action

Client's assets are marshaled immediately following our appointment and secured both physically and timely. *Time Matters* Program and *Quick Books* have been implemented and updated to avoid oversights in marshalling client's assets. Additionally, SFI increased staff members and cases are now being followed more closely and double checked.

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<p><i>Finding # 8</i></p> <p>➤ <i>Diligence</i></p> <p><u><i>Related Attributes:</i></u></p> <p><i>A.R.S. §14-5421</i></p> <p><i>Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (4) & (5)(d).</i></p>	<p>Clients' financial interests were compromised by late payments and a lack of timely attention to bank accounts.</p> <ul style="list-style-type: none"> • There was no evidence of adequate homeowner's insurance -- Client file # 4 • Bank account exceeded FDIC insured limits for over 6 months -- Client file # 4 • Evidence of recording letters of appointment with recorder where property physically located not in client file -- Client files # 5, 8 & 11 • Payments on behalf of a client to Uncle Bob's Self-Storage were late -- Client file # 7 • Late credit card payments on behalf of a client resulted in late penalties paid by the client's estate -- Client files # 10 & 13 • Nine months of a client's pension checks were all deposited on the same date resulting in a possible loss of interest -- Client file # 13 • The stated transfer amount (\$11,256.13) could not be reconciled with the Bank of America account -- Client file # 13 • A client's bank accounts were not closed promptly -- Client # 14 <p>A fiduciary must exercise extreme care and diligence when making medical and financial decisions on behalf of a ward or protected person.</p>
<p><i>Requirement</i></p>	<p>A fiduciary must exercise extreme care and diligence when making medical and financial decisions on behalf of a ward or protected person.</p>
<p><i>Auditee's Response</i></p>	<ul style="list-style-type: none"> • There was no evidence of adequate homeowner's insurance. <p>Client # 4 -- "Disagree with this finding."</p> <p>The property was a condo unit and was covered under the Homeowners Association for basis insurance. Insurance for furnishings is optional by the homeowner.</p>
	<p><i>Auditor Response -- FINDING STANDS.</i></p>
	<ul style="list-style-type: none"> • Bank account exceeded FDIC insured limits for over 6 months. <p>Client # 4 -- "Agree with this finding."</p> <p>"Southwest Fiduciary is cognizant of FDIC limits and with very few exceptions, maintains balances below the FDIC limits. Additional</p>

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training has already been held with staff to refresh, remind and maintain Southwest Fiduciary's policies and procedures."

- Evidence of recording letters of appointment with recorder where property physically located not in client file.

Client # 5 – "Agree with this finding."

"See response under Documentation, Finding #4 under R. Brown. Corrective measures have been addressed and implemented."

Client # 8 – "Disagree with this finding; unfounded."

"Previously addressed under Documentation, Finding # 4."

Auditor Response – FINDING STANDS.

Client # 11 – "Agree with this finding."

"Previously addressed under Documentation, Finding #4. Corrective measures have been addressed and implemented."

- Late payments to Uncle Bob's Self-Storage.

Client # 7 – "Agree with this finding."

"Inadvertently the Accounts Payable Department failed to make this payment on a timely basis. A new system of follow-up has been established to insure the integrity of the procedure."

- Late credit card payments resulted in late penalties paid by the client's estate.

Client # 10 – "Disagree with this finding."

"Payments were not made during this period because of an investigation of client's debts. The purchases and/or charges on the protected person's credit card were being investigated as to whether they were purchases for the client or her son or whether the card was being used fraudulently. Once our investigation was concluded the payment was made and the account was brought up to date."

Auditor Response – FINDING STANDS.

Client # 13 – "Agree with this finding."

"Southwest Fiduciary attempted to obtain control of the mail through address changes. This difficulty was with the United States Post

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Office. After several attempts of changing the address was made, the time delay caused some overdue bills. Southwest Fiduciary promptly paid the bills. Since that time, Southwest Fiduciary has established a different procedure on address changes.”

Auditor Response – FINDING STANDS.

- Cook County pension checks for nine months were all deposited on the same date resulting in loss of interest.

Client # 13 – “Agree only as to the “deposited on the same date”

“Cook County Pension office requested updated certified letters. Southwest Fiduciary did not receive this request until 2002. The checks were held by the Cook County Pension Company. Southwest Fiduciary ultimately contacted Cook County and ascertained the status. Once Cook County received our updated Letters, checks were forwarded to Southwest Fiduciary and ultimately deposited. Corrective action has already been implemented to insure that this does not occur in the future by closer follow up and documentation of all action taken.”

- Transfer amount \$ 11,256.13 could not be reconciled with BOA Acct. 0500.

Client # 13 – “Disagree with this finding.

“Southwest Fiduciary attempted to locate this transfer amount. The only transfer amount that resembled the amount was \$11,214.33. That was in fact documented under the date of July 20, 1999 (again outside the scope of the audit time period) as a transfer from BOA #0500 to BOA #0275. Should you need additional explanation, please advise.”

Auditor Response – FINDING STANDS. Any financial institution would not accept a \$41.80 discrepancy.

Client # 14 – “Agree with this finding.”

“Corrective action has been initiated to insure bank accounts are closed promptly.”

Corrective Action

“Time Matters incorporated with a Tickler System, together eliminates omissions, errors, and other inconsistencies. SFI AP/AR changed over

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to *Quick Books* which is a more efficient program and better adapted to our business parameters, SFI also increased staff members to allow closer follow-up and double checking of cases and work products for accuracy and compliance. Also monthly staff meetings and training sessions to refresh, remind, and update staff on SOP's."

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<p>Finding # 9</p> <p>➤ Certified Staff</p> <p><u>Related Attributes</u></p> <p><i>Arizona Code of Judicial Administration § 7-202 (E)(1)(b)(4)</i></p> <p>Requirement</p>	<p>Three positions, two estate administrators and one social service administrator, have assumed primary responsibility for court appointed clients and are not certified under the Fiduciary Certification Program Administrative Code § 7-202. The Program code requires the principal fiduciary to agree that not less than one certified person shall have the assigned primary responsibility for each court appointment as a guardian, conservator or personal representative. This requirement is a part of Southwest Fiduciary, Inc. business eligibility for certification.</p> <p>If a Southwest Fiduciary, Inc staff position is primarily responsible for a caseload of court appointed fiduciary clients, the staff employed in the position(s) must be certified.</p>
<p>Auditee's Response</p>	<p style="text-align: center;">“Disagree with this finding.”</p> <p>“Southwest Fiduciary’s Policy and Procedures manual clearly indicates that the staff members in question, “...<i>directly reports to CEO...</i>”and are under the direct supervision of the certified principal of Southwest Fiduciary, Inc. Those staff members are limited in scope to the depth of decisions that can be made concerning the clients. As a result, it is a mischaracterization to state that “...<i>three positions, two estate administrators and one social service administrator, have assumed primary responsibility for court appointed clients...</i>”when in fact they have not assumed primary responsibilities. They acted at the direction of the principal fiduciary on an administrative basis. Their decision-making authority is limited in scope with the principal certified fiduciary’s authority. It is the principal certified fiduciary who has assumed primary responsibility for clients. The fact is documented time and time again in court appearances, case notes and correspondence issued by Southwest Fiduciary. Additionally, the Estate Administrators and the Social Services Administrator, referred to above, explained their duties, positions and depth of their authority to the auditors at the initial interview.</p> <p>As a further observation, these individuals’ job descriptions and duties are better characterized by the definition of “Trainee” as described in the Arizona Code of Judicial Administration.”</p>

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	<p><i>Auditor Response – FINDING STANDS. To accept SFI's logic would require the Principal to be responsible for over 100 court appointed clients' day to day decision-making and client case/estate administration. The audit team witnessed staff, albeit competently, acting in the capacity of certified fiduciaries.</i></p>
<p><i>Corrective Action</i></p>	<p>“The parties referred to in this finding, fully explained their duties, positions and depth of their authority to the auditors at the initial interview.”</p>

Southwest Fiduciary, Inc. Compliance Audit Report

<p><i>Finding # 10</i></p> <p>➤ <i>Compliance</i></p> <p><u><i>Related Attributes</i></u></p> <p><i>Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard 7.</i></p> <p><i>Requirement</i></p>	<p>A fiduciary must perform all of their duties and discharge all of their obligations in accordance with current Arizona law and the administrative rules, administrative orders, Arizona Code of Judicial Administration § 7-201: General Requirements and § 7-202: Fiduciaries as adopted by the Arizona Supreme Court governing the certification of fiduciaries. Each finding (#'s 1 through 7) is illustrative of not meeting the <i>Code of Conduct, Standard 7</i>.</p> <p>Southwest Fiduciary, Inc. must ensure the certified fiduciaries and non-certified staff perform all of their duties and discharge all of their obligations to meet the requirements of <i>Standard 7</i>.</p>
<p><i>Auditee's Response</i></p>	<p style="text-align: center;">“Agree with this finding.”</p> <p>“Obviously, most fiduciaries in the State of Arizona, which include members of the Fiduciary Certification Program, have from time to time, omitted or committed infractions. As a result, we are all non-compliant! This “catch 22” standard is redundant and is tantamount allowing a traffic cop to issue an additional ticket if he writes a ticket for some violation.”</p> <p>“<u>Action taken</u>: See responses to findings set forth herein.”</p>
<p><i>Corrective Action</i></p>	<p>“The principal fiduciary met with senior management and staff to review this finding. Additionally, SFI has taken the following steps: implementation of and continual update in training of the <i>Time Matters</i> Program, increase in staff allowing cases to be followed more closely and to double check all work products for accuracy, due diligence, documentation, conformity, timeliness, and compliance and will continue to update staff at work sessions and staff meetings on the importance of compliance.”</p>

APPENDIX I

RESPONSE TO FINAL REPORT

CORRECTIVE ACTION
SOUTHWEST FIDUCIARY, INC.
RESULTS: FIDUCIARY CERTIFICATION COMPLIANCE REVIEW

# FINDING #	CORRECTIVE ACTION	PLAN	COMPLETION DATE	STATUS
1 CERTIFICATION NUMBERS	Corrective action has been taken.	Attorneys have been advised to include applicable certification numbers on all court documents. Time Matters Program has been implemented and continuously updated which includes a tickler system; additionally SFI has advised all counsel that they are required to file in timely manner or request extension of time.	Notice to counsel: 2-7-05	Responses to our letter to counsel are being received and thus far, counsel are in agreement and acceptance of our requests.
2 LATE FILINGS	Corrective action has been taken. Note that many of the "late filings" are not through the fault of this fiduciary. (See this fiduciary's response filed 1/28/05)	Time Matters Program has been implemented and continuously updated to eliminate errors, omissions and other inconsistencies. In addition, SFI has increased our staff members who are following the cases more closely and double checking all work products.	Time Matters: April 2001 Notice to counsel: 2/7/05	While it is not our policy to file untimely; with the cooperation of our counsel and implementation of Time Matters, late filings will be eliminated.
3 ACCURACY	Corrective action has been taken. Note that many of the "inaccuracies" are not through the fault of this fiduciary and/or can be fully explained. (See this fiduciary's response filed 1/28/05)	Corrective action includes request of our counsel to provide copies of all conformed documents, increase in staff members, closer follow-up and double checking of work product and implementation of Time Matters and Quick Books Programs. While SFI has always separated client's assets as to Conservatorships and Trusts assets, SFI is monitoring cases where there are dual assets more closely and ensuring that they are properly bifurcated.	Time Matters: April 2001 Increase in Staff Members commenced January 2003 Notice to counsel: 2-7-5 Time Matters: April 2001 Quick Books: Oct. 2003 Increase in Staff Members commenced January 2003 Closer monitoring of Bifurcation of Assets (between Conservatorships and Trusts): on or about Jan. 2003	Where after discovered assets were inadvertently not filed on a supplemental inventory, SWF believes our Time Matters program will eliminate those errors.
4 DOCUMENTATION	Corrective action has been taken. Note that many of the "missing documentation" are not through the fault of this fiduciary and/or can be fully explained. (See this fiduciary's response in Exit Interview Response filed 1-28-05).			While it is not our policy for our files to have missing documents; with the cooperation of our counsel, additional staff and implementation of time Matters, all SFI files will be properly documented.

**CORRECTIVE ACTION
SOUTHWEST FIDUCIARY, INC.
RESULTS: FIDUCIARY CERTIFICATION COMPLIANCE REVIEW**

5	INVENTORY	<p>The cases noted under this finding were addressed and fully explained in our Exit Interview Response.</p>	<p>SFI fully explained the cases noted under this finding and believed to be in compliance with Arizona Statutes, specifically with regards to market value of an estate. However, SFI has taken corrective action to assure that our files are more accurately and completely documented in the future to eliminate non-compliance.</p>	<p>Time Matters (April 2001) Quick Books (Oct. 2003), Notice to all counsel (February 7, 2005), and Staff increase Jan. 2003</p>	<p>SFI's utilization of Time Matters (April 2001) and Quick Books (Oct. 2003), have been preventive measures for clarification of trust and non-trust assets, and notice to all counsel (2/7/05), will ensure that counsel provides copies of documentation for our files. These actions will also allow follow up in a timely manner and clarification of market value of the estates.</p>
6	SUPPLEMENTAL INVENTORY	<p>While we disagree that corrective action pertains to the specific cases noted under this finding, SFI has been working diligently to prevent any future problems or non-compliance in this area.</p>	<p>Time Matters Program has been implemented and updated to eliminate omissions, errors, and other inconsistencies. In addition, SFI now utilizes Quick Books in our A/R Dept. and has increased our staff members who are following the cases more closely and double checking all work products to prevent any future non-compliance.</p>	<p>Time Matters: April 2001 Quick Books: Oct. 2003 Increase in Staff Members commenced January 2003</p>	<p>While it is our policy to file supplemental inventories where applicable, with the increase in staff and implementation of Time Matters, supplemental inventories are being filed as required and in a timely manner.</p>
7	SECURING ASSETS	<p>Disagree with this finding (as to the specific cases). While corrective action is not needed at this time as to this specific cases, SFI has implemented many programs to ensure compliance at all times.</p>	<p>Clients' assets are marshalled immediately following our appointment and secured both physically and timely. Time Matters Program and Quick Books have been implemented and updated to avoid oversights in marshalling client's assets. Additionally, SFI increased staff members and cases are now being followed more closely and double checked.</p>	<p>Time Matters: April 2001; Quick Books: Oct. 2003; and Increase in Staff Members commenced January 2003</p>	<p>Disagree with this finding (as to the specific cases). While corrective action is not needed at this time as to this specific finding, SFI's utilization of Time Matters will prevent any non-compliance in this area in the future.</p>

CORRECTIVE ACTION
SOUTHWEST FIDUCIARY, INC.
RESULTS: FIDUCIARY CERTIFICATION COMPLIANCE REVIEW

		<p>Time Matters Program incorporated with a Tickler System, together eliminates omissions, errors, and other inconsistencies. SFI AP/AR changed over to Quick Books which is a more efficient program and better adapted to our business parameters. SFI also increased staff members to allow closer follow-up and double checking of cases and work products for accuracy and compliance. Also monthly staff meetings and training sessions to refresh, remind, and update staff on SOP's.</p>	<p>Time Matters: April 2001 Quick Books: Oct. 2003 Increase in Staff Members commenced January 2003 Staff Meetings: Monthly Training Sessions: monthly commencing January 2002</p>	<p>While it is not our policy to compromise our client's financial interests, with the increase in staff, additional training and the implementation of Time Matters, our client's financial records are being in full compliance.</p>
8 DILIGENCE	<p>Corrective action has been taken. Note that many of the "diligence issues" are not through the fault of this fiduciary and/or can be fully explained. (See this Exit Interview Response filed 1-28-05).</p>	<p>The parties referred to in this finding, fully explained their duties, positions and depth of their authority to the auditors at the initial interview.</p>	<p>Not applicable</p>	<p>The parties referred to in this finding have not assumed primary responsibilities but have acted at the direction of the principal fiduciary on an administrative basis.</p>
9 CERTIFIED STAFF	<p>Disagree with this finding.</p>	<p>The principal fiduciary met with senior mgmt. & staff to review this finding. Additionally, SFI has taken the following steps: implementation of and continual update in training of the Time Matters Program, increase in staff allowing cases to be followed more closely and to double check all work products for accuracy, due diligence, documentation, conformity, timeliness, and compliance and will continue to update staff at work sessions and staff meetings on the importance of compliance.</p>	<p>Meeting took place on or about December 28, 2004 and will continue to be reviewed periodically at monthly staff meetings, bi-weekly work sessions and at any time deemed necessary for present employees as well as new hires. Additional corrective actions: Time Matters in April 2001 and Increase in staff: Jan 2003</p>	<p>We believe that our more current files (due to the implementation of the various plans of corrective action) are in full compliance brought on by the corrective action which has been initiated.</p>
10 COMPLIANCE	<p>Corrective action has been taken.</p>			