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**ARIZONA SUPREME COURT
Fiduciary Board**

**IN THE MATTER OF FIDUCIARY
LICENSE:**

**MICHAEL D. BOGLE,
License Number [REDACTED]**

and

**EAST VALLEY FIDUCIARY SERVICES,
INC.
License Number [REDACTED]**

NO. 20-0011, 20-0012 and 21-0012

CONSENT AGREEMENT

THE FIDUCIARY BOARD (herein, "Board") and MICHAEL D. BOGLE ("Bogle") as an individual fiduciary (Fiduciary License No. [REDACTED]) and as Designated Principal for EAST VALLEY FIDUCIARY SERVICES, Inc. ("EVFS") (Bogle and EVFS are, collectively, "the Parties") enter into the following Consent Agreement.

RECITALS

1. Bogle is a licensed fiduciary in the State of Arizona since approximately November 12, 2009. His license number is [REDACTED]

2. EVFS is a corporation duly authorized to conduct business in Arizona with license number [REDACTED]. On or about November 8, 2007, EVFS was licensed as a Fiduciary business.

3. Bogle is the designated principal of EVFS. As the designated principal, Bogle is responsible for the actions of EVFS and its employees.

4. Bogle and EVFS were court-appointed in Maricopa County Superior Court case PB2017-001373 as the temporary conservator from August 21, 2017, through September 18, 2018, and as temporary guardian from August 29, 2017, through October 17, 2017.

1 Allegation 37 Filed a Conservator's accounting that was inaccurate and/or misleading
2 and/or that contained misstatements and/or misrepresentations of material
3 facts.

4 Allegation 38 Failed to timely file the final Conservator's Account in accordance with the
5 Court's order.

6 The allegations and findings stem from the Parties' service as the temporary conservator
7 of Chalmers from August 2017 through September 2018, and certain actions after that, until
8 January 15, 2021, when the probate court approved the EVFS Final Accounting. While the Parties
9 do not agree with the Division's findings, and they have not had a chance to formally respond to
10 them, they believe it best to resolve the allegations through this Consent Agreement due to the
11 complexity of the case, the fact that the events happened several years ago, and the additional time
12 and expense that would be required to pursue the issues through a hearing and possible appeal
13 through the courts. The complexity of the case is shown in part by the fact that events related to
14 EVFS's conservatorship of Chalmers have already necessitated five separate decisions by the
15 Arizona Court of Appeals, stemming from three Superior Court decisions.

16 At its meeting on January 12, 2023, the Fiduciary Board instructed Division Staff to
17 attempt to resolve the disciplinary issues related to the 12 substantiated allegations against the
18 Parties through a Consent Agreement.

19 **JURISDICTION**

20 The Board possesses jurisdiction over complaints 20-0011, 20-0012 and 21-0012 under
21 ACJA §§ 7-201(H) and 7-202(H).



22 **CONSENT AGREEMENT AUTHORITY**

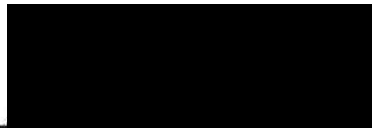
23 The Board's is authorized under ACJA § 7-201(H)(24)(a)(6)(c), on completion of its
24 investigation of a pending complaint, to resolve any found acts of misconduct by consent order
25 and issue a censure and place licensees on probation under ACJA § 7-201 (H)(24)(a)(6)(b) and
26 (e).


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- c. EVFS and Bogle must provide the compliance auditor and audit staff access to EVFS's and Bogle's records and staff as the compliance auditor deems necessary for the purposes of completing the Compliance Audit, making audit recommendations, and confirming implementation of any recommended corrections.
 - d. EVFS and Bogle must comply with all reasonable requests of the compliance auditor and must immediately notify Division staff of any refusal to comply. The notification must contain the request and the bases of the refusal to comply.
 - e. Bogle must complete a minimum of 5 hours total of continuing education that includes substantive content on court accountings, record keeping, and financial management, and must provide proof of completion to the Division within 10 days of completion and before the termination of the probationary period.
 - f. All costs associated with the Compliance Audit and reporting must be paid by EVFS or Bogle.
4. This Consent Agreement does not in any way affect or limit further disciplinary action for violations of statutes, rules, or administrative code provisions uncovered during the Compliance Audit or as the result of complaints pending or filed after the date on which the Board approves this Consent Agreement.
5. EVFS and Bogle must comply with all laws, court rules, administrative code provisions, and probationary terms. Failure to do so may result in further discipline, including disciplinary action as to Complaint Nos. 20-0011, 20-0012, and 21-0012, which are the subject of this Consent Agreement, in the event that EVFS and Bogle violate or do not complete the terms of their probation.

1 This Consent Agreement is approved by the Parties on the date indicated.

2
3  06/02/2023
4 Michael Bogle Date
5 (Fiduciary License No. )

 5/19/23
Deborah Primock, Date
Chair, Fiduciary Board

6
7 East Valley Fiduciary Services, Inc.
8 (Fiduciary License No. )

9 By: 
10 President
Dated: 06/02/2023

**Arizona Supreme Court
Administrative Office of the Courts**



INVESTIGATION SUMMARY

Complaint No. 20-0011/20-0012/21-0012

Certificate/License Nos. [REDACTED] and [REDACTED]

Certification and Licensing Division

October 20, 2022

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**ARIZONA SUPREME COURT
ADMINISTRATIVE OFFICE OF THE COURTS
INVESTIGATION SUMMARY and PROBABLE CAUSE ANALYSIS
and DETERMINATION REPORT**

<i>CERTIFICATE HOLDER/LICENSEE INFORMATION</i>	Certificate Holder:	Michael Bogle
	Certification Number:	██████████
	Certificate Holder:	Andrew Stone
	Certification Number:	██████████
	Business Name:	East Valley Fiduciary Services, Inc.
	Certification Number:	██████████
	Type of Certificate/License:	Individual (Michael Bogle), Individual (Andrew Stone), Business Entity (East Valley Fiduciary Services, Inc.)
<i>COMPLAINANTS</i>	Names:	Susan Wulff, Barbara Livingston, William Chalmers
<i>INVESTIGATION INFORMATION</i>	Complaint Number:	20-0011/20-0012/21-0012
	Investigator:	Pasquale Fontana
Complaint Received:	September 16, 2020 (Susan Wulff) September 22, 2020 (Barbara Livingston) January 4, 2021 (William Chalmers)	
Complaint Forwarded to the License Holder:	October 13, 2020 (Susan Wulff, Barbara Livingston); February 11, 2021 (William Chalmers, via email)	
Certificate Holder/Licensee Received Complaint:	October 16, 2020, February 11, 2021	
Response From License Holder:	November 12, 2020 (Wulff and Livingston complaints); March 26, 2021 (William Chalmers complaint)	
Period of Active Certification/Licensure:	November 12, 2009 - Present (Michael Bogle) May 12, 2017 - Present (Andrew Stone) November 8, 2007 - Present (East Valley Fiduciary Services, Inc.)	

Status of Certification/License:	All Active
Availability of Certificate Holder/Licensee:	Available
Availability of Complainant:	Available
Report Date:	October 20, 2022

ALLEGATIONS:

1. East Valley Fiduciary Services, Inc., conducted financial transactions on behalf of the estate after the conservatorship was terminated by the Court.
2. East Valley Fiduciary Services, Inc. engaged in co-mingling of estate funds with its account.
3. East Valley Fiduciary Services, Inc., failed to marshal and secure estate property and/or failed to timely marshal and secure estate property.
4. East Valley Fiduciary Services, Inc., failed to timely file an Inventory and Appraisal and did not file an Estate Budget with the Court.
5. East Valley Fiduciary Services, Inc., failed to comply with the Court Accountant's recommendations.
6. East Valley Fiduciary Services, Inc., engaged in and/or allowed block billing.
7. East Valley Fiduciary Services, Inc., failed to return and/or failed to timely return estate property and records when requested and/or after the conservatorship ended.
8. East Valley Fiduciary Services, Inc., failed to provide 120 days of funding to the ward at the end of the conservatorship, in violation of a Court order.
9. East Valley Fiduciary Services, Inc., breached its fiduciary duty to the estate by failing to take post-decree action against Renata Chalmers involving the sale of firearms accessories and a 1998 Ford Truck.
10. East Valley Fiduciary Services, Inc., failed to take action to terminate the conservatorship on October 17, 2017.
11. East Valley Fiduciary Services, Inc., overstated the value of the estate on Probate Rule 33 Applications to justify higher fiduciary fees.
12. East Valley Fiduciary Services, Inc., failed to involve the protected person in his divorce proceedings.
13. East Valley Fiduciary Services, Inc., filed a false police report and violated the Health Insurance Portability and Accountability Act by sharing confidential medical information about the ward/protected person.
14. East Valley Fiduciary Services, Inc. failed to seek Court clarification on an unclear Court order.
15. East Valley Fiduciary Services, Inc., acquired assets after the termination of the conservatorship and failed to report those assets to the Court.
16. East Valley Fiduciary Services, Inc., failed to share the costs of the storage of marital assets as outlined in the Court's Minute Entries.
17. East Valley Fiduciary Services, Inc., failed to include the estate's tax liability in the final accounting.

18. East Valley Fiduciary Services, Inc., failed to inform the Court that the fiduciary failed to complete all the terms of the divorce prior to the end of the conservatorship and did not comply with the Court order about the same.
19. East Valley Fiduciary Services, Inc., failed to provide documentation pursuant to Arizona Revised Statutes §14-56519(A)(3) and Michael Bogle and Andrew Stone failed to inform the Court that Barbara Livingston had the most recent Durable Power of Attorney, pursuant to A.R.S. §14-5410.
20. East Valley Fiduciary Services, Inc., made a poor decision by hiring a convicted felon as the property manager.
21. East Valley Fiduciary Services, Inc., sent Patrick Moore to a settlement conference knowing he had no knowledge of Ward's case.
22. East Valley Fiduciary Services, Inc., paid off Renata Chalmers' Subaru violating Family Law Rule 69 Agreement and/or charged services to the estate.
23. East Valley Fiduciary Services, Inc., engaged in an inappropriate relationship with Renata Chalmers allowing infringement by a third party and failed to include the ward in communications with Renata Chalmers regarding the divorce.
24. East Valley Fiduciary Services, Inc., damaged or lost estate items.
25. Michael Bogle and Tanya Malos, respectively, provided false and/or misleading testimony to the Court.
26. East Valley Fiduciary Services, Inc., failed to get competitive bids and a contract with licensed firearms dealer to sell firearms, per Family Law Rule 69 Agreement, and failed to obtain competitive bids for the repair of a pet door.
27. East Valley Fiduciary Services, Inc., entered into a lease agreement with a six-month upfront payment against the wishes of the ward.
28. East Valley Fiduciary Services, Inc., failed to keep records for the required three-year time frame.
29. East Valley Fiduciary Services, Inc., failed to involve the ward in debt payoff plan or attempts to resolve debt as ordered.
30. East Valley Fiduciary Services, Inc., failed to inform the Gilbert Court of the ward's stay in Community Bridges.
31. East Valley Fiduciary Services, Inc., billed the estate over \$1,500.00 per hour to pay for professional fees involving the settlement conference.
32. East Valley Fiduciary Services, Inc., may have paid one of Renata Chalmers' bills to Pinnacle West Management using estate money.
33. East Valley Fiduciary Services, Inc., generated excessive fees because EVFS does not use autopay.
34. East Valley Fiduciary Services, Inc., failed to pay any of the protected person's medical bills.
35. East Valley Fiduciary Services, Inc., failed to disclose expired patent information at the settlement conference.
36. East Valley Fiduciary Services, Inc., failed to pay the entire Banfield Pet Hospital Contract.

ADDITIONAL ALLEGATIONS:

37. East Valley Fiduciary Services, Inc. filed a conservator's accounting that was inaccurate and/or misleading and/or that contained misstatements and/or misrepresentations of material facts.
38. East Valley Fiduciary Services, Inc. failed to timely file the final conservator's accounting in accordance with the Court's order.

LIST OF SOURCES FOR OBTAINING INFORMATION:(Investigative, records, outside resources, etc.):

- Written complaint and documentation submitted by complainants, Susan Wulff ("Wulff"), Barbara Livingston¹ ("Livingston"), and William Chalmers ("Chalmers"),
- Written response and documentation submitted by certificate holder, Michael Bogle ("Bogle"), Andrew Stone ("Stone"), and East Valley Fiduciary Services, Inc. ("EVFS");
- Review of applicable Certification and Licensing Division ("Division") records;
- Review of pertinent Court records, Superior Court of Arizona, Maricopa County, involving PB2017-001373 and FC2016-053887²; and pertinent records in the Court of Appeals, State of Arizona, Division One involving CA-CV 18-0294 / PB2017-001373;
- Review of applicable sections of Arizona Revised Statutes ("A.R.S."), Arizona Codes of Judicial Administration ("ACJA") §§ 7-201, 7-202, 3-302, 3-303, and Arizona Supreme Court Rules.

PERSONS INTERVIEWED:

1. Susan Wulff
2. Tanya Malos
3. William Chalmers
4. Andrew Stone
5. Michael Bogle

SUMMARY OF INVESTIGATION:

The Division received three individual and separate written complaints from Wulff, Livingston, and Chalmers, respectively. After submitting the initial complaints, Wulff and/or Chalmers continued to extensively provide additional allegations, materials, or

¹ Barbara Livingston is Chalmers' sister.

² FC2016-053887 involves Chalmers' divorce from Renata Chalmers.

input while the investigation was open. The approximately 17 allegations in Wulff's and Livingston's complaints were similar, though each contained some separate allegations. In addition, the allegations in Wulff's and Livingston's complaints were similar to the allegations in the complaint that Chalmers later filed with the Division, though Chalmers' complaint included 53 allegations. Many of Chalmers' allegations were recurrent and/or were interspersed with various other allegations throughout his complaint. While Chalmers presented separate allegations, he often renewed allegations that he previously stated. This facilitated a reduction in the number of separate or unique allegations. Allegations presented in Wulff's and/or Livingston's complaints that differed substantively from Chalmers' allegations, are included in this Investigation Summary.

Due to the similarity of the combined allegations, the three complaints have been registered under Complaint Nos. 20-0011/20-0012/21-0012. The allegations of the three complaints, the facts gathered throughout the investigation and the analysis of the facts are presented in this single Investigation Summary. Further, the allegations have been numerically and sequentially written into this Investigation Summary, but the allegations presented herein are not in accordance with the numerical sequence that the allegations appeared in the three complaints.

The Division's investigation yielded additional allegations which appear in this Investigation Summary as Additional Allegations and are presented last. For each of the allegations that were substantiated, the Division has specified which of the three licenses are involved (EVFS, Bogle, Stone).

In brief, EVFS, Bogle, and Stone deny that there was any breach of fiduciary duty to Chalmers or the estate during the administration of the guardianship and temporary conservatorship.

Summary of Procedural History

To provide context, the following is a summary of the procedural history of two cases in the Superior Court involving Chalmers: Cause Numbers FC2016-053887 and PB2017-001373. Both cases reflect extensive filings with the Court. Cause Number FC2016-053887 involved the dissolution of marriage with minor children between Chalmers and his wife, Renata Chalmers ("Renata"). This summary of procedural history is not intended to be a comprehensive history or a full chronology of the two referenced cases.

EVFS' involvement with Chalmers materialized after Charles Keller ("Keller"), counsel for Chalmers in FC2016-053887, on June 23, 2017, filed with the Court a Motion to Appoint Guardian Ad Litem for Petitioner. Keller requested that the Court appoint a Guardian Ad Litem "(GAL)" to complete an independent evaluation and assessment of Chalmers to determine whether Chalmers had diminished capacity and if additional protective measures were necessary, as fully described in Keller's Motion. Keller

expressed concern that Chalmers may not have the capacity to make adequately considered decisions in connection with the divorce proceedings.

On July 5, 2017, the Court appointed attorney Brian Theut (“Theut”) as GAL for Chalmers in FC2016-053887. The Court, in part, requested that Theut advise the Court as to Chalmers’ mental stability, whether he was capable of representing himself in the matter, and whether a guardianship was necessary.

On or about July 21, 2017, EVFS entered into a Trust Services Agreement³ with Theut for the primary purpose of inventorying and storing Chalmers’ personal property. The Trust Services Agreement was not a requirement by the Court.

On August 11, 2017, Theut filed with the Court an Emergency Petition for Appointment of Temporary Conservator for an Adult, in PB2017-001373. Theut detailed his concerns in the Emergency Petition and recommended that a conservatorship was in Chalmer’s best interest. Theut nominated EVFS to be appointed as Temporary Conservator for Chalmers.

On August 17, 2017, the Honorable Jennifer Ryan-Touhill ordered, in part, that FC2016-053887 be consolidated with PB2017-001373 for trial purposes only, to be heard by Superior Court Commissioner, Carolyn Passamonte.⁴

On August 21, 2017, EVFS was appointed as Temporary Conservator for Chalmers, per Letters of Appointment of Temporary Conservators and Acceptance of Temporary Appointment⁵ in PB2017-001373.

On August 24, 2017, Theut filed with the Court an Emergency Petition for Appointment of Temporary/Permanent Guardianship with Inpatient Mental Health Powers, in PB2017-001373. Theut detailed his concerns and nominated EVFS to serve as Guardian with mental health powers.

On August 29, 2017, EVFS was appointed as Temporary Guardian with Inpatient Mental Health Powers, per Letters of Temporary Guardianship.

On October 17, 2017, after a hearing on the Temporary Guardianship, the Court terminated the Temporary Guardianship after determining that a guardian was no longer needed for Chalmers. The hearing did not address the Temporary Conservatorship.

On February 20, 2018, the relevant parties in the matter, including Chalmers; Court-appointed counsel, Gary Doyle; GAL Theut; John McKindles, counsel for EVFS; Renata;

³ EVFS representatives executed the Trust Services Agreement on July 21, 2017; Theut, on behalf of William Chalmers, executed the Trust Services Agreement on August 2, 2017.

⁴ Minute Entry of August 17, 2017, electronically filed on August 23, 2017, in FC2016-053887

⁵ PB2017-001373.

and Angela Wilson-Goodman, counsel for Renata, Renata, executed a Family Law Rule 69 Agreement (“Rule 69 Agreement”) outlining the terms of the settlement/dissolution and division of marital assets.

On March 2, 2018, EVFS, by and through counsel, filed a Joint Petition for Approval of Rule 69 Agreement.

On March 15, 2018, Chalmers, by and through counsel, filed an Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Agreement.

On April 2, 2018, over the objections of Court-appointed counsel and Guardian Ad Litem, the Court entered a Decree of a Dissolution of Non-Covenant Marriage in FC2016-053887. The Court further ordered granting Court Appointed Counsel’s objection to Page 2, line 14, paragraph 5, of the Decree of Dissolution and striking the language, “There has been significant domestic violence between the parties.” The Court further ordered signing and granting the Decree of Dissolution, with the deletion of line 14, paragraph 5 of Page 2 of the decree, in FC10’5-052887.

On April 4, 2018, over objections of Court-appointed Counsel for the ward and objections of the Guardian Ad Litem of the ward, the Court approved the Rule 69 Agreement dated February 20, 2018, in PB2017-001373.

On May 17, 2018, EVFS was appointed as Limited Temporary Conservator for 120 days, although the corresponding Amended Letters of Temporary Conservatorship, dated June 1, 2018, in part, authorized EVFS to act as Temporary Conservator without restrictions.

Pursuant to Commissioner Passamonte’s Minute Entry, dated May 17, 2018, in PB2017-001373, the Court ordered EVFS, in part, to deal with issues related to the Rule 69 Agreement⁶ and Decree of Dissolution in the following areas:

1. Liquidation of the guns.
2. Resolution of the QDRO.⁷
3. Dealing with accounts that are in collection belonging to Mr. Chalmers in the manner set forth on the record.
4. IRS refund and the current denial posture of IRS.
5. East Valley Fiduciary will [sic] need to holdback liquid assets of Mr. Chalmers.

⁶ EVFS, by and through counsel, filed a Joint Petition for Approval of Rule 69 Agreement on March 2, 2018. The petition contained therein Exhibit “A” Rule 69 Agreement. The Rule 69 Agreement, executed by all parties, was dated February 20, 2018. Chalmers later filed an objection to the petition although the Court eventually ruled to approve the approval of the Rule 69 Agreement. Chalmers also appealed the Superior Court’s decision to the Court of Appeals, but the appellate Court upheld the lower Court’s ruling on the matter.

⁷ Qualified Domestic Relations Order Re: Intel SERPLUS, dated June 19, 2018, in FC2016-053887.

On July 3, 2018, Commissioner Passamonte ordered EVFS, in part, to satisfy the orders entered by the Court regarding payment of attorney fees and costs for representation of Chalmers in PB2017-001373 and FC2016-053887. The Court further ordered that EVFS convert qualified (non-liquid) assets to liquid assets to satisfy these orders.

On September 13, 2018, Chalmers, by and through counsel, filed with the Court a Motion to Extend Temporary Limited Conservator of an Adult and Supplement citing concerns that EVFS would not be able to complete the terms of the Qualified Domestic Relations Order (“QDRO”). The Court denied the Motion, pursuant to Commissioner Passamonte’s Minute Entry of September 18, 2018. EVFS’ appointment as Limited Temporary Conservator ended on September 18, 2018. The Court ordered that EVFS would be discharged as conservator only upon approval of the Conservator’s Final Accounting.

EVFS continued to serve as Temporary Conservator⁸ for Chalmers until the appointment was terminated on September 18, 2018.⁹

On September 19, 2018, EVFS transferred \$125, 597.85¹⁰ from Chalmers’ conservator’s account into EVFS’ Master Operating Account. These funds were to be used to satisfy payment of the outstanding professional liabilities involving representation of Chalmers, per Probate Rule 33 Applications (“Rule 33 Applications”)

On December 14, 2020, a hearing was held regarding the Conservator’s Final Accounting.

On January 15, 2021, the Court approved the Conservator’s Final Accounting. Pursuant to Commissioner Thomas Marquoit’s Minute Entry of the same date, certain Rule 33 Applications for attorney’s fees and costs and the fiduciary’s fees and costs were denied.

⁸ EVFS was appointed as Temporary Limited Conservator on May 8, 2018, in PB2017-001373.

⁹ Minute Entry dated September 10, 2018, set out that the Temporary Limited Conservatorship would terminate on September 18, 2018, unless extended by further Order of the Court, and that EVFS would be discharged only upon approval of the final accounting. There were no extensions Ordered by the Court.

¹⁰ On September 19, 2018, EVFS transferred \$125, 597.85 from Chalmers’ conservator account into EVFS Master Operating Account.

ALLEGATIONS, DETERMINATIONS AND AUTHORITIES		
Allegations	Certification and Licensing Division's Determinations	Authority: Arizona Rules of Probate Procedure, Arizona Revised Statutes and Arizona Codes of Judicial Administration
Allegation 1: East Valley Fiduciary Services, Inc., conducted financial transactions on behalf of the estate after the conservatorship was terminated by the Court.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1), ACJA §7-202(F)(1), ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a) and (b), ACJA §7-202(J)(5), A.R.S. §14-5430(B) and (C). Other applicable code ACJA §7-202(B)(3).
Allegation 2: East Valley Fiduciary Services, Inc. engaged in co-mingling of estate funds with its own account.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1), ACJA §7-202(F)(1), ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a), ACJA § 7-202(J)(5)(d), ACJA § 7-202(J)(2)(b)(1). Other applicable code ACJA §7-202(B)(3).
Allegation 3: East Valley Fiduciary Services, Inc., failed to marshal and secure estate property and/or failed to timely marshal and secure estate property.	Substantiated involving East Valley Fiduciary Services, Inc., Michael Bogle, and Andrew Stone.	ACJA §7-201(F)(1), ACJA §7-202(F)(1), ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a), ACJA §7-202(J)(5)(c), ACJA §7-202(E)(3)(f)(1)(a). Other applicable code ACJA §7-202(B)(3), ACJA §7-202(a). ACJA §3-302(A)
Allegation 4: East Valley Fiduciary Services, Inc., failed to timely file an Inventory and Appraisal with the Court and did not file an Estate Budget with the Court.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a); ACJA §7-202(J)(1)(a), Arizona Rules of Probate Procedure Rule 30(A)(1)(2), Rule 30.1(A)(1) and (2), Rule 30.2(A)(B)(C),(D), (E), (F), Rule 30.3(A)(B), (C),(D), Rule 33(A), (B)(1)(2)(3) and (C), A.R.S. §14-5418, A.R.S. §14-5109(A) and (D), ACJA §3-303(D)(2)(a). Other applicable code ACJA §3-302(A and (D))(b)(1)(a)
Allegation 5: East Valley Fiduciary Services, Inc., failed to comply with	Substantiated involving East Valley	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a). ACJA §7-

the Court Accountant's recommendations.	Fiduciary Services, Inc., and Michael Bogle.	202(J)(1)(a), ACJA §7-202(J)(1)(c)(2) and (3)
Allegation 6: East Valley Fiduciary Services, Inc., engaged in and/or allowed block billing and double billing.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a), ACJA §3-303(D)(2)(c)
Allegation 7: East Valley Fiduciary Services, Inc., failed to return and/or failed to timely return estate property and records when requested and/or after the conservatorship ended.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a) and (b), ACJA §7-202(J)(5)(m), A.R.S. §14-5430(B) and (C), A.R.S. §14-5418(C)(1), (2), and (3)
Allegation 8: East Valley Fiduciary Services, Inc., failed to provide 120 days of funding to the ward at the end of the conservatorship, in violation of a Court order.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a),
Allegation 9: East Valley Fiduciary Services, Inc., breached its fiduciary duty to the estate by failing to take post-decree action against Renata Chalmers involving the sale of firearms accessories and a 1998 Ford Truck.	Not Substantiated	N/A
Allegation 10: East Valley Fiduciary Services, Inc., failed to take action to terminate the Conservatorship on October 17, 2017.	Not Substantiated	N/A
Allegation 11: East Valley Fiduciary Services, Inc overstated the value of the estate on Probate Rule 33 Applications to justify higher fiduciary fees.	Not Substantiated	N/A
Allegation 12: East Valley Fiduciary Services, Inc., failed to involve the protected person in his divorce proceedings.	Not Substantiated	N/A
Allegation 13: East Valley Fiduciary Services, Inc., filed a false police	Not Substantiated	N/A

report and violated the Health Insurance Portability and Accountability Act by sharing confidential medical information about the ward/protected person.		
Allegation 14: East Valley Fiduciary Services, Inc. failed to seek Court clarification on an unclear Court order.	Not Substantiated	N/A
Allegation 15: East Valley Fiduciary Services, Inc., acquired assets after the termination of the conservatorship and failed to report those assets to the Court.	Not Substantiated	N/A
Allegation 16: East Valley Fiduciary Services, Inc., failed to share the costs of the storage of marital assets as outlined in the Court's Minute Entries.	Not Substantiated	N/A
Allegation 17: East Valley Fiduciary Services, Inc., failed to include the estate's tax liability in the final accounting.	Not Substantiated	N/A
Allegation 18: East Valley Fiduciary Services, Inc., failed to inform the Court that the fiduciary failed to complete all the terms of the divorce prior to the end of the conservatorship and did not comply with the Court order about the same.	Not Substantiated	N/A
Allegation 19: East Valley Fiduciary Services, Inc., failed to provide documentation pursuant to Arizona Revised Statutes §14-56519(A)(3) and Michael Bogle and Andrew Stone failed to inform the Court that Barbara Livingston had the most recent Durable Power of Attorney, pursuant to A.R.S. §14-5410.	Not Substantiated	N/A
Allegation 20: East Valley Fiduciary Services, Inc., made a poor decision by hiring a convicted felon as the property manager.	Not Substantiated	N/A
Allegation 21: East Valley Fiduciary Services, Inc., sent Patrick Moore to a	Not Substantiated	N/A

<p>settlement conference knowing he had no knowledge of the ward's case.</p>		
<p>Allegation 22: East Valley Fiduciary Services, Inc., paid off Renata Chalmers' Subaru violating the Family Law Rule 69 Agreement and/or charged services to the estate.</p>	<p>Substantiated only for billing the estate for time involving paying off the Subaru Crosstrek for Renata Chalmers, involving East Valley Fiduciary Services, Inc., and Michael Bogle.</p>	<p>ACJA §7-201(F)(1), ACJA §7-202(F)(1), ACJA §7-201(H)(6)(a), ACJA §7-202(J)(5)(b)(1) and A.R.S §14-1104.</p>
<p>Allegation 23: East Valley Fiduciary Services, Inc., engaged in an inappropriate relationship with Renata Chalmers allowing Infringement by a third party and failed to include the ward in communications with Renata Chalmers regarding the divorce.</p>	<p>Substantiated only as to failure to make decisions in accordance with the determined preferences of the protected person, involving East Valley Fiduciary Services, Inc., and Michael Bogle.</p>	<p>ACJA §7-201(F)(1), ACJA §7-202(F)(1), ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a), ACJA §7-202(J)(3)(a) and (b)</p>
<p>Allegation 24: East Valley Fiduciary Services, Inc., Damaged or Lost Estate Items</p>	<p>Not Substantiated</p>	<p>N/A</p>
<p>Allegation 25: Michael Bogle and Tanya Malos provided false and/or misleading testimony to the Court.</p>	<p>Not Substantiated</p>	<p>N/A</p>
<p>Allegation 26: East Valley Fiduciary Services, Inc., failed to get competitive bids and a contract with licensed firearms dealer to sell firearms, per Family Law Rule 69 Agreement and failed to get competitive bids for the repair of a pet door.</p>	<p>Not Substantiated</p>	<p>N/A</p>
<p>Allegation 27: East Valley Fiduciary Services, Inc., entered into a lease</p>	<p>Not Substantiated</p>	<p>N/A</p>

agreement with a six-month upfront payment against the wishes of the ward.		
Allegation 28: East Valley Fiduciary Services, Inc., failed to keep records for the required three-year time frame.	Not Substantiated	N/A
Allegation 29: East Valley Fiduciary Services, Inc., failed to involve the ward in debt payoff plan or attempts to resolve debt as ordered.	Not Substantiated	N/A
Allegation 30: East Valley Fiduciary Services, Inc., failed to inform the Gilbert Court of the ward's stay in Community Bridges.	Not Substantiated	N/A
Allegation 31: East Valley Fiduciary Services, Inc., billed the estate over \$1,500.00 per hour to pay for professional fees involving the settlement conference.	Not Substantiated	N/A
Allegation 32: East Valley Fiduciary Services, Inc., may have paid one of Renata Chalmers' bills to Pinnacle West Management using estate money.	Not Substantiated	N/A
Allegation 33: East Valley Fiduciary Services, Inc., generated excessive fees because EVFS does not use autopay.	Not Substantiated	N/A
Allegation 34: East Valley Fiduciary Services, Inc., failed to pay any of the protected person's medical bills.	Not Substantiated	N/A
Allegation 35: East Valley Fiduciary Services, Inc., failed to disclose expired patent information at the settlement conference.	Not Substantiated	N/A
Allegation 36: East Valley Fiduciary Services, Inc., failed to pay the entire Banfield Pet Hospital Contract.	Not Substantiated	N/A
Allegation 37: East Valley Fiduciary Services, Inc. filed a conservator's accounting that was inaccurate and/or misleading and/or that	Substantiated involving East Valley Fiduciary Services, Inc.,	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a) and (c)(2) and (3),

contained misstatements and/or misrepresentations of material facts.	and Michael Bogle.	
Allegation 38: East Valley Fiduciary Services, Inc. failed to timely file the final conservator's accounting in accordance with the Court's order.	Substantiated involving East Valley Fiduciary Services, Inc., and Michael Bogle.	ACJA §7-201(F)(1); ACJA §7-202(F)(1); ACJA §7-201(H)(6)(a), ACJA §7-202(J)(1)(a) and (c)(3) Arizona Rules of Probate Procedure Rule 30(B)(5) and (6)

SUMMARY OF FACTUAL FINDINGS OF INVESTIGATION AND ANALYSIS:

Unless otherwise noted, all citations involving ACJA §7-202 are pursuant to Administrative Order 2012-64, effective September 1, 2012, in effect at the time of the alleged misconduct.¹¹

Allegation 1: East Valley Fiduciary Services, Inc., conducted financial transactions on behalf of the estate after the conservatorship was terminated by the Court.

As previously stated, EVFS was appointed as Temporary Conservator for Chalmers on August 21, 2017, per Letters of Appointment of Temporary Conservator and Acceptance of Temporary Appointment. The Temporary Conservatorship was terminated on September 18, 2018.

Chalmers alleged that EVFS conducted certain financial transactions after the Court ended the temporary conservatorship thereby doing so without judicial authority. Chalmers identified two financial transactions of concern:

- 1) On September 20, 2018, EVFS issued Check No. 1005, in the amount of \$7,272.73, to Renata.
- 2) On September 21, 2018, Bogle, as conservator, executed a document authorizing the transfer of \$46,314.88 in a TD Ameritrade Account to Renata.

The two referenced payments to Renata were part of the Rule 69 Agreement (divorce settlement) executed by Chalmers and Renata and other relevant parties (counsel) involved in the settlement. The Rule 69 Agreement was filed with and accepted by the Court.

¹¹ ACJA §7-202 was amended by Administrative Order 2020-56, effective April 1, 2020.

In his interview with the Division, Bogle was asked about the September 20, 2018, and September 21, 2018, payments to Renata. He was asked under what authority he conducted the financial transactions after the conservatorship terminated, absent a judicial order extending the conservatorship past September 18, 2018. Bogle acknowledged the conservatorship ended on September 18, 2018, and that there was no Court order extending the conservatorship. He told the Division that Check No. 1005, dated September 20, 2018, for the amount of \$7,272.73, payable to Renata, represented her 50% portion of tax returns for 2014, 2015.

Bogle further acknowledged that on September 21, 2018, he executed, as conservator for Chalmers, an Account Transfer Form authorizing the transfer of \$46,314.88 in a TD Ameritrade Institutional account to Renata. The TD Ameritrade document was also executed by Renata on September 21, 2018.

Bogle told the Division that EVFS continued to conduct business for Chalmers and the estate after September 18, 2018, because Bogle felt obligated to fulfill responsibilities involving the Rule 69 Agreement.

As to the reason the two financial transactions were not completed prior to the termination of the conservatorship, Bogle said EVFS was waiting for the Internal Revenue Service ("IRS") to resolve a tax refund issue. He reiterated that it was EVFS' obligation to its duties under the Rule 69 Agreement as the reason he also executed the TD Ameritrade Account Transfer Form, on September 21, 2018, authorizing the transfer of \$46,314.88 from the estate to Renata.

The Division reviewed EVFS' records involving federal and state taxes.

a) Tax Refund

Bogle told the Division that EVFS issued Renata Check No. 1005 in the amount of \$7,272.73, two days after the conservatorship ended because there was a delay by the IRS in sorting out a tax refund. EVFS' records demonstrate that the United States Treasury issued a check, dated June 15, 2018, to Renata and Chalmers, care of EVFS, for the amount of \$12,734.70 involving a tax refund. On June 19, 2018, EVFS deposited the check from the United States Treasury into Chalmers' conservator accounting ending **[REDACTED]

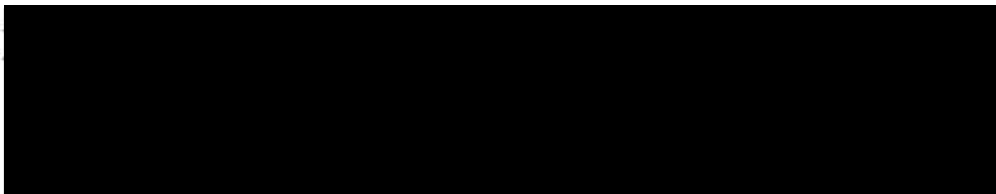
EVFS records show that the State of Arizona issued a check, dated June 8, 2018, to Chalmers and Renata, care of EVFS, for the amount of \$1,407.57, involving a state tax refund. EVFS deposited the check from the State of Arizona into Chalmers' conservator account ending ***[REDACTED] on June 19, 2018.

EVFS records further demonstrate that on April 13, 2018, Chalmers' conservator account ending ***[REDACTED] was credited \$405.19 involving a check from the State of Arizona. It is

not clear what that check represented but the sum of the three referenced government checks in the respective amounts of \$405.19 (State of Arizona credit), \$12, 734.70 (United States Treasury tax refund), and \$1,407.57 (State of Arizona tax refund), equals \$14,547.46, half (50%) of which is \$7,273.73, consistent with the amount EVFS issued to Renata for her portion of the tax refunds.

In addition, EVFS records demonstrate that EVFS transferred \$7,273.73 from Chalmers' conservator account ending ***[REDACTED] to Chalmers' conservator account ending ***[REDACTED] on July 17, 2018. Check No. [REDACTED], payable to Renata, in the amount of \$7, 273.73, was dated September 20, 2018, and appeared to have cleared Chalmers' conservator accounting ending ***[REDACTED] on September 21, 2018.

The Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 3 – Receipts, shows the three transactions involving taxes which total \$14,547.46, half of which is \$7,273.73 consistent with the payment issued to Renata:



The facts suggest that EVFS received the pertinent federal and state tax refunds by June 15, 2018, and EVFS transferred \$7,273.73 into Chalmers' account on July 17, 2018. Although the \$7, 273.73 was in the bank account on July 17, 2018, EVFS did not issue Check No. [REDACTED] to Renata until September 20, 2018, after the conservatorship was terminated.

Issuing Checks 9/20/2018	Paulina Cabezas	585.00	0.20	\$17.00
Issued check #1005 to Renata Chalmers in the amount of \$7,273.73 for other income, completed, scanned and saved to Therefore.				

Bogle's explanation that EVFS issued the \$7, 273.73 portion of the tax refunds to Renata on September 20, 2018, because of a delay by the IRS does not appear to be supported by EVFS' records because the amount equal to Renata's share of the tax refunds was in the Chalmers conservator's bank accounts prior to September 18, 2018. Moreover, Bogle's explanation is inconsequential because the facts suggest the federal and state tax refunds checks were issued to EVFS by June 2018, and even if there was a delay by the IRS in processing the tax refunds, the conservatorship ended on September 18, 2018. By dispersing Check No. [REDACTED] to Renata on September 20, 2018, Bogle and EVFS continued to act on behalf of the estate without judicial authority, in violation of ACJA §7-202(J)(1)(b):

b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval.

A.R.S §14-5430. Termination of proceeding

B. The court, on determining after notice and a hearing that the minority or disability of the protected person has ceased, shall terminate the conservatorship unless the court has continued the conservatorship or other protective order pursuant to section 14-5401, subsection B.

C. On termination, title to assets of the estate passes to the formerly protected person or to the person's successors. The order of termination shall provide for expenses of administration and shall direct the conservator to execute appropriate instruments to evidence the transfer.

b) TD Ameritrade

Bogle does not dispute that on September 21, 2018, he executed, as conservator for the estate, the referenced financial transaction involving TD Ameritrade, although the conservatorship had ended on September 18, 2018.

On September 21, 2018, Bogle, identifying as “Conservator for William J. Chalmers,” executed an Account Transfer Form authoring TD Ameritrade to transfer \$46,314.88 to Renata. The signature portion of the document is shown below:

4 DISCREPANCIES OF ACCOUNT NAME AND TYPE (IF APPLICABLE)

If the account you are transferring is not the Asset, please complete the following authorization. We hereby authorize a transfer from the account of William Chalmers via East Valley Fiduciary, to the account at TD Ameritrade for Reheta Chalmers

Account Owner's Signature: [Redacted] or William J. Chalmers Date: 9/21/2018

Account Co-Owner's Signature: [Redacted] Date: 9/21/18

When transferring from a joint account at a contra firm to an individual account at TD Ameritrade, the party losing ownership of the assets must sign section 4. If the party losing ownership does not have an account at TD Ameritrade, please attach a notarized letter of authorization signed by the party losing ownership of the assets. If the discrepancy is a result of a name change for an account owner, please provide a copy of the legal document such as a marriage certificate, divorce decree, etc. Further documentation may be required, depending on the situation.

5 SIGNATURE(S): PLEASE READ AND SIGN THIS SECTION IF COPY OF YOUR LATEST STATEMENT IS REQUIRED

If this account is a qualified retirement account, I have awarded the applicable plan to which it names TD Ameritrade Clearing, Inc. as a successor custodian.

Unless otherwise indicated in the instructions above, please transfer all assets in my account in kind to TD Ameritrade. I understand that to the extent any assets in my account are not readily transferable, with or without penalties, such assets may not be transferred within the time frames required by applicable regulations.

Unless otherwise indicated in the instructions above, I authorize you to liquidate any non-transferable publicly traded money market fund assets that are part of my account and transfer the resulting credit balance to TD Ameritrade Clearing, Inc. I authorize you to deduct any outstanding fees due you from the credit balance in my account. If my account does not contain a credit balance, or if the credit balance in the account is insufficient to satisfy any outstanding fees due you, I authorize you to liquidate the assets in my account to the extent necessary to satisfy that obligation. If certificates or other instruments in my account are in your physical possession, I instruct you to transfer them in good deliverable form, including affixing any necessary tax stamps, to enable the successor custodian to transfer them in its name for the purpose of sale, when and as directed by me. I understand that upon receiving a copy of this transfer instruction, you will cancel all open orders for my account on your books.

Account Owner's Printed Name: Reheta Chalmers

Account Owner's Signature: [Redacted] Date: 9/21/18

Account Co-Owner's Printed Name (if necessary): _____

EVFS' billing entry reflects the transaction:

Signed Document	Michael Bogie	\$148.00	0.10	\$14.80
9/21/2018				
Reviewed and signed Ameritrade Account Transfer				

EVFS was initially appointed as temporary conservator for Chalmers out of concern that he was unable to adequately manage his affairs during the divorce proceedings. Each successive conservatorship appointments were temporary appointments suggesting that the Court determined Chalmers required only interim protection to get him through the divorce proceedings. The Court order specified the temporary conservatorship would not extend past September 18, 2018.

The Court's Minute Entry, dated May 17, 2018, pertinently:

IT IS ORDERED that East Valley Fiduciary as limited temporary conservator shall continue for a period of 120 days from the date of the current expiration.

The Court's Minute Entry, dated September 10, 2018, pertinently:

IT IS FURTHER ORDERED that the appointment of the Temporary Limited Conservator shall terminate on September 18, 2019¹² (“120 days from the date of the current expiration”) [sic] unless extended by further Order of the Court.

IT IS FURTHER ORDERED that within 60 days of the date of the entry for this Order, East Valley Fiduciary shall file a formal accounting for the period of the appointment since August 17, 2017, until termination of the temporary limited conservatorship. East Valley Fiduciary Services will be discharged only upon approval of the accounting. [original emphasis]

On September 13, 2018, Chalmers filed with the Court a Motion to Extend Temporary Limited Conservatorship citing concerns that EVFS would not be able to complete the terms of the QDRO before the conservatorship ended.

On September 18, 2018, per Minute Entry, the Court denied Chalmers’ Motion stating, pertinently:

The Court would expect that the limited temporary conservator’s actions would be self-evident as to the duties set forth in the Court’s order signed 9-5-18. To the extent that the limited temporary conservator determines that there is ambiguity in what they have done with respect to each of their duties under the order, they must inform Mr. Chalmers, in writing, of what they have done.

Similarly, if Mr. Chalmers believes that the temporary limited conservator is a necessary witness at an OSC hearing in the post-decree matter he may retain them or subpoena them to appear at any evidentiary hearing that the family court may schedule in connection with the OSC.

IT IS ORDERED denying the Motion to Extend Temporary Limited Conservatorship of an Adult. [original emphasis]

Though conservatorship ended on September 18, 2018, EVFS was not discharged as conservator by the Court. There is a distinction between the Court terminating the conservatorship and the Court discharging the conservator. The termination of the conservatorship ends the conservator’s authority to act for and make decisions on behalf of the estate and protected person. The Court’s final discharge of the conservatorship releases the conservator’s liability in connection with the conservatorship and exonerates and releases the bond, which is conditioned upon the faithful discharge of the conservator’s duties. The Court commonly discharges and/or releases the conservator after the conservator’s final accounting is approved by the Court.

¹² The Court issued a Pro Tunc Minute Entry on September 10, 2018, correcting the date from September 18, 2019 to September 18, 2018.

When the temporary conservatorship ended on September 18, 2018, Chalmers was no longer a protected person, and his rights were fully restored. The estate's assets, including financial assets and personal property, that were managed and controlled by EVFS throughout the appointment as temporary conservator, must be turned over to Chalmers' control upon the termination of the conservatorship, absent a Court order extending the conservatorship or authorizing any extended involvement and action, none of which occurred in this matter.

A.R.S §14-5430. Termination of proceeding

B. The court, on determining after notice and a hearing that the minority or disability of the protected person has ceased, shall terminate the conservatorship unless the court has continued the conservatorship or other protective order pursuant to section 14-5401, subsection B.

C. On termination, title to assets of the estate passes to the formerly protected person or to the person's successors. The order of termination shall provide for expenses of administration and shall direct the conservator to execute appropriate instruments to evidence the transfer.

While serving as temporary conservator, EVFS had the authority and obligation to pay legitimate expenses and claims on behalf of the estate, including monies owed to Renata, per the Rule 69 Agreement. Conversely, any claim or debt owed by Chalmers and his estate after the temporary conservatorship ended was outside of EVFS' scope of authority, absent the Court's order to extend the conservatorship and/or directive from the Court. When the conservatorship ended, EVFS was duty bound to turn over financial accounts, assets, and property to Chalmers and it was Chalmers' responsibility to resolve any outstanding debt or claim against him and/or his estate going forward.

Bogle's statements that EVFS continued to act on behalf of the estate after the conservatorship ended because Bogle felt obligated to fulfill Rule 69 responsibilities belies the Court's September 10, 2018, order,¹³ and ruling:

IT IS FURTHER ORDERED [original emphasis] that the appointment of the Temporary Limited Conservator shall terminate on September 18, 2019 ("120 days from the date of the current expiration") **unless extended by further Order of the Court.** [emphasis added]

Moreover, Bogle's explanation for conducting the transactions after the conservatorship ended is problematic. The Rule 69 Agreement was, fundamentally, a two-party private agreement between Chalmers and Renata, entered into by the two parties as a basis for their

¹³ Commissioner Passamonte's Minute Entry dated September 10, 2018, in PB2017-001373.

divorce settlement. By executing the TD Ameritrade Account Transfer Form, on September 21, 2018, as “Conservator for William J. Chalmers,” days after the conservatorship ended, Bogle and EVFS continued to act on behalf of the estate and protected person without authority, in violation of ACJA §7-202(J)(1)(b):

- b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval.

Additional Transactions After Conservatorship Ended

The Division found other examples when Bogle and EVFS conducted financial transactions on behalf of Chalmers and the estate after the Court terminated the conservatorship. The following background information may help explain the issues involving the additional transactions EVFS made after the conservatorship ended.

On May 17, 2018, the Court ordered that EVFS was ordered to deal with several issues related to the Rule 69 Agreement and the Decree of Dissolution in the following areas:

1. Liquidation of guns.
2. Resolution of QDRO.
3. Dealing with accounts that are in collection belonging to Mr. Chalmers in the manner set forth on the record.
4. IRS refund and the current denial posture of IRS.
5. East Valley Fiduciary will [sic] need to holdback liquid assets of Mr. Chalmers.

c) Holdback Funds

EVFS was ordered to holdback Chalmers’ liquid assets, however, the Court did not specify the amount of assets for holdback. At a May 17, 2018, hearing, Commissioner Passamonte stated the holdback amount would be determined by the conservator. EVFS proceeded with a holdback of estate funds to satisfy outstanding professional fees, primarily Rule 33 Applications for approval of attorneys’ fees and costs and fiduciary fees and costs.

On September 19, 2018, the day after the end of the temporary conservatorship, EVFS transferred \$125, 597. 85 (holdback funds) from Chalmers’ conservator account ending ***[REDACTED] into EVFS’ account ending ***[REDACTED]. Although on or about May 21, 2018, the Court had approved Rule 33 Applications for attorneys’ fees and costs and fiduciary fees and costs, by the end of the conservatorship, EVFS had not fully paid outstanding balances of those fees and costs.

On December 6, 2018, EVFS, by and through counsel, filed with the Court the Final Inventory & Accounting.

On December 8, 2018, Chalmers, by and through counsel, filed with the Court a Memo of points offering that a cause of action existed to deny professional fees and hold the parties in contempt of Court, stating that injuries caused by gross negligence resulted in long term life changing damage to Chalmers. Chalmers argued that negligence existed due to a deviation from standards of care that other reasonable professionals similarly situated would exercise in the situation. He stated that the fee applications before the Court were unreasonable because the parties failed to address the final Court orders, inflated the Rule 33 estate values in their filing and generated block billing. Chalmers highlighted a number of points against professionals involved in his case. In part, Chalmers sought the Court to order the professionals to return all fees from October 17, 2017, through the end of the conservatorship.

The Division notes that many of the points in the Memo of points were also alleged in Chalmers' complaint filed with the Division.

On March 14, 2019, Chalmers, by and through counsel, filed with the Court an Objection to Petition for Approval of Final Annual Account; Motion to Appoint Independent Accountant.

On March 28, 2019, EVFS, by and through counsel, filed a Response to Objection to Petition for Approval of Final Annual Account; Motion to Appoint Independent Accountant. In part, EVFS contested Chalmers' "paranoid theories" that virtually every professional involved in the case to date was implicated in a grand conspiracy against Chalmers. EVFS argued that Chalmers' theories were a chief driver of the significant legal costs incurred over the last nineteen months; due diligence required that the professionals involved run down Chalmers' many claims, the vast majority of which were ultimately found to be unsubstantiated.

EVFS, via counsel, said Chalmers had many opportunities to object to the Rule 33 Petitions that had previously been filed and approved in the case, but he failed to do so, stating Chalmers' Objection not only failed to address the outstanding Rule 33 Petitions with the required specificity, but that Chalmers was seeking to relitigate virtually the entirety of the probate action, including issues that had already been extensively vetted and argued before the Court. EVFS sought that the Court decline Chalmers' "poorly disguised attempt at a second bite at the apple. If it is allowed to proceed, the only outcome will be to further waste his diminishing resources chasing claims already shown not to exist."

On May 24, 2019, Chalmers, by and through counsel, filed with the Court a Motion to Release to Mr. Chalmers the Remaining Funds Held by East Valley Fiduciary Services, and To Release Firearms to Mr. Chalmers' Counsel: Motion For Fees and Costs. In part, Chalmers sought release of \$135, 000.00 held by EVFS and release of the firearms and related equipment, if any, given to EVFS.

On June 25, 2019, Chalmers, by and through counsel, filed with the Court an Objection to (4) Rule 33 Applications including ones filed by EVFS on December 13, 2018; Scharber's filed on December 13, 2018; McKindles filed on December 7, 2018 (John McKindles ("McKindles") is counsel to EVFS); and Theut's filed on January 17, 2019.

On July 9, 2019, EVFS, by and through counsel, filed with the Court Opposition to Motion To Release Funds and Firearms. As to holdback funds, EVFS stated, in part, that as of May 17, 2018, Commissioner Passamonte directed EVFS to "holdback liquid assets of Mr. Chalmers." EVFS said most of the holdback money had already been paid out pursuant to Court-approved Rule 33 Statements and only \$61, 136.63 remained for the payment of the few Rule 33 Statements that remained before the Court.

On July 17, 2019, the Court issued a Minute Entry regarding a status conference and initial hearing regarding the Rule 33 Applications in dispute and Motion to Release Mr. Chalmers for the Remaining Funds Held by East Valley Fiduciary Services and to Release Firearms to Mr. Chalmers' counsel. As to the holdback funds, the Court stated:

Mr. Chalmers' allegations are serious and the Court does not doubt that he would benefit from the release of the funds now if he is successful. However, his success is certainly not guaranteed. Further the statements in Court indicate that if Mr. Chalmers received the funds at issue, he would immediately use them to pay off creditors or for some other purpose. If he won at the first hearing and then the fee petitions were later approved, the money would already be gone. As such, keeping the money in place until a judicial determination is made on the pending fee petitions makes the most sense. There are various claims on those funds in the form of fee petitions and all parties making those claims are entitled to be heard.

The Court held an evidentiary hearing on December 14, 2020, regarding pending Rule 33 fee applications and the conservator's final accounting. The Court's Minute Entry, dated January 15, 2021, addressed numerous pending Rule 33 Applications. The Court ruled on the Rule 33 Applications that had been filed with the Court in December 2018 and January 2019 and the Court denied the subject Rule 33 Applications. The Court also ruled that the Court would not review any previously approved Rule 33 Applications.

The holdback funds that EVFS kept from Chalmers after the temporary conservatorship ended involved the Rule 33 Applications. However, EVFS performed two transactions one month after the conservatorship ended that were not part of the Rule 33 applications involving attorneys' fees and costs and fiduciary fees and costs. EVFS made payments to Certified Public Accountant, James Raftery ("Raftery"), and licensed firearms dealer, Curt

La Manna¹⁴ (“La Manna”) for their services rendered during the pendency of the conservatorship. The two respective checks were paid out of EVFS’ business Operating account ending ***[REDACTED].

- 1) On October 18, 2018, EVFS issued a check to Raftery for the amount of \$1,354.61, Check No. [REDACTED].
- 2) On October 18, 2018, EVFS issued a check to La Manna for the amount of \$6,205.00, Check No. [REDACTED].



Though EVFS issued the two referenced checks to Raftery and La Manna on October 18, 2018, in the Final Inventory & Accounting that EVFS filed with the Court on December 6, 2018, EVFS identified the two payments to Raftery and La Manna, Checks Nos. [REDACTED] (Raftery) and [REDACTED] (La Manna), respectively, as being issued on September 17, 2018, but were “uncleared checks.”

UNCLEARED CHECKS WRITTEN PRIOR TO END OF CONSERVATORSHIP

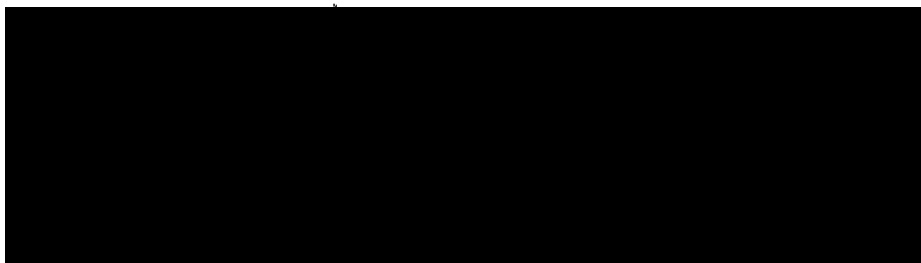


Bogle was asked about the Final Inventory & Accounting which told the Court that the checks to Raftery and La Manna were issued on September 17, 2018, but EVFS records

¹⁴ Curt La Manna is a Federal Firearms Licensed dealer. License : [REDACTED] (expiration 10//1/2024 (LA MANNA, CURT P | Firearm Dealer and FFL Store in [REDACTED] (fflapi.com). La Manna was retained to assist with the sale of firearms per Clause 17 the Rule 69 Agreement.

showed that the two checks were actually issued to Raftery and La Manna on October 18, 2018. Bogle told the Division that EVFS included the checks to Raftery, and La Manna in the Final Inventory & Accounting filed with the Court “to account for the checks” because the money was owed to them. Bogle said EVFS did not send the checks to Raftery and Le Manna on September 17, 2018, but EVFS sent the checks to Raftery and La Manna on October 18, 2018.

It is not clear why EVFS did not send the checks to Raftery and La Manna with sufficient time to clear the bank account before the temporary conservatorship ended on September 18, 2018. The Final Inventory & Accounting also shows that EVFS issued five checks on September 17, 2018, and three checks on September 18, 2018, that were identified as checks written but not yet cleared.

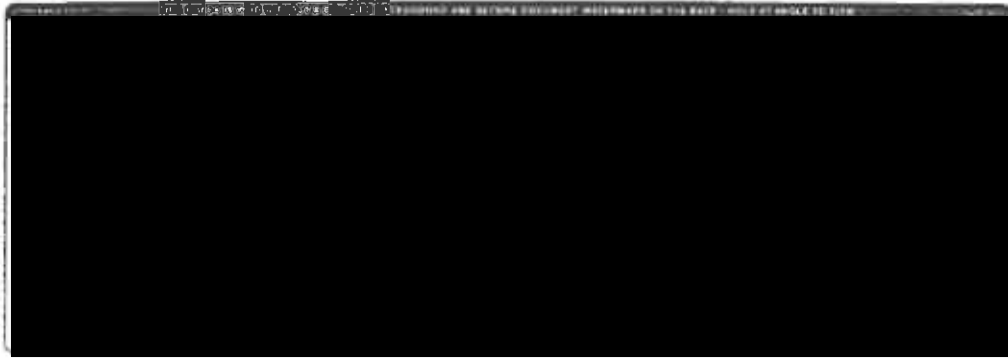


In addition, the Final Inventory & Accounting identified Raftery and La Manna as respective creditor under bills and payables more than 30 days old.



By waiting until October 18, 2018, to pay Raftery and La Manna, Bogle and EVFS conducted the transactions after the conservatorship had been terminated. After the conservatorship ended, Raftery and La Manna should have been listed as creditors and any money owed by the estate to Raftery and La Manna for their respective services rendered, was Chalmers’ responsibility because after September 18, 2018, he was no longer a protected person and his rights had been fully restored.

Another example of EVFS conducting financial transactions after the conservatorship ended involved a payment to McKindles Law Firm, for the amount of \$4,295.25, Check No. [REDACTED], dated December 12, 2018, paid via EVFS’ Operating account ending ***[REDACTED]. The memo line of the check identifies the payment for “Remainder of legal fees for Chalmers per court order.”

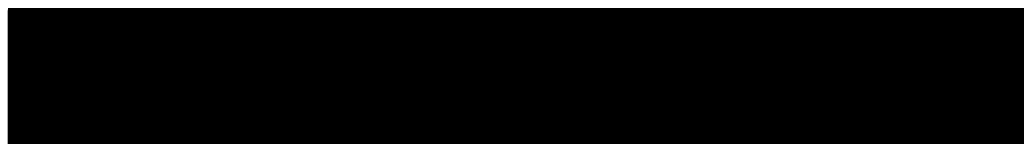


Check No. [REDACTED] to McKindles Law Firm presented payment for the outstanding balance of the Rule 33 Application filed with the Court on April 2, 2018 for the period September 28, 2017, through March 27, 2018.

In the Rule 33 Application, McKindles noted that the firm received some payment but was still owed \$33,090.00 to be paid by the estate. McKindles Law Firm's Ledger Report filed with the Rule 33 Application as Exhibit A showed payments of \$2,500.00 on September 30, 2017, \$2,500.00 on October 2, 2017, and \$1,660.00 on November 13, 2017.

On May 21, 2018, the Court approved that Rule 33 Application and amount owed to McKindles Law Firm.

EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, shows that McKindles Law Firm was paid \$1,660.00 on November 17, 2017, Check No. [REDACTED], and \$28,794.75 on May 10, 2018, Check No. [REDACTED], which represented "Partial payment thru 4/18.



McKindles had been approved for legal fees and costs for the period from September 27, 2017 through March 27, 2018, per the Court's order, and not through April 2018, as stated in EVFS' accounting entry, reflected as "Partial payment thru 4/18." On December 17, 2018, McKindles filed with the Court a Rule 33 Application for fees and costs for the period March 28, 2018 through October 30, 2018.

Regardless, the payment of \$28,794.75, that EVFS issued to McKindles Law Firm on May 10, 2018, left a remaining balance of \$4,295.25 owed by the estate and approved by the Court on May 21, 2018. Therefore, the check for \$4,295.25 EVFS issued to McKindles Law Firm on December 12, 2018, appears to represent payment of the remaining balance owed to McKindles.

EVFS' actions and timing involving payment to McKindles Law Firm contain inconsistencies. The Final Inventory & Accounting showed that EVFS issued Check No. [REDACTED] to McKindles Law Firm, for the amount of \$14,275.75, on September 17, 2018, from Chalmers' conservator account ending ***[REDACTED] while the conservatorship was in place, but that the check had yet to clear.

UNCLEARED CHECKS WRITTEN PRIOR TO END OF CONSERVATORSHIP

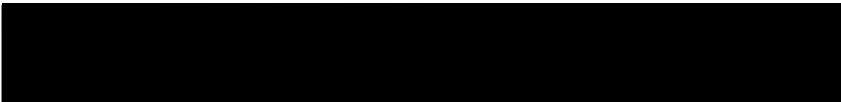
9/17/2018 9800 [REDACTED] McKindles Law Firm Fees thru August, 2018 -\$14,275.75

EVFS time entries show billing for time involving the same check to McKindles Law Firm.

Time Entries	Billed By	Rate	Hours	Sub
Issuing Checks 9/17/2018	Paulina Cabezas	\$85.00	0.70	\$59.50
Issued check #1016 to McKindles Law Firm in the amount of \$14,275.75 for Attorney fees.				

However, bank statements for Chalmers' conservator account ending ***[REDACTED] do not show Check No. 1016 being issued between September through November 2018 nor was there record of the subject check clearing the account. It is not clear why McKindles Law Firm was apparently owed \$14,278.75 from the estate when records suggest the outstanding balance on the Court approved Rule 33 Application for the period September 27, 2017, through March 27, 2018, filed on April 2, 2018, was \$4,295.25.

The Final Inventory & Accounting shows McKindles Law Firm as a creditor involving bills and payables more than 30 days old.



By September 19, 2018, EVFS had transferred Chalmers' remaining cash assets of \$125,597.85 from his conservator's account ending ***[REDACTED] into EVFS' account ending ***[REDACTED]. This amount represented the holdback money to cover various Rule 33 Applications for fees and costs. Bank statements for account ending ***[REDACTED] show that by September 30, 2018 and through October 31, 2018, the account balance was \$14.71.

EVFS could have issued the remaining balance of \$4,295.25 to McKindles Law Firm in September 2018 prior to the end of the conservatorship, but instead EVFS waited until December 12, 2018 to proceed with this payment.

EVFS invoices also show that Bogle communicated with La Manna regarding the liquidation of Chalmers' funds. Bogle emailed counsel "for status and advise [sic]." The communication occurred approximately one month after the conservatorship ended.

Communicate (other external) 10/23/2018 Confile: with Curt Lamanna regarding the gun liquidation. 3 Email counsel for status and advise. .1	Michael Bogle	\$146.00	0.40	868.00
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ACJA §7-202(J)(1)(b):

b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval.

A.R.S §14-5430. Termination of proceeding

B. The court, on determining after notice and a hearing that the minority or disability of the protected person has ceased, shall terminate the conservatorship unless the court has continued the conservatorship or other protective order pursuant to section 14-5401, subsection B.

Allegation 1 is substantiated (involving EVFS and Bogle).

Allegation 2: East Valley Fiduciary Services, Inc. engaged in co-mingling of estate funds with its own account.

In his complaint, Chalmers alleged “[on] information and belief,” on September 19, 2018, Bogle requested that someone from EVFS transfer \$125,597.85¹⁵ from a bank account at Arizona Bank and Trust ending ***[REDACTED] to EVFS business operating account ending ***[REDACTED] at the same bank. Chalmers alleged this was co-mingling of funds. He said Bogle closed a bank account that the Chalmers had no way of legally accessing and therefore this transfer of money appears to be an attempt to enrich EVFS with extra operating capital.

With the complaint, Chalmers provided September 30, 2018, bank statement for accounting ending ***[REDACTED], as Exhibit “aa.” The bank statement Chalmers submitted to the Division showed that \$125,597.85 was transferred from Chalmers’ conservator account ending ***[REDACTED] to EVFS business account ending ***[REDACTED] on September 19, 2018.

The Division notes that EVFS used at least two accounts titled in the business’ name. At the Division’s request, EVFS submitted bank statement records which included Arizona Bank & Trust monthly statements for EVFS business account ending ***[REDACTED], and certain bank statements for EVFS operating account ending ***[REDACTED]. Both of these accounts were used by EVFS to conduct financial transactions involving Chalmers’ funds.

¹⁵ The funds representing holdback monies to pay for attorney fees and costs and fiduciary fees and costs. Chalmers contested the conservator’s final account and Rule 33 Applications. The funds were not disbursed until the Court approved the conservator’s final account in January 2015.

The bank statements involving EVFS account ending *** [REDACTED] identify the account as the Master Fiduciary Account (“Master account”) and was categorized as a small business checking account.

[REDACTED]

[REDACTED]

Bank statements show extensive monthly transactions including deposits and transfers and transactions that appear to involve other estates. The monthly statements also reflect account service charges, which were consistently covered from a transfer of funds from EVFS operating account ending *** [REDACTED]

Bank statements for EVFS’ operating account ending *** [REDACTED] identify the account as the Operating Account (“Operating account”) and is categorized as a business checking account.

[REDACTED]

[REDACTED]

Bank statements suggest that the Operating Account serves as a business account which included, but was not limited to, payroll, ADT Security Services, cellular phone payments, and credit card payments. EVFS’ Operating account ending *** [REDACTED] did not appear to reflect transactions involving other estates, though EVFS transferred Chalmers’ estate funds from EVFS Master Account ending *** [REDACTED], where Chalmers’ funds were initially transferred to and held, into EVFS Operating account ending *** [REDACTED]. Using Chalmers’ funds, EVFS issued several checks from EVFS Operating account ending *** [REDACTED].

Bogle told the Division that the two referenced accounts are EVFS’ operating accounts. He denied that the accounts are interest-bearing. The bank statements for each account reviewed by the Division did not reflect any interest paid to the accounts.

The signature card for EVFS Master account ending *** [REDACTED] showed this account was a free checking business account. The owner/signer was Bogle. Conversely, the signature card for the conservator’s account ending *** [REDACTED] showed that the account belonged to Chalmers, and it was titled to EVFS, as temporary conservator.

The facts indicate EVFS co-mingled Chalmers' financial assets with the assets of other estates, even if the transactions were transient in nature, and with EVFS' assets. This was done by EVFS utilizing the following process:

- 1) EVFS transferred \$125,597.85 of Chalmers' financial assets from Chalmers' conservator account ending ***[REDACTED] into EVFS Master account ending ***[REDACTED]. The Master account was used for extensive transactions including deposits and transfers of monies from various sources including other estates.
- 2) EVFS transferred Chalmers' financial assets from EVFS Master account ending ***[REDACTED] into EVFS Operating account ending ***[REDACTED]. This Operating account included business transactions related to the fiduciary business such as payroll and other bills.
- 3) EVFS issued checks from the fiduciary's Operating account ending ***[REDACTED], using Chalmers' funds, to pay various vendors or professionals on behalf of the estate. To do so, estate funds were transferred into EVFS' Operating account ending ***[REDACTED].

As previously stated, records demonstrate that on September 19, 2018, the day after the conservatorship ended, EVFS transferred \$125,597.28 from Chalmers' Arizona Bank & Trust conservator account ending ***[REDACTED] into Arizona Bank & Trust EVFS Master account ending ***[REDACTED].

On October 18, 2018, EVFS transferred \$6,205.00 and \$1,354.61, respectively, of Chalmers' estate funds, from EVFS' Master account ending ***[REDACTED] into EVFS' Operating account ending ***[REDACTED]. The two individual transfers of Chalmers' funds were performed for the purpose of issuing checks to La Manna and Raftery for services rendered during the pendency of the conservatorship. Check No. 3673 to La Manna, and Check No. [REDACTED] to Raftery, were issued from EVFS' Operating account ending ***[REDACTED].

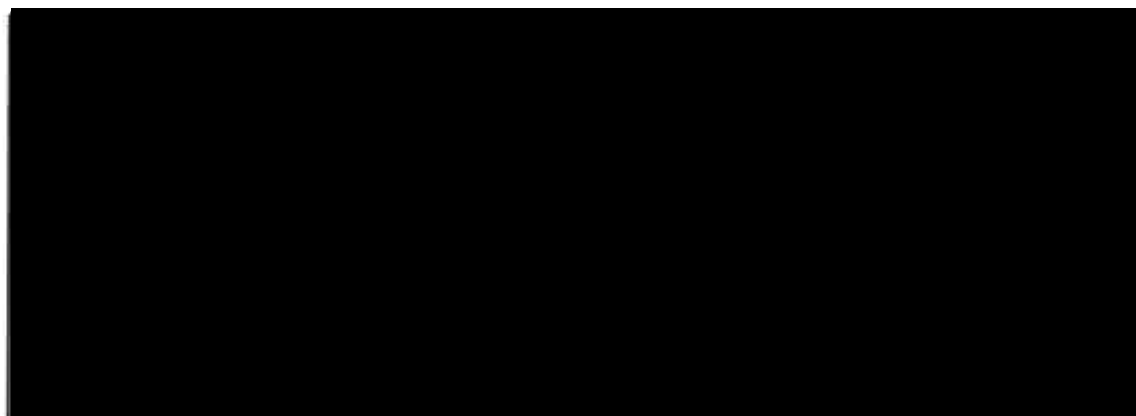
During the month of October 2018 when the transfers of \$6,205.00 and \$1,354.61, to Raftery and La Manna, respectively, were made, EVFS Operating Account ending ***[REDACTED], had an opening balance of \$29, 402.03, as of September 30, 2018, and had an ending balance of \$29, 717.86, as of October 31, 2018. The October 2018 bank statement for the Operating account ending ***[REDACTED] reflected deposits and credits of \$135, 869.50 and checks and other withdrawals of \$135, 503. 83. There was a service fee of \$49.84.

The two October 18, 2018, transfers of Chalmers' estate funds, to Raftery and La Manna, did not remain in EVFS Operating account ending ***[REDACTED] because EVFS issued two checks on the same date. But, that EVFS combined any estate money into the fiduciary's business operating account and made a payment using estate funds from its business account is itself co-mingling.

There were additional financial transactions and payments demonstrating that EVFS used EVFS' Operating account ending ***[REDACTED] to make payments on behalf of the estate.

EVFS issued Check No. [REDACTED], dated December 12, 2018, for the amount \$4,295.25, payable to McKindles Law Firm, from EVFS Operating account ending ***[REDACTED]. Again, this payment represented a balance owed to McKindles Law Firm from a previously Court-approved Rule 33 Application. However, unlike the two transfers for payments to La Manna and Raftery, there was no record of a transfer of \$4,295.25 for McKindles Law Firm from EVFS Master account ending ***[REDACTED] where Chalmers' funds were held, into EVFS Operating account ending ***[REDACTED], although the \$4,295.25 to McKindles Law Firm was paid by the estate.

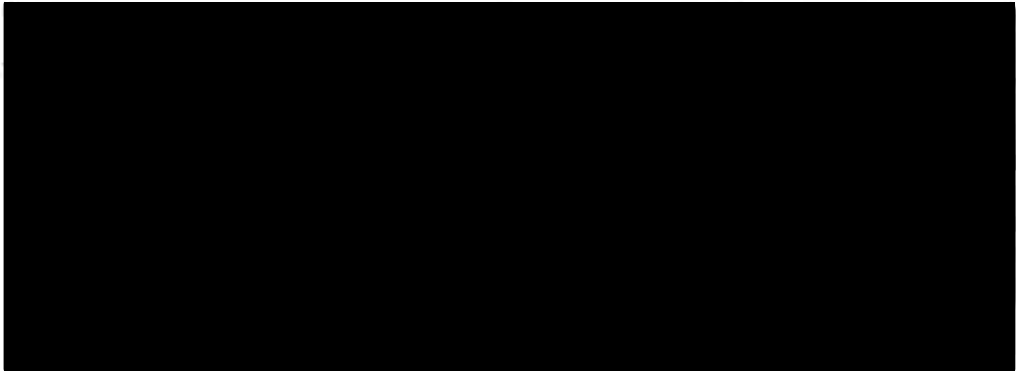
On January 16, 2019, EVFS transferred \$37,414.08 of Chalmers' estate assets from EVFS Master account ending ***[REDACTED] into EVFS Operating account ending ***[REDACTED]. The \$37,414.08 represented the balance owed to Court-appointed counsel, Doyle,¹⁶ for previously approved attorneys' fees and costs. EVFS wrote Check No. [REDACTED], check for the amount of \$37,414.08, payable to Doyle Bauman law firm.



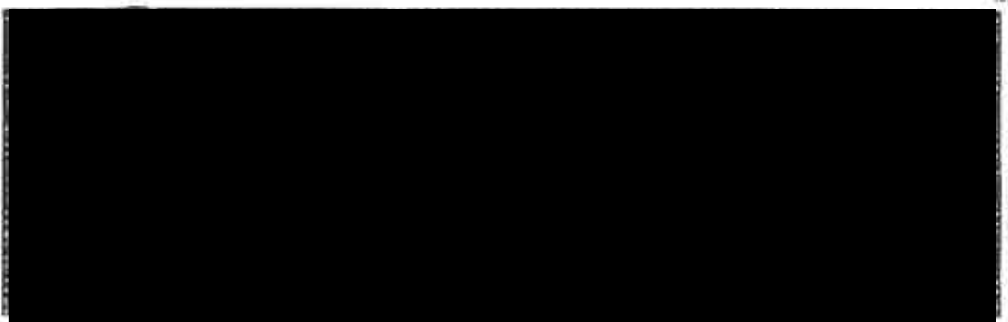
On January 16, 2019, EVFS transferred \$19,155.05 from Chalmers' funds into EVFS Operating ending ***[REDACTED]. This payment represented the balance owed to EVFS previously approved by the Court.

On January 19, 2019, EVFS issued Check No. [REDACTED], payable to EVFS, for the amount of \$19,155.05, from EVFS Operating account ending ***[REDACTED].

¹⁶ The Division uses "Doyle" to include Gary Doyle and/or Michael Doyle of Baumann, Doyle, Paytas & Bernstein, P.L.L.C., both of whom simultaneously worked as Court-appointed counsel for Chalmers.



On February 24, 2021, EVFS transferred \$80,636. 63 of Chalmers' estate assets from EVFS' Master account ending ***[REDACTED] into EVFS' Operating account ending ***[REDACTED]. EVFS then issued Check No. [REDACTED], from EVFS Operating account ending ***[REDACTED], to Chalmers, in the amount of \$80, 636.63, representing the amount Chalmers was owed from the initial \$125, 597.28 holdback money paid out once the Court approved the conservator's final accounting on January 15, 2021, per the Court's Minute Entry of that date.



The referenced checks appear to be executed by Bogle.

During the pendency of the temporary conservatorship, there were five bank accounts¹⁷ appropriately titled to EVFS as temporary conservator for Chalmers. Below is an example of conservator account ending ***[REDACTED], which was a checking account:



¹⁷ Arizona Bank & Trust accounts ending [REDACTED], and ***[REDACTED]

EVFS had Chalmers' conservator accounts ending ***[REDACTED] and ***[REDACTED] open as late as November 2018, demonstrating the accounts were not closed when the conservatorship ended. Records demonstrated that on November 14, 2018, EVFS made two separate but nominal financial transfers from each of the two referenced conservator's accounts into EVFS Master account ending ***[REDACTED].

It is unclear why EVFS did not hold Chalmers' holdback funds of \$125, 597.28 in conservator account ending ***[REDACTED] or EVFS did not open an escrow type of account holding the estate funds in trust, pending the resolution of the contested Rule 33 Applications and conservator's final account, rather than transferring the estate funds into EVFS Master account ending ***[REDACTED] and using that account and EVFS Operating account ending ***[REDACTED] to conduct financial transactions using Chalmers' funds.

EVFS Master account ending ***[REDACTED] held Chalmers' holdback money from September 19, 2018, through February 24, 2021, minus monies transferred for certain payments made in October 2018, December 2018, and January 2019, as described herein. During the time Chalmers' funds were held in EVFS Master account ending ***[REDACTED], Chalmers' funds were combined with other monies including funds involving other estates because EVFS Master account ending ***[REDACTED] was used to conduct numerous intermediary transactions which included checks deposited and funds transferred to other accounts. Bank statements showed monies being deposited from many different sources and there were extensive financial transfers conducted from EVFS Master account ending ***[REDACTED] to other bank accounts.

In addition, EVFS Master account ending ***[REDACTED] received, every month, the amounts of the bank service charge for that account, transferred from EVFS Operating account ending ***[REDACTED]. This suggests that EVFS' operating funds were deposited into EVFS' Master account which also included Chalmers' funds and other estate monies.

ACJA §7-202(J)(5)(d) prohibits co-mingling of property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold and from co-mingling with the fiduciary's own property or assets:

d. The fiduciary shall not co-mingle any property or assets of the protected person's estate with property or assets of other clients' estates the fiduciary may hold as conservator or in another capacity, nor co-mingle with the fiduciary's own property or assets

EVFS was required by code to maintain separation of estate funds from other estate funds and from EVFS' own funds. Co-mingling, itself, is a violation of ACJA §7-202(J)(5)(d) and co-mingling may also create the appearance of self-interest or conflict of interest impropriety, or the appearance thereof, also prohibited by code.

ACJA §7-202(J)(2)(b)(1):

(1) Avoid self-dealing, conflict of interest impropriety, or the appearance of a conflict of interest or impropriety. Self-dealing, a conflict of interest, or impropriety arises where the fiduciary has some personal or agency interest other individuals may perceive as self-serving or adverse to the position or best interest of the ward, protected person, or decedent.

Each of the transfers and transactions that EVFS made from EVFS Master account ending ***[REDACTED] and EVFS Operating Account ending ***[REDACTED], involving Chalmers' estate funds were identified as transactions for Chalmers, with one exception. On November 26, 2018, EVFS transferred \$347.30 of Chalmers' funds from EVFS Master account ending ***[REDACTED] into EVFS Operating account ending ***[REDACTED]. The bank statement information about the \$347.30 transfer from EVFS Master account ending ***[REDACTED] identified only that it was regarding a credit card reimbursement and courier service, but the transaction was not attributed to any name or account.

Likewise, the corresponding bank statement information on the receiving EVFS Operating account ending ***[REDACTED] offered the same information as that which appeared in the Master account ending ***[REDACTED] statement. The Division was able to determine that the \$347.30 transferred between the two EVFS accounts belonged to Chalmers because the Division had requested information from EVFS regarding how EVFS used the holdback money. EVFS noted, amongst other payments, that EVFS was reimbursed \$347.30 from Chalmers' estate on November 26, 2018. This matched the amount of money and date of the transaction.

In his complaint, Chalmers also alleged that EVFS transferred his estate funds into EVFS' account for self-enrichment purposes because it gave EVFS extra operating capital. By transferring Chalmers' holdback funds of \$125, 597.28 from the conservator account ending ***[REDACTED] into EVFS Master account ending ***[REDACTED] and holding much of those funds from September 2018 until February 2021, EVFS' Master account ending ***[REDACTED] did reflect an increase in capital because the Chalmers' holdback money was held in the account.

The Division did not find evidence that EVFS enriched itself by receiving any interest from using EVFS Master account ending ***[REDACTED] or EVFS Operating account ending ***[REDACTED]. Neither account was interest-bearing nor were there points or incentives evidenced by the bank statements reviewed.

Allegation 2 is substantiated (involving EVFS and Bogle).

Allegation 3: East Valley Fiduciary Services, Inc., failed to marshal and secure estate property and/or failed to timely marshal and secure estate property.

Chalmers alleged that EVFS failed to marshal and secure property and/or failed to timely marshal and secure certain estate property that Chalmers stored at his uncle, Merle Cunningham's ("Merle") home. Chalmers said he told EVFS' Stone in November 2018, that Chalmers left various firearm accessories at Merle's house and Chalmers wanted assistance acquiring those assets. Chalmers said Stone had an obligation to marshal those assets immediately, but it was not until February 2018, that EVFS took action to contact Merle. Once EVFS contacted Merle, EVFS learned that he sold the firearms accessories and gave the proceeds from the sale of the firearms accessories to Renata. He said Renata failed to disclose that she received money from the sale of the gun accessories. Chalmers said he did not receive any portion of the proceeds from the sale of the firearms accessories and said EVFS failed to seek relief to compensate the estate.

In his interview with the Division, Chalmers said he was required to vacate the marital home because Renata obtained an Order of Protection against him. Chalmers said he was concerned Renata may potentially accuse him of threatening her with firearms and he expressed some concern about his son and/or others possibly having access to the firearms although Chalmers said the firearms were securely stored in the home. To prevent potential problems, Chalmers said he removed the firing pins/firing mechanisms from each of the firearms and he left those items with his uncle, Merle, to store at his residence. Chalmers said his firearms were eventually stored with the Gilbert Police Department. Chalmers was also upset that EVFS' failure to marshal the firearms accessories diminished the resale value of his firearms because the firearms could not be sold as complete due to the missing parts.

Division staff interviewed Stone. He was asked what priority EVFS places on marshaling and securing estate property once appointed as conservator for an estate. Stone replied that marshaling and securing estate assets is a top priority for EVFS. He said it was his responsibility to marshal and secure Chalmers' estate assets. Stone denied that Chalmers informed him specifically of what property Chalmers left with Merle, but Stone acknowledged he was aware that Chalmers left property at his uncle's home. Stone was asked what immediate actions he took to marshal whatever property Chalmers had at Merle's home. Stone said he called Merle and left a voice message. Stone could not recall when he first contacted Merle, but Stone told the Division that he did not follow up with Merle after initially leaving the voice message with him. Stone acknowledged that Merle sold some of the firearm accessories and later brought the remaining items to EVFS' office.

Division staff interviewed Bogle. He was asked what priority EVFS places on marshaling and securing assets once appointed as conservator for an estate. Bogle told Division staff that marshaling and securing estate assets is a top priority for EVFS. He said EVFS reached out to Merle and eventually retrieved what firearm accessories remained because Merle had sold the accessories and he gave the proceeds to Renata. Bogle acknowledged that EVFS did not compensate Chalmers' estate for portion of the proceeds Merle gave to her from the sale of the firearms accessories.

The Division reviewed EVFS' billing records. Records demonstrate that Chalmers called Stone on November 3, 2017. In that billing entry, Stone wrote, in part, that Chalmers "requested that I reach out to his aunt and uncle and get some personal property they are holding; he was to send email with contact information." Stone's billing entry does not identify the nature of the personal property and it is not clear whether Chalmers relayed additional information to Stone during that telephone call that was not otherwise documented in the billing entry.

Email records show that on November 21, 2017, Chalmers sent an email to Stone with a copy to Chalmers' Court-appointed Counsel, Gary Doyle ("Doyle"), regarding contact information for Merle and Nancy Cunningham, Subject line: "Aunt and Uncle address, significant property located here." In that email, Chalmers wrote, in part, that Merle and Nancy would be "VERY [sic] difficult to deal with but they have a considerable amount of my property and I don't want any conflicts with them. I can show you the police report, but they have openly admitted to breaking into my rental and taking things for Renata. The police felt they were acting in my best interest..." The email does not identify the nature of the property held at Merle's home.

On November 21, 2017, Stone replied to Chalmers' email and copied Doyle and Bogle. Stone stated, in part, "I will contact them and let you know what they say."

The Division could not document whether Chalmers specifically identified the property he left with Merle. However, it is evident that Chalmers informed Stone that there was "significant" property and informed that "they have a considerable amount of my property..." at Merle's home, per Chalmers' November 21, 2017, email. EVFS was responsible for inquiring about the property and marshaling and securing whatever property was with Merle.

EVFS was initially appointed as Temporary Conservator for Chalmers on August 21, 2017, per Letters of Appointment of Temporary Conservators and Acceptance of Temporary Appointment. The Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017:

CONSERVATORS:

1. Immediately locate, identify and inventory all of the assets of the protected person and make proper arrangements for their protection...

The ACKNOWLEDGEMENT portion of the above-referenced Order, executed by Stone on August 18, 2017, states:

I (We), the undersigned, acknowledged receiving a copy of this order and agree to be bound by its provisions, whether or not read before signing, as long as serving as guardian or conservator.

ACJA §3-302(A) Definitions:

“Asset” means any item of economic value owned by an individual or corporation, especially that which could be converted to cash.

ACJA §7-202(J)(5)(c):

5. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

c. On appointment, the fiduciary shall take reasonable steps to marshal and secure the property and income of the protected person’s estate as soon as possible. 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.

To determine whether Stone, Bogle and EVFS took action to “Immediately locate, identify and inventory all of the assets of the protected person and make proper arrangements for their protection,” per the August 18, 2017, Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, or if Stone, Bogle and EVFS took “reasonable steps to marshal and secure the property...as soon as possible,” as set forth in ACJA §7-202(J)(5)(c), regarding the property stored at Merle’s home, in addition to interviewing Stone and Bogle, the Division reviewed available records.

In summary, Chalmers appears to have first contacted Stone on November 3, 2017, asking him to reach out to Merle about personal property he was holding. Chalmers emailed Stone on November 21, 2017, provided Merle’s contact information, and informed Stone there was significant property or considerable property there. Stone replied and assured Chalmers that Stone would contact Merle and let Chalmers know what was said. Despite Chalmers informing Stone and EVFS in November 2017 that he had property at Merle’s home, there was no record demonstrating that EVFS took substantive action involving the property at Merle’s home until June 2018.

EVFS billing records demonstrate that on April 13, 2018, Bogle billed for time involving a meeting with Renata to “inventory and collect gun parts with Curt La Manna. Discuss plan for liquidation per court order.”

On April 18, 2018, Bogle billed for time to work with La Manna for collection of guns from Gilbert Police Department and to discuss assembly and “identify missing pieces.”

Although Stone and Bogle told the Division that after learning about the property at Merle’s, Stone reached out to Merle and left a telephone message, there was no record supporting that Stone timely placed any call(s) to Merle. EVFS billing records show that on June 14, 2018, Bogle billed for time involving a meeting with La Manna and Chalmers “to discuss the inventory of guns and issues with various disassembled firearms.” Bogle discussed with Chalmers, “additional equipment that he is aware of and the plan to locate and collect these items.” Bogle discussed possible options for Chalmers to take ownership of all of the guns and hold them at the Gilbert police department.

On June 18, 2018, Bogle billed for time involving analyzing multiple emails and printing invoices for “items purchased as gun accessories.”

EVFS provided the Division with a copy of a letter, dated June 26, 2018, that EVFS’ attorney, Scharber, sent to Merle and Nancy Cunningham via certified mail. Pertinently, Scharber noted that it was EVFS’ understanding that Merle was in possession of certain firearms and firearm accessories that belong to Chalmers. Scharber said EVFS is in the process of selling Chalmers’ armory in order to generate liquidity for the administration of his estate and as Temporary Conservator, “they have a duty to marshal *all* [sic] of Bill’s personal property (including those items in your possession). Scharber requested that Merle/Nancy contact EVFS “to arrange for the transfer of such items into their custody.”

On July 2, 2018, Scharber billed for time to prepare correspondence to Merle and Nancy via certified mail regarding the firearms.

EVFS records demonstrate that on July 5, 2018, Stone billed for time involving contacting Merle and Nancy Cunningham “regarding personal property they had received from Bill [Chalmers].” Stone wrote that they outlined the history of the sale of the items. Stone and EVFS licensed fiduciary, Patrick Moore (“Moore”) inventoried items received from Merle.

Time	Andrew Stone	\$125.00	2.00	\$250.00
7/5/2018				
Specs with Merle and Nancy Cunningham regarding personal property they had received from Bill; they outlined the history of the sale of the items (1); with Pat, inventoried items received (1); emailed Ryan Scharber and provided outline of history of items that Merle and Nancy gave me along with the inventory list (1).				

On July 5, 2018, Stone emailed Scharber and Bogle informing them, in part, that Merle and Nancy Cunningham came to EVFS this day to drop off the remaining gun accessories that belonged to Chalmers. Stone’s email stated that Merle had noted concerns about guns and gun cases missing. According to Stone’s email, in October 2017 Chalmers went to Merle’s home and, with Merle’s help, removed the “take off parts” on the guns that were supposed to be given to the Gilbert Police Department. Merle kept those parts in three

boxes. In November 2017, Chalmers asked Merle for the three boxes of items back and in late November 2017, Chalmers called Merle and asked him to pick up the boxes again because the police were there, and Chalmers was afraid the police would find them.

Stone's email further stated that Merle took the three boxes back from Chalmers, called Renata, and that she received the three boxes in late November or early December 2017. In his email, Stone said that in early 2018, Renata asked Merle to sell the three boxes of items and to give her the money because she was broke, and that Renata's attorney told her to go ahead and sell them. Stone's email documented that most of the items were sold in January, February and March 2018. Stone added that Renata had never disclosed to him that the items were being sold and that she was receiving the money.

On July 10, 2018, Scharber emailed Theut and Doyle providing them with Stone's summary of the situation regarding the gun accessories with Merle. Scharber also noted that Merle had refused certified letters that Scharber sent to Merle, but Renata told Merle what the letters were about, so he agreed to call Scharber and drop off the remaining accessories with EVFS, along with an inventory. Scharber wrote that Merle liquidated many of the items for \$7,552.00 and turned that over to Renata per her attorney's direction. Merle valued the remaining unsold items, in EVFS' custody, at \$1,908.00.

Scharber further wrote that since the accessories had been sold, "the estate stands to receive much less in selling Bill's firearms than if everything was available." Scharber sought input from Theut and Doyle as to whether EVFS should proceed with liquidating them or if the preference was to have Chalmers purchase them from the estate for Gilbert Police to hold. Scharber added that EVFS still held approximately \$9,000.00 in liquid assets from Renata's share of the tax refund and her share of the IRA account "so we may have some leverage" if Theut or Doyle was willing to put this in front of Commissioner Passamonte. Scharber said a simple petition from Doyle that Theut and Scharber could join might be effective since EVFS can simply transfer the damages from Renata's share of the tax refund into Chalmer's account if Commissioner Passamonte Orders.

On July 10, 2018, Doyle replied to Scharber and Theut stating, in part:

Let me get this straight. Merle was selling this stuff in the last six months? Now you can understand why Bill was so hot for EVFS to get ahold of Merle and get whatever he had in regard to these items.

Please hold any further proceeds from going to Renata. Somehow she and Angela¹⁸ forgot to tell us about this deal at the settlement conference?

By the way, Bill gave the items to his uncle for safe keeping, not for him to sell.

¹⁸ Angela Wilson- Goodman, Wilson-Goodman Law Group, PLLC, counsel for Renata Chalmers

Theut's response to Doyle and Scharber, also on July 10, 2018, stated that he authorized EVFS to "immediately take action against the parties involved including Renata" before Commissioner Passamonte.

Doyle emailed Chalmers on July 10, 2018 and provided the thread of emails on the matter adding, "This is an amazing... [sic] course of events. Unbelievable."

Records demonstrate that on July 17, 2018, Renata emailed Scharber, Bogle, and Stone, wherein she discussed the firearm accessories issue. Pertinently:

I would like to express my perspective surrounding the sale of gun accessories by Bills [sic] uncle.

I made the decision to keep some of the gun parts. My rationale was that they were joint property, he was not allowed to possess them, and I could sell them to offset some of the expensive stuff I gave him. I asked Merle to help me in that endeavor to help me recover some of the money spent. Merle was doing me a favor and in reality had no right to give my property back to EVFS. Also EVFS had no right to ask or accept it. It is my property. This is no different than Bill selling some of the woodworking equipment and me coming back and asking for some of that money back. In addition to that, Bill sent an email (see attached) to Merle that he sold the Chris Kyle collector gun (prior to OOP) and has a receipt to prove it. I never received my half. I have also shown everyone that there are multiple missing guns of very high value that no one wants to investigate, including the police. My point is that I am not coming back and complaining to everyone that I need half and things aren't "fair". That money received from the sale of the gun parts are my proceeds of my property sold. I have not asked for nor expect half of anything Bill has sold.

The Division reviewed Scharber's billing records. On June 26, 2018, Scharber billed for time involving drafting a letter to Merle and Nancy Cunningham "Regarding Guns" and for time to draft an email to Bogle and Theut regarding the same.

On August 3, 2018, Scharber billed for time involving a telephone call from Merle regarding the gun accessories and billed for a call from Bogle to discuss Merle selling the gun accessories.

Records show that after July 5, 2018, EVFS was involved with discussing the issue of missing firearms accessories and the valuation of the firearms given the missing items with EVFS attorney, John McKindles ("McKindles")¹⁹

¹⁹ John McKindles was retained as counsel for EVFS and was tasked, in part, with negotiating the Rule 69 Agreement on Chalmers' behalf, in PB2017-001373.

In his interview with the Division, Bogle acknowledged that Merle sold much of the firearms accessories and gave Renata \$7,552.00 from the proceeds of the sale. Merle later gave EVFS what firearm accessories remained. Bogle told the Division that Chalmers' estate was not compensated for any portion of the \$7,552.00 Renata received from the sale of the accessories.

The firearms were marital property, per the Rule 69 Agreement. The firearms were to be sold with the help of La Manna and the proceeds equally divided between Chalmers and Renata. See Clause 17 of the Rule 69 Agreement, below:

17. GUNS: To be sold with the help of Curt Lamma and the proceeds equally divided.

The facts suggest that Renata benefitted, primarily, from the sale of the firearm accessories because Merle gave her the \$7,552.00 which apparently represented the money received from the sale of the firearms accessories. Chalmers was not compensated for any portion of the proceeds of the sale of firearms accessories. Merle returned the remaining firearms accessories to EVFS, evidently valued at \$1908.00, according to an informal appraisal by Merle, according to EVFS accounting records. In addition, EVFS billed the estate for time involved in sorting out the firearms accessories issue.

On September 29, 2021, pursuant to the Division's request for additional documentation, pertinent to the property at Merle's, EVFS, by and through counsel, provided additional information. The response stated that the Cunninghams at one time had possession of "estate property" because Chalmers gave them gun parts "in order to improperly hide them from the police." According to EVFS's response, Chalmers did not disclose that to Renata, EVFS, or his own legal counsel, Doyle. Unbeknownst to anyone, after the Cunninghams received the gun parts, they sold some of those parts for \$7,552.00 and gave that money to Renata. Per the Rule 69 Agreement, half of the proceeds from that \$7,552.00 in gun sales (\$3,776.00), should have gone to Chalmers so "this is ultimately a dispute about what efforts and estate resources EVFS should have used in order to try and collect \$3,776 from Renata."

EVFS' response further stated Chalmers sent Stone and Doyle an email regarding the Cunningham's address and contact number and that Chalmers had significant property there. The response noted that Chalmers did not describe the nature of the personal property at the Cunningham's, the reason they had the property nor did Chalmers express "any urgency in retrieving the property." EVFS' response stated that Chalmers and his attorney, Doyle, were "equally able to try and get back the property" Chalmers had given the Cunninghams. The response said, in any event, Stone said he would try and contact the Cunninghams and let Chalmers know what they said but Stone was not successful at contacting the Cunninghams "for a few months." Stone later learned that beginning in January 2018, Merle started selling the gun parts. EVFS' counsel, Scharber made a more formal attempt in June 2018 by sending a demand letter asking the Cunninghams to turn

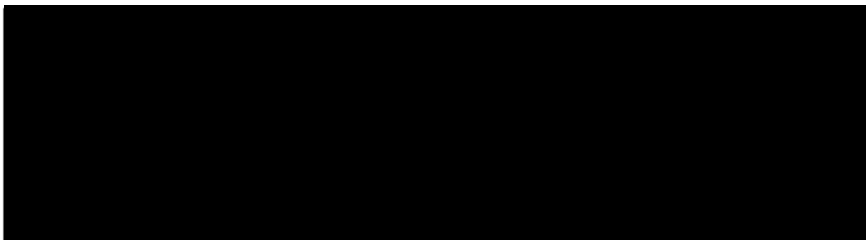
over to EVFS “any of Mr. Chalmers’ firearms, firearm accessories, or other personal property that was in their possession and control.”

Based on the evidence reviewed, Stone, Bogle and EVFS failed to take “reasonable steps to marshal and secure the property...as soon as possible,” as required by ACJA §7-202(J)(5)(c).

Devaluation of Firearms

EVFS’ failure to secure and protect and/or timely secure and protect the property at Merle’s residence contributed to the devaluation of the firearms resale because certain firearms could not be sold as intact or as complete units.

Chalmers told the Division that his firearms were stored with the Gilbert Police Department. He alleged that EVFS’ failure to marshal and secure the firearms accessories stored at Merle’s home harmed the estate because the firearms could not be sold as complete due to the missing parts, thereby diminishing the resale value of the firearms. Chalmers’ assertion appears to be supported by Scharber’s July 10, 2018, email to Theut and Doyle sent after Scharber received Stone’s summary of the situation involving the firearm accessories with Merle. In his email, Scharber stated, pertinently, “the estate stands to receive much less in selling Bill’s firearms than if everything was available.” Schedule 5 of EVFS’ Final Inventory & Accounting filed with the Court on December 6, 2018, informed the Court that the value of the firearm accessories was based on an “informal appraisal” by Merle Cunningham. This value represents the remaining firearm accessories that Merle returned to EVFS on July 5, 2018.



Schedule 2 of the Final Inventory & Accounting documented the beginning value and ending value of the firearm accessories. The beginning value is listed as \$9,460.00 and ending value as \$1,908.00. In Schedule 2, EVFS wrote that Chalmers had given these accessories to Merle who later sold “most of the accessories and gave all the proceeds to Renata. EVFS was not given the items until after they were sold.” See below:



The Net “-\$7,552.00” represents the proceeds Merle gave to Renata from the sale of the firearms accessories.

With the Final Inventory & Accounting, EVFS included, as Attachment “E,” an inventory of the firearm accessories Merle had in his possession, including those items sold. This inventory appears, in part, to be the one completed by Stone and Moore after Merle came to EVFS’s office on July 5, 2018, to drop off the remaining firearm accessories. The valuation of the firearm accessories was provided by Merle’s “informal appraisal” of the items.

On December 2, 2017, La Manna emailed Stone and Bogle, writing, in part, that he was able to contact and look over the firearms at Gilbert Police evidence facility and that, as he had explained in a previous conversation, “these were not complete firearms,” and varied in condition. In his email, La Manna provide the valuation based on “current prices for the comparable items, that have been sold within the past 30 day [sic] period.” La Manna provided EVFS with an appraisal of the firearms and items, included as Attachment “A” in the Final Inventory & Accounting filed with the Court on December 6, 2018. La Manna appraised the value of 29 firearms and “items” in December 2017, at which time he noted an estimated valuation of \$16,350.00. In that same appraisal, La Manna included a “Current Value” of \$6,925.00, which suggests a \$9,425.00 reduction in resale value due to missing parts.

EVFS billing records show that on July 24, 2018, Stone billed for time involving a call he received from McKindles “to discuss issue with sale of guns parts.” Stone resolved to speak with La Manna regarding the issue and “determine loss in value due to sale of guns.” On the same day, Stone spoke with La Manna and emailed him requesting a valuation of the guns.

Email records demonstrate that on July 24, 2018, Stone emailed La Manna and Bogle regarding an appraisal of firearms. Stone attached “the spreadsheet of the parts we have.”

On July 25, 2018, Stone billed for time involving emailing Scharber regarding Stone’s conversation with McKindles on the weapons.

On July 31, 2018, Stone billed for time involving speaking with La Manna regarding the request for updated valuation of the firearms.

On August 7, 2018, Bogle and Stone billed for time involving a call with La Manna regarding “the disposition and status of the guns.”

On August 9, 2018, Stone emailed La Manna asking him, “Can you give us a rough idea of the lose [sic] in value per weapon?”

On August 10, 2018, La Manna replied to Stone and Bogle stating, pertinently:

I cannot get this request completed until I have the opportunity to look through the containers returned to your office from Merle and determine what parts remaining in there are parts for the disassembled guns at my shop.

As these items are currently, there’s only a small number as completed firearms. As for selling of these missing major components, there’s no true way to determine what any auction or sales price would be, given the parts missing. People purchasing guns want complete and functioning firearms. The potential buyers of these as they are, would be Gunsmiths or other parts buyers. And these buyers would only pay a small fraction of the actual price of a complete firearm.

For instance, a \$700 rifle missing the completed bolt, would cost more to rebuild than to outright purchase a new one.

Stone replied to La Manna on August 10, 2018, providing La Manna with a link containing a picture of each item that was returned by Merle. Stone thought the parts were accessories to the weapons and not parts that make them operable. Stone attached a .pdf document of the items provided by Merle. Stone added, “If there isn’t anything there that will make the weapons operable, we will report that back to the attorney. We need to move on this quickly. [sic] We are running out of time to be able to file something.”

La Manna replied to Stone and Bogle on August 10, 2018, informing that he looked over all the pictures and the listing of the items and confirmed “there are none of the firearms parts needed to complete the items I received from Gilbert PD.” In another email from La Manna to Stone and Bogle on August 10, 2018, La Manna wrote, in part, “As most of these are missing major components, I am making an approximate sale price [sic] of the incomplete Firearms.” [sic] La Manna wrote, “These are estimated sales prices of the few complete firearms and incomplete firearms to be sold as “parts only”. [sic] The other items on the page is Not Here [sic], were not at Gilbert PD property, nor my possession at the time of transfer from there.” La Manna provided the current valuation on the same 29 items he identified in the December 2, 2017, email to Stone and Bogle.

The evidence reviewed indicates that EVFS did not take immediate action to locate the items at Merle’s once EVFS was aware of the existence of estate property at that location nor did EVFS take reasonable and necessary steps to timely marshal and protect the estate

assets stored at Merle's residence, as described herein. In November 2017, Chalmers notified Stone that he had "significant assets" at Merle's residence and EVFS in November 2017 that he had "significant assets" and Chalmers provided Merle's contact information and address. In response, Stone assured Chalmers that the fiduciary would contact Merle about the property.

Stone told the Division that he initially reached out to Merle and left a voice message with him but added that he did not follow up with Merle after the initial voice message was left. The Division did not find any record of Stone billing for time involving a call to Merle prior to July 5, 2018. There was no record found demonstrating that anyone at EVFS took any substantive action to inquire about and/or to secure the property until June 26, 2018, when Scharber apparently sent a certified letter to Merle regarding the firearms, and then again on July 5, 2018, when Merle arrived at EVFS' office with the remaining unsold firearms accessories.

Despite Stone's and Bogle's respective statements to the Division that marshaling and securing estate assets are "a top priority" for EVFS once appointed as conservator for an estate, the records reviewed indicate EVFS did not make this "a top priority" and failed to take immediate and/or reasonable steps to securing the property stored at Merle's home. Merle sold most of the firearm accessories between January and March 2018 and he gave the proceeds to Renata. Merle returned the remaining unsold firearms accessories EVFS on July 5, 2018.

Marshaling and securing estate property is a core function and principal task of Court-appointed conservators. Failing to marshal and protect estate property and/or failing to timely marshal and secure estate property is contrary to the best interest of the estate, constitutes a breach of fiduciary duty, and suggests that Stone, Bogle, and EVFS failed to act in the best interest of the estate and exercise the reasonable care, skill and caution required of a careful, prudent conservator.

Stone told Division staff he was responsible for marshaling and securing Chalmers' property/assets. However, as Designated Principal of EVFS, Bogle was responsible for the active and direct supervision over the services of other fiduciaries. The Division's review indicated Bogle did not effectively supervise Stone in this task to ensure it was property done and in accordance with the ACJA.

ACJA §7-202(A). Definitions:

Active and direct supervision" means "supervision by a licensed fiduciary or designated principal who provides or exercises routine and regular control over the services of and assumes personal professional oversight and responsibility for the services of other licensed fiduciaries and certified and licensed professionals, trainees, and support staff to whom the licensed fiduciary delegates non-informed consent and

non-contract entering authority. Active and direct supervision does not require a principal's constant physical presence if the supervising principal is or can be easily in contact with the fiduciary, trainee, or staff by radio, telephone, or electronic communication.

ACJA §7-202(E)(3)(f)(1)(a):

(1) The principal shall:

(a) Provide active and direct supervision of all other licensed fiduciaries, trainees, and support staff who work with wards, protected persons, or decedent estates and who work for the corporation, limited liability company, or partnership...

Allegation 3 is substantiated (involving EVFS, Bogle and Stone).

Allegation 4: East Valley Fiduciary Services, Inc., failed to timely file an Inventory and Appraisement with the Court and did not file an Estate Budget with the Court.

a) Inventory and Appraisement

Chalmers alleged that EVFS did not timely file with the Court an "inventory of assets," as required, and that the Court was "forced to file a contempt motion and an order to show cause."

The Arizona Rules of Probate Procedure ("ARPP") and the A.R.S. require fiduciaries to file with the Court an Inventory and Appraisement within 90 days of being appointed as conservator.

ARPP Rule 30.²⁰ Guardianships/Conservatorships-Specific Procedures, in effect at the time of the alleged misconduct.

A. INVENTORY.

1. Unless otherwise ordered by the court, the conservator shall file the inventory of the protected person's estate, AS REQUIRED BY A.R.S. SECTION 14-5418(A), within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued. The inventory shall list all property owned by the protected person as of the date the conservator's letters of conservator, whether temporary or permanent, were first issued, and shall provide the values of such assets as of the date of the conservator's first appointment.

²⁰ Pursuant to Arizona Supreme Court No. R-11-0023, filed December 13, 2011, in effect on and after September 1, 2012. Rule 30 is now Rule 45, Conservator's Inventory, Budget, and Account, effective January 1, 2020.

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory. [original emphasis]

A.R.S §14-5418. Inventory and records

A. Within ninety days after appointment, a conservator shall prepare and file with the court an inventory of the assets of the protected person on the date of the conservator's appointment, listing it with reasonable detail and indicating the fair market value of each asset as of the date of appointment. The conservator shall attach to the inventory a copy of the protected person's consumer credit report from a credit reporting agency that is dated within ninety days before the filing of the inventory.

EVFS was appointed as temporary conservator for Chalmers on August 21, 2017, per Letters of Appointment of Temporary Conservators and Acceptance of Temporary Appointment Temporary Conservator, issued by the Court Administration, on August 21, 2017. Fiduciaries commonly have within 90 days of issuance of Letters to file an inventory. In this matter, the Court shortened the filing requirement from 90 days to 60 days.

The Order Appointing Temporary Conservator, dated August 18, 2017, pertinently:

C. Within ninety ⁶⁰⁻⁹⁰ ~~90~~ days after the issuance of Letters Of Temporary Conservator, East Valley Fiduciary Services, Inc. shall file an inventory of William Chalmers' Estate pursuant to A.R.S. § 14-5418 and thereafter East Valley Fiduciary Services, Inc. shall account to the Court for the administration of William Chalmers' Estate pursuant to A.R.S. § 14-5419(A).

The Addendum to Court Order – Compliance, accompanying the August 18, 2017, Order Appointing Temporary Conservator, stated, in part:

ADDENDUM TO COURT ORDER – COMPLIANCE

Case #: PB2017-001373

To maintain public trust and confidence, the Court has a duty to ensure that court-appointed Guardians, Conservators and Personal Representatives comply with all Court Orders, Court Rules and Arizona Probate Laws. Therefore, **IT IS ORDERED** that the following tasks be completed in this case:

<p><u>GUARDIANS:</u></p> <p><input type="checkbox"/> Issue Letters of Appointment within 10 days</p> <p><input type="checkbox"/> File Certificate of Completion of Training within 10 days</p> <p><u>PERSONAL REPRESENTATIVES / SPECIAL ADMINISTRATORS:</u></p> <p><input type="checkbox"/> Issue Letters of Appointment within 10 days</p> <p><input type="checkbox"/> File Certificate of Completion of Training within 10 days</p> <p><input type="checkbox"/> Post a Bond within 10 days</p> <p><input type="checkbox"/> File or provide proof of mailing of Inventory & Appraisal within 90 days of appointment</p>	<p><u>CONSERVATORS:</u></p> <p><input checked="" type="checkbox"/> Issue Letters of Appointment within 10 days</p> <p><input type="checkbox"/> File Certificate of Completion of Training within 10 days</p> <p><input checked="" type="checkbox"/> Post a Bond within 10 days</p> <p><input type="checkbox"/> File Proof of Restricted Account within 30 days of appointment</p> <p><input type="checkbox"/> File Proof of Recorded Restriction on Real Property within 30 days of appointment</p> <p><input type="checkbox"/> File Proof of Annuity Contract within 60 days of appointment</p> <p><input checked="" type="checkbox"/> File Inventory & Appraisal within ⁶⁰90 days of appointment</p> <p><input checked="" type="checkbox"/> File Consumer Credit Report (dated within 90 days of the Inventory & Appraisal) within 90 days of appointment</p>
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The Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017:

CONSERVATORS:

- File our inventory with the Court **no more than 90 days** after your **Letters of Appointment**, whether temporary or permanent were first issued. [emphasis in original]

Stone executed the **ACKNOWLEDGEMENT** portion of the Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, on August 18, 2017, thereby acknowledging receipt of a copy of the Court's order and agreeing to be bound by its provisions, whether or not read before signing, as long as serving as guardian or conservator. See below:

ACKNOWLEDGEMENT

I (We), the undersigned, acknowledge receiving a copy of this order and agree to be bound by its provisions, whether or not read before signing, as long as serving as guardian or conservator.

	8/18/2017		
Guardian - Conservator's Signature	Date	Co-Guardian - Conservator (if any)	Date
Andrew Stone			
Printed Name		Printed Name	

Pursuant to the Minute Entry dated August 18, 2017, appointing EVFS as temporary conservator for Chalmers, the Court ordered, pertinently:

IT IS FURTHER ORDERED that an Inventory and Appraisal be filed within sixty (60) days of this Order of Appointment.

IT IS FURTHER ORDERED that you must comply with this Order (file an Inventory and Appraisalment) by October 17, 2017.

IT IS FURTHER ORDERED setting a **Review Hearing** to determine compliance (for filing of Inventory and Appraisalment) on **November 7, 2017, at 8:30 a.m.** [emphasis in original]

The Court's order required that EVFS file with the Court the Inventory and Appraisalment by October 21, 2017, which is 60 days after the appointment as temporary conservator, per Letters issued. EVFS did not file the Inventory and Appraisalment by the Court's deadline nor did EVFS file with the Court for approval of an extension of time to file the inventory and appraisalment, as required by ARPP, Rule 30(A)(2).

2. If the conservator is unable to file the inventory within 90 days after the conservator's letters of conservator, whether temporary or permanent, are first issued, the conservator shall, before the deadline, file a motion that requests additional time to file the inventory. Such motion shall state why additional time is required and how much additional time is required to file the inventory.

A Review Hearing had been set for November 7, 2017, but no representative from EVFS attended the Review Hearing.

On November 14, 2017, the Court issued a Minute Entry to EVFS regarding the November 7, 2017, Review Hearing. Pertinently:

This is the time set for a Review Hearing to determine whether the Inventory and Appraisalment has been filed as previously ordered by the Court. To date, the required document has not been filed, and no one appears to explain this non-compliance. Based on the foregoing,

IT IS ORDERED setting an Order to Show Cause Hearing on January 9, 2018, at 8:30 a.m.

IT IS FURTHER ORDERED that if the Inventory and Appraisalment is filed by temporary conservator Michael Bogle d/b/a East Valley Fiduciary Services, Inc., and/or attorney Ryan Scharber by **December 26, 2017**, the hearing will be vacated, and they will not have to appear in Court. [emphasis in original]

Consistent with Chalmers' assertion, the Court set an Order to Show Cause hearing as a result of EVFS failing to file with the Court an Inventory and Appraisalment by the Court's deadline of within 60 days of Letters issued, therefore by October 21, 2017. On November 14, 2017, EVFS, by and through counsel, filed with the Court the Inventory and

Appraisalment. There was no record of the Court filing a contempt motion, as alleged by Chalmers.

b) Estate Budget

Chalmers alleged that EVFS failed to create a yearlong budget and did not file an estate budget with the Court. He claimed that if EVFS had filed an estate budget with the Court, the Court would see that the estate was insolvent and would possibly curb spending.

In the March 26, 2021, response to the complaint, EVFS stated that it has already “paid” for this issue by the Court’s decision not to approve EVFS’ final Rule 33 fees request. EVFS said that it was employed only as “temporary” conservator and that EVFS was appointed for 90 days because the Court felt that the divorce and related matters would conclude within that time. When that did not occur, the Court appointed EVFS as temporary conservator another 90 days. In its response, EVFS said with only a 90-day appointment, making a yearlong budget “didn’t make sense.” EVFS said Chalmers’ situation at the beginning was “very volatile and access to funds uncertain, making it difficult or impossible to determine what expenses would be incurred and what income was available.”

EVFS’ statement in the response to the complaint that “it didn’t make sense” to file an estate budget because the temporary conservatorship was a 90-day appointment is inconsistent with the Court’s order involving the initial temporary appointment. The Minute Entry dated August 18, 2017, appointed EVFS as temporary conservator and the temporary appointment was to expire on February 18, 2018, with a hearing on the permanent conservatorship was scheduled for January 17, 2018. Pertinently:

MINUTE ENTRY

OCH-Courtroom #108

9:05 a.m. This is the time set for hearing regarding the Emergency Petition for Appointment of Temporary Conservator for an Adult. Petitioner/Guardian Ad Litem Bryan Theut is present appearing on behalf of the proposed protected person. William Chalmers, the proposed protected person, is present with Court-appointed Counsel Gary Doyle, who is appearing on behalf of Court-appointed Counsel Michael Doyle. Counsel Ryan Scharber is present appearing on behalf of East Valley Fiduciary Services, Inc. Andrew Stone from East Valley Fiduciary Services, Inc. is present. Renata Chalmers is also present.

IT IS ORDERED appointing East Valley Services, Inc. as temporary Conservator, to serve with bond in the amount of \$150,000.00, as set forth in the formal written order modified and signed by the Court on August 18, 2017 and filed (entered) by the clerk on August 18, 2017. The temporary appointment expires on February 18, 2018.

Let the record reflect that the parties agree to vacate the September 27, 2017 hearing regarding the permanent petition and resetting the hearing to January 17, 2018 at 1:30 p.m. before Commissioner Passamonte.

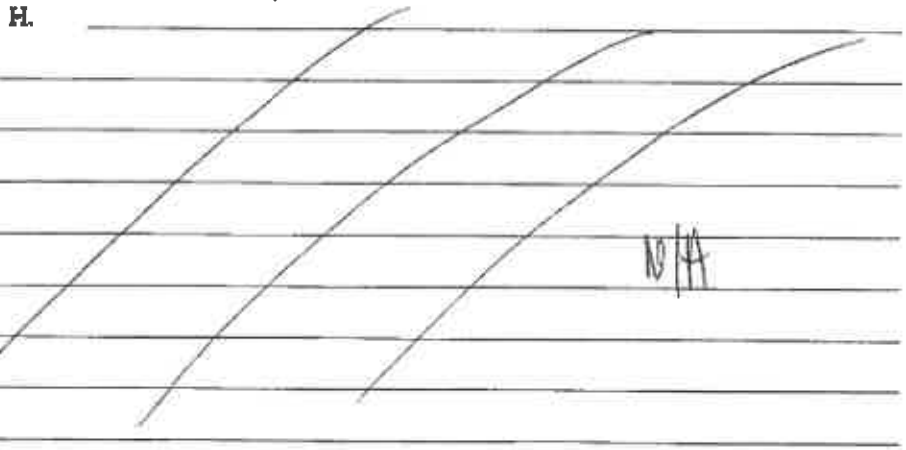
The Order Appointing Temporary Conservator, dated August 18, 2017, pertinently:

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D. This appointment of East Valley Fiduciary Services, Inc. as temporary conservator for William Chalmers terminates on 2-18-18

G. A hearing on the Petition For Appointment Of Permanent Conservator For An Adult is set for January 17, 2018 @ 1:30 pm before this Court.

H.



W/A

DATED this 16th day of Aug., 2017



Honorable Carolyn Passamonte


The Letters of Temporary Conservator issued by the Court Administration, on August 21, 2017, executed by Bogle and Stone, respectively, on August 21, 2017, stated that the temporary appointment expired on February 18, 2018. See below:


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LETTERS OF TEMPORARY CONSERVATOR

Mike Bogle, Licensed Fiduciary Number 20628, or Andrew Stone Licensed Fiduciary Number 20826 on behalf of East Valley Fiduciary Services, Inc., Licensed Fiduciary Number 20592, has been appointed by the Court and is authorized to act as Temporary Conservator for William Chalmers with the powers and duties provided by law including, without limitation, the powers set forth in A.R.S. § 14-5424 and A.R.S. § 14-5425, subject to the following restrictions:

This temporary appointment expires on 2/18/18
WITNESS: AUG 21 2017, 20

MICHAEL K. JEANES, CLERK
Clerk of the Superior Court
By 
V. FOLTS.
DEPUTY CLERK



The Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017:


CONSERVATORS:

7. Unless ordered otherwise by the court, you must establish and file a budget...

Stone executed the ACKNOWLEDGEMENT portion on August 18, 2017, acknowledging receipt of a copy of the Court's order and agreeing to be bound by its provisions, whether or not read before signing, as long as serving as guardian or conservator. See below:

ACKNOWLEDGEMENT

I (We), the undersigned, acknowledge receiving a copy of this order and agree to be bound by its provisions, whether or not read before signing, as long as serving as guardian or conservator.

	<u>8/18/2017</u>		
Guardian - Conservator's Signature	Date	Co-Guardian - Conservator (if any)	Date
<u>Andrew Stone</u>			
Printed Name		Printed Name	

ARPP Rules 30.1, 30.2, and 30.3,²¹ pertinently:

²¹ Pursuant to Arizona Supreme Court No. R-11-0023, filed December 13, 2011, in effect on and after September 1, 2012. Rule 30.3 is now Rule 45, Conservator's Inventory, Budget, and Account, effective January 1, 2020.

RULE 30.1. FINANCIAL ORDER

A. FOLLOWING THE APPOINTMENT OF A CONSERVATOR FOR AN ADULT, THE CONSERVATOR SHALL INSTITUTE AND FOLLOW A BUDGET, AS SET FORTH IN RULE 30.3, UNLESS OTHERWISE ORDERED BY THE COURT, AND THE COURT MAY ENTER ONE OR MORE OF THE FOLLOWING ORDERS:

1. LIMITING EXPENDITURES FROM THE ESTATE OF THE PROTECTED PERSON AS THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST; OR,

2. REQUIRING THE CONSERVATOR TO PROCEED IN ANY OTHER LAWFUL MANNER THE COURT FINDS IS IN THE PROTECTED PERSON'S BEST INTEREST. [emphasis in original]

RULE 30.2. SUSTAINABILITY OF CONSERVATORSHIP

A. THE CONSERVATOR SHALL DISCLOSE WHETHER THE ANNUAL EXPENSES OF THE CONSERVATORSHIP EXCEED INCOME AND, IF SO, WHETHER THE ASSETS AVAILABLE TO THE CONSERVATOR LESS LIABILITIES ARE SUFFICIENT TO SUSTAIN THE CONSERVATORSHIP FOR THE DURATION OF TIME THE PROTECTED PERSON NEEDS CARE OR FIDUCIARY SERVICES.

B. THE ESTATE SUSTAINABILITY SHALL BE CALCULATED AS FOLLOWS: [AVAILABLE ASSETS MINUS LIABILITIES OF THE ESTATE] DIVIDED BY [ANNUAL EXPENDITURES MINUS ANNUAL INCOME] EQUALS ESTATE SUSTAINABILITY

C. IF THE ASSETS ARE NOT SUFFICIENT TO SUSTAIN THE ESTATE, THE CONSERVATOR SHALL ALSO DISCLOSE THE MANAGEMENT PLAN FOR THE NON-SUSTAINABLE CONSERVATORSHIP.

D. THE INFORMATION REQUIRED BY THIS RULE SHALL BE A GOOD FAITH PROJECTION BASED UPON THE INFORMATION THAT IS REASONABLY AVAILABLE TO THE CONSERVATOR CONCERNING THE SUBJECT PERSON. THIS INFORMATION MAY BE CONSIDERED BY THE COURT WHEN ENTERING ORDERS.

E. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL DISCLOSE THE INFORMATION REQUIRED BY THIS RULE, INCLUDING THE CONSERVATOR'S ASSUMPTIONS AND CALCULATION, WHEN FILING AN INVENTORY, ANY CONSERVATOR'S ACCOUNT, AND FOLLOWING ANY MATERIAL CHANGE OF CIRCUMSTANCES.

F. UNLESS OTHERWISE ORDERED BY THE COURT, THE SUSTAINABILITY DISCLOSURE SHALL BE FILED IN THE FORMAT SET FORTH IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION. [emphasis in original]

RULE 30.3. CONSERVATORSHIP ESTATE BUDGET

A. UNLESS OTHERWISE ORDERED BY THE COURT, THE CONSERVATOR SHALL FILE A BUDGET NOT LATER THAN THE DATE THE INVENTORY IS DUE AND THEREAFTER WITH EACH CONSERVATOR'S ACCOUNT, FOLLOWING CONSULTATION WITH ANY ATTORNEY OR GUARDIAN AD LITEM FOR THE PROTECTED PERSON. THE FIRST BUDGET SHALL COVER THE DATE OF THE CONSERVATOR'S INITIAL APPOINTMENT THROUGH AND INCLUDING THE END DATE OF THE CONSERVATOR'S FIRST ACCOUNT.

B. UNLESS OTHERWISE ORDERED BY THE COURT, THE BUDGET SHALL BE FILED IN THE FORMAT SET FORTH IN THE APPROPRIATE FORM PRESCRIBED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION. C. THE CONSERVATOR MUST PROVIDE A COPY OF THE BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE CONSERVATOR'S ACCOUNTS PURSUANT TO ARIZONA REVISED STATUTES SECTION 14-5419(C).

C. THE CONSERVATOR MUST PROVIDE A COPY OF THE BUDGET TO ALL PERSONS ENTITLED TO NOTICE OF THE CONSERVATOR'S ACCOUNTS PURSUANT TO ARIZONA REVISED STATUTES SECTION 14-5419(C).

D. THE CONSERVATOR SHALL FILE AN AMENDMENT TO THE BUDGET AND PROVIDE NOTICE IN THE SAME MANNER AS THE INITIAL BUDGET WITHIN THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY A THRESHOLD PRESCRIBED BY THE ARIZONA JUDICIAL COUNCIL AND AS SET FORTH IN THE INSTRUCTIONS FOR THE CONSERVATOR'S BUDGET AS ADOPTED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION. [emphasis in original]

Pursuant to Rule 30.3(A), in effect at the time of the alleged misconduct, EVFS was required to file with the Court an initial estate budget not later than the date the inventory was due and per Rule 30.3(B) provide a copy of the budget to all persons entitled to notice of the conservator's accounts. EVFS did not file the budget according to the requirements of Rule 30.3. Albeit approximately three weeks late and after the Court issued an Order to Show Cause, EVFS filed with the Court an Inventory and Appraisal on November 14, 2017.

On December 6, 2018, EVFS filed with the Court a Final Inventory & Accounting wherein EVFS stated that EVFS was not required to file a budget because of a Court order. In the “NARRATIVE” and “EXPLANATION” portion of the Final Inventory & Accounting, Page 22 of 24, paragraph 5, EVFS noted the following:

■ [REDACTED]

In his interview with the Division, Bogle was asked about EVFS not filing an estate budget and about the statement contained in the Final Inventory & Accounting, “Per the Order Appointing Temporary Conservator, EVFS was not required to filed [sic] a budget for the Conservatorship.” Bogle told the Division that the Court’s order appointing EVFS as temporary conservator for Chalmers set out that EVFS was not required to file an estate budget therefore EVFS did not file a conservator’s estate budget.

Bogle’s statement that the Court’s order provided the judicial basis for EVFS not having to file an estate budget is not supported by the facts. There were no Court records demonstrating that the Court expressly ordered or explicitly waived the estate budget filing requirement. Rather, the Court, in part, ordered that the inventory and appraisal was to be filed within 60 days of appointment as conservator and the Court was silent on filing the estate budget at the time of EVFS’ initial appointment as temporary conservator.

However, the absence of verbiage in a Court order involving filing an estate budget when an estate budget is required to be filed with the Court by statute and rule, is not equivalent to the Court issuing an order with prescribed language explicitly waiving the requirement. The responsibilities set forth in ARPP Rule 30.3, A.R.S. §14-5418, or responsibilities set forth in the Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017, referenced earlier, still applied.

The code requires that a budget of all anticipated expenses and income be filed as Form 5.

ACJA §3-302 (A) and (D)(2)(b)(1)(a):

“Budget” means a projected list of all anticipated expenses and income.

b. Exclusive Forms, Schedules, Worksheets, and Instructions.

(1) The following forms and the associated schedules, worksheets, and instructions are adopted as the exclusive method for presenting such matters in the superior court:

(a) Form 5: Conservatorship Estate Budget;

Court records provide additional context on the estate budget issue further demonstrating that the Court did require that EVFS file an estate budget. On July 9, 2020, Commissioner Thomas Marquoit (“Commissioner Marquoit”) issued a Minute Entry regarding a Hearing Reset. Pertinent to the conservator’s budget, Commissioner Marquoit wrote:

Lastly, the Court brings a matter to the attention of the parties which may or may not be significant. In preparing for the last hearing, the Court reviewed the docket in this case and did not find any notices of compensation filed by any party seeking fees other than Mr. Doyle. **The Court also does not see a budget filed for EVFS.** The Court expresses no feeling regarding the relevance of this information but wants the parties to be prepared to address it at the evidentiary hearing. [emphasis added]

On January 15, 2021, Commissioner Marquoit issued a Minute Entry. Pertinent to the conservator's budget, he wrote:

On July 9, 2020, this Court issued a minute entry informing the parties that, as far as this judicial officer was able to determine, no notices of compensation were filed by any party in this case other than Mr. Doyle, and that **EVFS did not appear to have filed a budget.**

Since that time, the only filing which addresses this issue came from EVFS on September 16, 2020 when it filed "Response to Court re: notice of basis of compensation..."

The Court also denies the fee petition from EVFS for the same reason of failure to file a notice of compensation, and also **because of its failure to file a budget.** In "Response to Court re: notice of basis of compensation..." EVFS acknowledged that it did not file a notice of compensation but did not address the lack of a budget at all. By signing "Order to temp guardian and conservator for an adult and acknowledgement and information to interested persons," filed on August 18, 2017, EVFS agreed that it was required to **"establish and file a budget."**

During the time relevant to the petition at bar, the conservator was required to file (1) a budget and (2) an amendment to the budget, and provide notice of same, within 30 days of reasonably projecting that their expenditures would exceed the original budget by 10% or by \$2,000.

This is not a situation of an unlicensed fiduciary with no experience attempting to navigate complicated legal requirements. Nor is this a case where counsel for EVFS is unexperienced. The Court expects licensed fiduciaries to follow the rules, especially when requesting payment of such high amounts. [emphasis added]

In his January 15, 2021, Minute Entry, Commissioner Marquoit referenced the Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017:

CONSERVATORS:

7. Unless otherwise ordered by the court, you must establish and file a budget...

Commissioner Marquoit also referenced Rule 30.3(D) requiring fiduciaries to file an amended budget, and provide notice of same, within 30 days of reasonably projecting that their expenditures would exceed the original budget by 10% or by \$2,000.

Rule 30.3(D)

D. THE CONSERVATOR SHALL FILE AN AMENDMENT TO THE BUDGET AND PROVIDE NOTICE IN THE SAME MANNER AS THE INITIAL BUDGET WITHIN THIRTY DAYS AFTER REASONABLY PROJECTING THAT THE EXPENDITURES FOR ANY SPECIFIC CATEGORY WILL EXCEED THE APPROVED BUDGET BY A THRESHOLD PRESCRIBED BY THE ARIZONA JUDICIAL COUNCIL AND AS SET FORTH IN THE INSTRUCTIONS FOR THE CONSERVATOR'S BUDGET AS ADOPTED IN THE ARIZONA CODE OF JUDICIAL ADMINISTRATION [emphasis in original]

Estate budgets are a reasonable projection of all costs and income over the forthcoming year. Expenses and costs include, but are not limited to, housing and shelter, utilities, food, clothing, medical, and also professional fees and costs including fiduciary and legal fees and costs. Estate budgets give the fiduciary a financial framework or blueprint from which to calculate and monitor estate expenditures. Fiduciaries are required to file conservatorship sustainability reports and estate budgets with the Court, with notice to interested parties, so that the Court and interested parties receive an estimation of the expenses and costs. The Court can review and determine whether the assets are sufficient to pay for expenses for the duration of the time the protected person needs care and fiduciary services.

Moreover, when the fiduciary can reasonably project that expenditures will exceed 10% or \$2,000.00, involving any budget line item, the fiduciary is required by Rule 30.3(D) to file an amended budget with the Court and provide notice to interested parties. In addition to transparency, interested parties receiving a copy of the estate budget or amended budget are given a voice to agree or object to a budget or amended budget filed with the Court.

Estate budgets require judicial approval. When the Court reviews an estate budget or an amended budget, the Court can either approve, disapprove, or modify the estate budget to further the protected person's best interest. Whether intentional or not, by failing to file with the Court an estate budget and/or file with the Court an amended budget as expenditures increased, EVFS disregarded its fiduciary duty to file an estate budget and/or an amended budget. In doing so, EVFS precluded the Court from reviewing, approving, and overseeing the projected expenditures.

c) Additional: Notice of Basis of Compensation

EVFS failed to file a written Notice of Basis of Compensation as required by ARPP and A.R.S., when EVFS filed with the Court the Rule 33 Applications.

Pursuant to ARPP, Rule 33, Compensation for Fiduciaries and Attorneys; STATEWIDE FEE GUIDELINES [sic] in effect at the time of the alleged misconduct,²² fiduciaries are required to give written notice of the basis of any compensation, as required by A.R.S §14-5109.

Rule 33. Compensation for Fiduciaries and Attorneys; STATEWIDE FEE GUIDELINES

A. A GUARDIAN, CONSERVATOR, ATTORNEY OR GUARDIAN AD LITEM WHO INTENDS TO BE COMPENSATED BY THE ESTATE OF A WARD OR PROTECTED PERSON SHALL GIVE WRITTEN NOTICE OF THE BASIS OF ANY COMPENSATION AS REQUIRED BY ARIZONA REVISED STATUTES SECTION 14-5109. [emphasis in original]

B. Unless otherwise ordered by the court, a petition that requests approval of compensation for a personal representative, trustee, guardian, conservator, guardian ad litem, attorney representing such fiduciary, or an attorney representing the subject person in a guardianship or conservatorship proceeding for services rendered in proceedings under A.R.S. Title 14 shall be accompanied by a statement that includes the following information:

- 1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;**
- 2. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is based on some other method, an explanation of the method being used for reimbursement of costs; and**
- 3. If compensation is not based on hourly rates, an explanation of the fee arrangement and computation of the fee for which approval is sought.**

²² R-11-0023, effective on and after February 1, 2012.

C. Copies of all petitions for compensation and fee statements shall be provided to or served on each party and person who has appeared or requested notice in the case. Proof of such service shall be filed with the court. [emphasis in original]

A.R.S §14-5109. Disclosure of compensation: determining reasonableness and necessity

A. When a guardian, a conservator, an attorney or guardian ad litem who intends to seek compensation from the estate of a ward or protected person first appears in the proceeding, that person must give written notice of the basis of the compensation by filing a statement with the court and providing a copy of the statement to all persons entitled to notice pursuant to sections 14-5309 and 14-5405. The statement must provide a general explanation of the compensation arrangement and how the compensation will be computed.

D. The person seeking compensation has the burden of proving the reasonableness and necessity of compensation and expenses sought.

ACJA §3-303(D)(2)(a):

2. Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:

a. All fee petitions shall comply with Rule 33 of the Arizona Rules of Probate Procedure.

Commissioner Marquoit noted that EVFS failed to file the requisite notice of compensation. The Court's July 9, 2020, Minute Entry, pertinently:

Lastly, the Court brings a matter to the attention of the parties which may or may not be significant. In preparing for the last hearing, the Court reviewed the docket in this case and **did not find any notices of compensation filed by any party seeking fees other than Mr. Doyle.** The Court also does not see a budget filed for EVFS. The Court expresses no feeling regarding the relevance of this information but wants the parties to be prepared to address it at the evidentiary hearing. [emphasis added]

On January 15, 2021, Commissioner Marquoit issued a Minute Entry. Pertinently:

On July 9, 2020, this Court issued a minute entry informing the parties that, as far as **this judicial officer was able to determine, no notices of compensation were filed by any party in this case other than Mr. Doyle,** and that EVFS did not appear to have filed a budget.

Since that time, the only filing which addresses this issue came from EVFS on September 16, 2020 when it filed "Response to Court re: notice of basis of compensation..."

The Court also denies the fee petition from EVFS for the same reason of failure to file a notice of compensation, and also because of its failure to file a budget. In "Response to Court re: notice of basis of compensation....EVFS acknowledged that it did not file a notice of compensation but did not address the lack of a budget at all. By signing "Order to temp guardian and conservator for an adult and acknowledgement and information to interested persons," filed on August 18, 2017, EVFS agreed that it was required to "establish and file a budget." [emphasis added]

On September 16, 2020, EVFS, by and through counsel, filed with the Court a Response to Court Re: Notice of Basis of Compensation Pursuant to A.R.S. §14-5109 & Objection to Motion to Withdraw as Counsel of Record for William Chalmers. Pertinently,

5 A.R.S. §14-5109 is intended to provide notice of an attorney's hourly rate and, though
6 they were not filed at the outset, the professional fees of those acting on the Ward's behalf were
7 constantly being addressed in pleadings and during oral argument before Commissioner
8 Passamonte. Rule 33 Applications for Fees and Costs were filed by EVFS and undersigned
9 counsel on April 5, 2018, no objections were filed regarding either, and they were both eventually
10 approved by Commissioner Passamonte on May 18, 2018. Undersigned counsel regrets the
11 oversight, but everyone involved in this case was aware of the basis of his and EVFS'
12 compensation from very early on, they were afforded ample opportunity to object, and no one
13 opted to do so until Cook's filings in June of 2019.

The temporary conservatorship ended on September 18, 2018, and after ongoing objections, filings, and a hearing, the Court approved the Final Inventory & Accounting on January 15, 2021. The Minute Entry of the same date reflected Commissioner Marquoit's ruling that he could not consider the Rule 33 Applications that Commissioner Passamonte had previously approved, but Commissioner Marquoit denied the Rule 33 Applications that were subsequently submitted in December 2018 and January 2019, in PB2017-001373.

Chalmers continued to litigate the fiduciary fees and costs and attorneys' fees and costs previously approved by Commissioner Passamonte in May 2018.

On May 16, 2022, in PB2017-001373, the Court issued a Minute Entry regarding the memorandums of law provided by the parties and the oral argument presented on April 18, 2022. The Court considered the record in this case and the memorandum decision of

Division One of the Court of Appeals, State of Arizona, issued on December 14, 2021. The Court was asked to determine whether \$312, 939.23 in fees should be reconsidered (2018 approved fees).

The Court found that failure of the professionals (EVFS, Theut, Scharber, and McKindles) to comply with the applicable statute regarding a Notice of Compensation waived their right to seek such compensation. As a result, the approval of the fees was manifestly unjust and erroneous. Ultimately, the Court concluded that the previous fee approvals were manifestly unjust because the professionals did not comply with A.R.S. §14-5109(A). The Court ruled that all fees from the 2018 fee orders be returned to Chalmers within 60 days of May 15, 2022.

Allegation 4 is substantiated (involving EVFS and Bogle).

Allegation 5: East Valley Fiduciary Services, Inc., failed to comply with the Court Accountant's recommendations.

Chalmers alleged that EVFS failed to provide financial data to support a significant number of transactions after the Court accountant requested specific information. Chalmers pointed to the Court accountant's review of March 6, 2019, which he included as Appendix "jj." Chalmers also said EVFS failed to inform him or the Court via the final accounting of the financial transactions conducted after the conservatorship ended.

In response to the Final Inventory & Accounting that EVFS filed with the Court on December 6, 2018, the Court Accountant issued a Court Accountant's Report and Recommendations ("CARR") on March 6, 2019. The CARR identified four areas of concern and made recommendations accordingly:

- 1) This account was filed on Form 8: Final Conservator's Account, however there was not a Statement of Asset Distribution included with the account as required.

Recommendation: A Statement of Asset Distribution should be filed with the response.

- 2) The fiduciary fee statement filed December 13, 2018 makes references to an Arizona Bank and Trust account ending in #■■■■■, however there is nothing in this account that relates to an accounting ending in #■■■■■ nor was an account statement for that account number provided with this account.

Recommendation: An explanation should be provided to this Court that explains the account ending in #■■■■■. An amended account should be filed to include this account if necessary. A copy of the financial account statement ending in #■■■■■ that covers the end date of this account should also be provided with the response.

- 3) Schedule 2, Line 16 had a beginning balance of \$152, 880.80 and an ending balance of \$0.00, however only \$45, 362.85 was paid on debt according to the Transaction Log. It is unclear where the difference of the debt went.

Recommendation: An explanation should be provided to this Court that explains the difference in the debt amounts from the beginning of the account period to the end. An amended account and/or Transaction Log should be filed if necessary.

- 4) A supplemental schedule was provided with this account that shows “uncleared checks written prior to the end of conservatorship.” These checks total \$135, 034.87 and were written the day before and the last day of the conservatorship. These amounts were not included in the Transaction Log or Schedule 2, Line 11 balances.

Recommendation: An amended account and Transaction Log should be filed that accounts for all transactions made during the account period and show an accurate amount of funds in the bank accounts at the end of the account period. If the amounts on Schedule 2 do not agree to the ending balance of the checking accounts a reconciliation of the checking account should be provided with the account.

EVFS, by and through counsel, provided a response to the CARR on March 18, 2019.

- Regarding CARR 1, EVFS said that a Statement of Asset Distribution was attached to the response as Exhibit “A.”
- Regarding CARR 2, EVFS said this was the account that Chalmers’ personal allowance was typically transferred into. EVFS did not account for these funds because all transactions were made at the discretion of Chalmers. Every statement for this account is attached as Exhibit “B.”
- Regarding CARR 3, EVFS said Page 2 of the transaction log referenced the total amount for “Bill and Payables More than 30 Days old” at the end of the accounting period in the amount of \$250,131.98. Page 23 of the transaction log lists each debt that totals this amount. This information was not included in Worksheet B and therefore Schedule 2, Column B, Line 16 is in error. A corrected Form 8 is attached hereto as Exhibit “C.”
- Regarding CARR 4, EVFS said a supplemental accounting for Arizona Bank & Trust accounts # [REDACTED] and # [REDACTED] covering all transactions that occurred between the end of the temporary conservatorship on September 18, 2018 and the closing of said accounts, is attached as Exhibit “D.” The relevant account statements are included therewith. All transactions except checks [REDACTED] and [REDACTED] were made in

compliance with a May 17, 2018 Minute Entry directing EVFS “to holdback liquid assets” for the payment of professional fees, attached as Exhibit “E.” Check numbers [REDACTED] through [REDACTED] and [REDACTED] and [REDACTED] were payments of court approved professional fees. The transfer from account # [REDACTED] to Renata Chalmers was her portion of the couple’s tax refund, as required by the Divorce Decree.

The Court account issued another CARR dated April 16, 2019, containing areas of concerns:

- 1) The CARR filed on March 6, 2019 recommended in part, “An amended account and Transaction Log should be filed that accounts for all transactions made during the account period...” The Response to Court Accountant’s Report and Recommendation, filed on March 18, 2019, regarding this item of concern did not satisfy Court accountant’s recommendation.

This recommendation was in specific reference to the \$135, 043.87 in “uncleared checks written prior to end of conservatorship.” The Petitioner points to the Court’s order on May 17, 2018 that “East Valley Fiduciary will [sic] need to holdback liquid assets of Mr. Chalmers.” [sic] but this Order of the Court is immaterial to the Court Accountant’s recommendation. As these checks, regardless of whether they were cleared or not, were written during the accounting period, they should have been reflected in the Transaction Log, as a disbursement on Schedule 1, and ultimately in the Net Assets on Schedule. As the money was already “spent” a failure to report it in these three respective areas creates an inflated ending cash balance.

Recommendation: An amended account and Transaction Log should be filed that accounts for all transactions [sic] made during the account period, including any transfers that were initiated and checks that were written and/or dated during the account period. Proof of these transactions should be included with the response such as copies of the cleared checks showing the date written and receipts of the transfers showing the date requested.

On May 22, 2019, EVFS, by and through counsel, responded to the April 16, 2019 CARR. EVFS attached 1) an updated Transaction Log; 2) Statement of Asset Distribution; and 3) Account Statements substantiating the checks in question.

On June 18, 2019, another CARR was issued wherein the Court accountant said the accountant reviewed the First Annual Account for the period August 18, 2017 through September 18, 2018; the First Response filed on March 18, 2019, and the Second Response filed on May 22, 2019. The accountant stated:

After the review of this information provided, along with other information in the court file, this Account is NOT being recommended for approval as the petitioner

has been unable to adequately address the Court Accountant's concerns. [emphasis in original]

On July 9, 2019, EVFS, by and through counsel filed with the Court a Motion to Continue Status Conference set for July 17, 2019 and Motion for Clarification of Court Accountant's Objection. EVFS argued that it would not be fair to EVFS to proceed with the upcoming status conference until the Court Accountant has provided EVFS with a detailed explanation for why they object to the documents provided in EVFS' Second Response.

On July 16, 2019, the Court issued a Minute Entry denying EVFS' Motions as filed on July 9, 2019.

ACJA §7-202(J)(1)(c)(2) and (3):

c. The fiduciary shall:

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate, understandable, in a form acceptable to the court, consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;

(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;

The Court's records indicate EVFS did not provide an accurate and complete accounting to the Court. In addition, EVFS failed to adequately satisfy the Court Accountant's requests per the CARRs issued and, subsequently, the Court Accountant did not recommend that the accounting be recommended for approval. The Division notes that the conservator's accounting was eventually approved by the Court on January 15, 2021.

Allegation 5 is substantiated (involving EVFS and Bogle).

Allegation 6: East Valley Fiduciary Services, Inc., engaged in and/or allowed block billing and double billing.

Chalmers alleged that EVFS' attorney, Scharber, engaged in "rampant" block billing and double billing. Chalmers alleged that EVFS engaged in double billing and block billing. ACJA §3-303(D)(2)(c) applies to compensation for fiduciaries, Guardians ad litem and attorneys and disallows block billing.

2. Compensation of the Professional. Unless otherwise ordered by the court, compensation and reimbursement for professional services shall meet the following requirements:

c. "Block billing" is not permitted. Block billing occurs when a timekeeper provides only a total amount of time spent working on multiple tasks, rather than an itemization of the time expended on a specific task.

In his interview, Bogle told the Division that he reviews EVFS' and attorneys' billings for compliance with ACJA §3-303 including checking for block billing or double billing. Bogle said he would not allow any block billing. The Division reviewed various examples from McKindles' billing which meet the definition of block billing because entries reflected the total hours spent on numerous tasks, but McKindles did not itemize the time spent on each task. Bogle stated he did not find any examples of block billing in McKindles' billings or Scharber's billings.

McKindles' billing records, per Rule 33 Applications for the period from September 28, 2017, through March 27, 2018, reflect block billing. The following examples are copied from McKindles' billing, but do not represent every entry where block billing may have occurred. McKindles' billing was consistently documented in the same manner with no itemization of time expended on any given task.

		<u>Fees</u>		
			<u>Hours</u>	
09/28/2017	JMM	Conference with Andrew Stone. Review and collation of documents. Notes to file.	<u>3.80</u>	<u>1,140.00</u>
		For Current Services Rendered	3.80	1,140.00
		Total Current Work		1,140.00
		<u>Payments</u>		
09/28/2017		Retainer received. Thank you!		-2,800.00
		Credit Balance		<u>-\$1,300.00</u>
10/03/2017	JMM	Email from and telephone call to Andrew (x2). Collation of documents. Telephone call to Ryan Scharber. Preparation and filing of Notice of Appearance. Telephone call to Gary Doyle. Email to Andrew.	3.80	1,140.00
10/11/2017	JMM	Emails from and to Andrew. File review. Email string from Ryan Scharber. Email to Andrew with copy to Ryan, Gary and Brian.	1.30	390.00
10/12/2017	JMM	Emails from and to Andrew. File review. Telephone conference with Andrew, Bill, and Gary. Notes to file. Emails from Andrew and Ryan Scharber. Email to Ryan Scharber.	2.80	840.00

11/20/2017	JMM	Conference with Bill Chalmers. File review and notes to file. Telephone call to Andrew. Brief research.	4.70	1,410.00
01/29/2018	JMM	Emails from Bob Budoff, Andrew, AWG and others. File review and work on Position Statement.	2.90	870.00
01/30/2018	JMM	Emails from and to Ryan. Telephone call to Ryan. File review and notes to file. Telephone call to Court. Telephone call to Brian. Teleconference with Court and counsel. Work on position statement.	2.70	810.00
01/31/2018	JMM	File review and notes to file. Conference with Gary, Mike and Bill (telephonically). Collation of file documents. For Current Services Rendered	<u>2.80</u> 21.20	<u>840.00</u> 6,380.00

The Division reviewed Scharber's billings, per Rule 33 Applications, for the period from August 16, 2017, through March 29, 2018. There were examples of Scharber engaging in block billing. Scharber's billing was consistently documented in the same manner with no itemization of time expended on tasks.

08/30/2017	RMS	Phone Call From Andrew Regarding Bill's Trust; Phone Calls From Attorney Brian Theut Regarding Dr. Rookwell; Draft Emails to Mike Bogle, Attorney Gary Doyle and Andrew Stone Regarding the Same; Draft Partial Distribution Agreement; Draft Email to Attorneys Gary Doyle and Angela Wilson Goodman;	2.30	\$375.00
09/06/2017	RMS	Review and Receipt of Emails From Attorneys Brian Theut, Gary Doyle and Angela Wilson-Goodman Regarding Partial Distribution Agreement; Draft Emails to Brian, Gary and Angela Regarding the Same; Phone Call From Brian Theut Regarding the Same; Edit Agreement Regarding Distribution Amount;	1.90	\$475.00
10/17/2017	RMS	Attend Hearing Regarding Temporary Guardianship; Review and Receipt of Email From Bill Regarding Fees; Draft Email to Andrew Stone Regarding the Same;	4.50	\$1,125.00
11/02/2017	RMS	Meet With Mike Bogle Regarding Bill's Trust, Etc.; Review and Receipt of Emails from Gary Doyle Regarding the Same; Call From Gary Regarding the Same; Call From Andrew Stone Regarding the Same; Draft Email to Mike Bogle and Andrew Stone Regarding the Same;	1.80	\$450.00
02/15/2018	RMS	Meet With Mike Bogle to Discuss Divorce Mediation; Call With Gary and Bill Regarding the Same; Review and Receipt of Email From Attorney John McKindies Regarding Divorce Mediation; Draft Emails to John Regarding the Same;	2.10	\$619.50

02/22/2018	RMS	Review and Receipt of Emails From Attorneys Gary Doyle, Brian Theut, Angela Wilson-Goodman and John McKindler Regarding Trial, Petition for Approval, Etc.; Call From John McKindler Regarding the Same; Draft Email to Gary, Brian, Et Al Regarding the Same; Draft Petition for Approval; Draft Stipulation to Vacate; Draft Emails Regarding the Same;	2.60	\$767.00
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There were no examples of block billing found in Doyle's billings for services rendered, per the Rule 33 Applications. Doyle consistently itemized the time expended on each task.

There were no examples of block billing by GAL Theut.

EVFS records, per Rule 33 Application for the period from July 20, 2017, through March 27, 2018, revealed what appears to be some examples of block billing although billing also showed that EVFS did itemize time expended on certain tasks. The following are a few examples to illustrate that EVFS itemized time and task:

AS	With MB, discussed Chaimers petition and medical evaluation (.3); called counsel to discuss hearing and communication with Guardian Ad Litem (.2)	0.50 125.00/hr	62.50
AL	Traveled in dual control with AS to clerk of court for letter of appointment, filed bond (0.7); traveled to client's residence to collect his personal property, already bagged up by hotel staff; met with hotel manager and assistant to discover what happened; looked through client's residence and did not find items left behind (1.4); traveled back to office (0.3); moved client's inventory into the office (0.2)	2.70 45.00/hr	121.50

There were some examples of block billing, including:

9/14/2017	MB	Travel to hearing to work through the civil claims and address the bond. Multiple calls with counsel for status in the civil matters. Work with Bill and Mr. Warshaw for proceedings.	2.50 145.00/hr	362.50
AL	Traveled to client's Chandler home to meet with BG and deliver all personal property to client. Had client sign detailed inventory list. Drove to CVS pharmacy to drop off client's prescription. Made phone calls to office and client to determine pertinent medical information.	2.50 45.00/hr	112.50	

EVFS, as temporary conservator reviews the attorney's invoices and EVFS has the responsibility for ensuring attorney's billings do not demonstrate block billing because the conservator could not properly determine whether the billing for time is suitable before paying the attorney. A pattern of block billing on any attorney's invoice should indicate to EVFS that the attorney should reconstruct the billing to eliminate block billing before EVFS paid the attorney for services rendered.

Although Bogle told the Division that he reviews for block billing when he reviews the attorneys' invoices, but he did not find examples of block billing. In any example presented to him by the Division during the interview, Bogle stated that he did not consider the billing to be block billing.

The Division does not contend that Scharber's or McKindles' billings were inappropriate or unreasonable in rate or duration. The issue is whether the attorneys' billing complied with ACJA §3-303(D)(2)(c) and whether EVFS allowed block billing by paying the attorneys' fees and costs when block billing appeared in the billings and was prohibited by code. The records reviewed indicate McKindles and Scharber engaged in block billing practices and EVFS issued payment to the attorneys despite block billing.

There were examples of double billing found in EVFS' billing records. The Division did not find that EVFS regularly engaged in double billing, but examples were found. The following are several examples of what was noted in the billing records, but this does not necessary reflect all examples of double billing:

9/5/2017	TM	Phone call from client regarding medications, moving, and request for Dr. appointment.	0.30 95.00/hr	28.50
	TM	Phone call from client regarding medications, moving, and request for Dr. appointment.	0.30 95.00/hr	28.50

On September 8, 2017, Tanya Malos ("Malos") billed for time involving a telephone call from Chalmers after she had accompanied him to a medical appointment on that same date. Chalmers later called Malos because he was angry with the outcome of the appointment with his primary care physician. Malos also captured the same description on September 11, 2017, though EVFS records demonstrate that the appointment with the primary care doctor took place on September 8, 2017, and not on September 11, 2017.

9/8/2017

TM	Received call from client regarding his PCP visit today. He is angry with PCP and wants to change Dr.'s Discussed potential solutions and made a recommendation.	0.40 95.00/hr	38.00
TM	Drove from the office to Gilbert to meet with client's PCP. Met client at PCP's office and accompanied him to his appointment.	2.60 95.00/hr	247.00

9/11/2017

TM	Received call from client regarding his PCP visit today. He is angry with PCP and wants to change Dr.'s Discussed potential solutions and made a recommendation.	0.20 95.00/hr	19.00
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Allegation 6 is substantiated (involving EVFS and Bogle).

Allegation 7: East Valley Fiduciary Services, Inc., failed to return and/or failed to timely return estate property and records when requested and/or after the conservatorship ended.

Chalmers alleged that EVFS failed to either return and/or timely return estate property and financial records when requested and/or at the end of the conservatorship. Chalmers identified the following subject property and records:

- a) Cloned hard drives
- b) Property held in storage
- c) Financial and other records

a) Cloned Hard Drives

Chalmers said EVFS used estate funds to retain an IT company to create cloned drives of two Apple computers turned over to EVFS by Renata, but EVFS refused to turn over the imaged hard drives to him. Chalmers said he wants the cloned hard drives so that he can have an independent forensic computer expert determine what files have been deleted from the Apple computer(s) after he left the marital home and before Renata returned the computers to EVFS. In the complaint allegation, Chalmers credited EVFS for showing “good judgement” when EVFS did not trust Renata and cloned the hard drives of the computers. Chalmers said the cloned drives create an opportunity for him to “clearly show” that Renata had source code deleted from his computers “with the intention of doing financial harm” to him. He said EVFS’ position that EVFS is not required to turn over an asset for which estate funds were used to create is flawed and EVFS should turn over the assets because they are estate property.

During interview, Chalmers told the Division that he received the computers from EVFS after the computers were turned over to EVFS by Renata. Chalmers stated that he did not believe EVFS in any way tampered with the computers. After receiving his Apple computers, Chalmers said he got into a computer and made some type of changes but because of the changes he made, Chalmers now needed the cloned hard drives to restore the computer to the state in which he received the computer from EVFS. He said this would allow him “to prove” that Renata deleted data and source code. Chalmers said the computers were included in the Rule 69 Agreement which set out that Renata would forfeit \$50,000.00 if she did not produce the computers.

The Rule 69 Agreement, Clause 16, involves personal property and effects including the computers and states that Renata’s equalization payment will be reduced by \$50,000.00 if she failed to make reasonable efforts to find Chalmers’ computer(s).

16. PERSONAL PROPERTY AND EFFECTS: EXCEPT AS OTHERWISE STATED each party shall retain all personal property of any kind, including furniture, furnishings, clothing, jewelry and personal effects currently in his/her possession or control. If Wife locates any of Husband's computers she will provide it to him. Wife will make reasonable efforts to locate and provide to Husband his computer and the "Letter of Providence" as to the china. Wife will provide digital copies of the family photographs to Husband. If Wife does not provide the computer her equalization payment will be reduced by \$50,000.

The issue of an Apple Workstation was a topic of contention. In brief, on March 15, 2018, Chalmers, by and through counsel, filed an Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Decree. Pertinent to the Apple Workstation, Chalmers said one of his primary concerns was the whereabouts of the Apple Workstation. The following bullet points highlight some of Chalmers' concerns, in part:

- Chalmers had a substantial amount of work product for a patent he was developing.
- Renata repeatedly denied being in possession of an Apple Workstation but when at the settlement conference it was going to cost her \$50,000.00 if she was unable to produce the computer, Renata was able to produce the computer within 72 hours.
- The Apple Workstation was purchased on August 5, 2015 [sic].
- After Renata returned the Apple Workstation to EVFS, EVFS had the hard drive cloned before making the computer available to Chalmers. Chalmers was immediately able to determine that all of the data placed on the computer after August 26, 2015 [sic] was deleted.
- The computer had over \$10,000.00 worth of software programs installed, all of which were deleted.
- Renata had another computer serviced by Kendall Technologies, Inc, a computer repair business. Chalmers asked EVFS to get the records from Kendall Technologies to determine what work was done on what computers. EVFS failed to make any requests or issue subpoenas.
- One of the computers stored Chalmers' financial information and that information has never been recovered.
- Renata failed to return the Apple Workstation in its pre-divorce condition therefore she should not be entitled to the \$50,000.00 that was to be paid if she did produce the computer.

Renata, by and through counsel, filed a Response to Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Decree, on March 29, 2018. Pertinent to the Apple Workstation, she disputed Chalmers' contentions. Bullet points highlight her response, in part:

- She knew the whereabouts of the computer otherwise why agree to the outlandish caveat of relinquishing \$50,000.00 for a computer valued at less than \$4,000.00.

- The computer belongs to Intel for Chalmers' use while he was employed there but that he was required to return the computer to Intel after he settled his lawsuit with Intel because he signed an agreement to do so.
- It was a small computer and she forgot she had removed it from the marital residence when the property was listed for sale so it would not be stolen
- She waited until mediation to address the computer because of Chalmers' obsessive and paranoid reactions to the issue of personal property.
- She did not recall the computer ever being set up or turned on, let alone knowing about any software or data on the computer.
- She turned over the computer and complied with the Rule 69 Agreement.

Bogle told the Division that Renata returned the computers to EVFS. After receiving the computers, EVFS had the contents of the hard drives imaged because EVFS was concerned that Chalmers may accuse EVFS of wrongdoing involving the computers. Bogle said EVFS did not return the cloned hard drives to Chalmers because EVFS returned the original computers to him in the same state that Renata returned the computers to EVFS.

EVFS's Final Accounting and Inventory records show that on March 6, 2018, EVFS paid a computer IT firm for "Computer Back up." There appears to be two hard drives cloned including the subject Apple Workstation. The total cost to the estate was \$202.64.

[REDACTED]

Email records demonstrate that on May 4, 2018, Scharber, on behalf of EVFS, emailed Doyle and Theut stating that Scharber subpoenaed Kendall Technologies when Theut asked Scharber to do so, and Scharber shared the documents produced as soon as he received them. Scharber said McKindles did not think the invoice alone would be sufficient to prevail on a Petition for Post Decree Relief. McKindles had requested some sort of expert opinion based off the laptop(s) in question and the invoices regarding the likelihood that Renata spoliated evidence. Scharber said EVFS did not have either of the laptops referenced in its possession, which would likely make obtaining such an expert opinion difficult. Scharber suggested that if Doyle and Theut wanted McKindles "to take a run at Angela [Renata's attorney] on this issue with nothing but the invoices, I'm happy to tell him to do so, but that's going to run up fees, which I'm very hesitant to do at this point unless our odds of delivering a tangible victory for Bill are significant."

However, the central issue to resolve in this allegation is whether the imaged computer hard drives, paid for with estate funds, are estate property and whether those imaged drives should have been returned to Chalmers.

Bogle's concerns about Chalmers potentially accusing EVFS of some type of misconduct involving tampering with the computers prompted EVFS to image the hard drives after EVFS received the computers from Renata. EVFS' actions were protective of the business and its staff to neutralize or mitigate possible accusations against EVFS in future, should any arise. However, EVFS burdened the estate for the costs of imaging the hard drives even though the hard drives did not benefit the estate because the drives were imaged as part of a self-preservation strategy. EVFS should have used its own funds to pay for the cost of the imaged drives. In this instant matter, estate funds paid for the imaged drives, making them estate property that should have been returned to Chalmers.

b) Storage Units

In his complaint, Chalmers said that EVFS turned over the keys to storage units to a Right Space Storage manager on October 15, 2018, one month after the conservatorship ended on September 18, 2018, but that EVFS did not inform Chalmers or his attorney that EVFS turned over the keys.

Records demonstrate that EVFS, on behalf of the estate, rented three storage units with Right Space Storage to hold Chalmers' property. EVFS made monthly payments for the storage units between August 30, 2017, and September 18, 2018. On or about September 6, 2018, EVFS made a payment to Right Space Storage covering the storage unit rental period from August 25, 2018, through September 24, 2018. This payment covered storage rental costs up to six days after the conservatorship ended. In addition, on September 18, 2018, EVFS made another payment to Right Space Storage which paid for the storage rental unit(s) from September 25, 2018, through October 24, 2018, which exceeded the period of the temporary conservatorship.

EVFS continued to control Chalmers' property after the conservatorship ended.

In his interview with the Division, Bogle acknowledged that EVFS did not give Chalmers access to his belongings in storage for one or two months after the conservatorship ended. Bogle suggested that Chalmers' aggressive behavior may have contributed to the delay in EVFS relinquishing the keys to the storage units. Bogle told the Division that Chalmers had been accompanied to the storage units by EVFS staff and, while there, Chalmers made threats against Bogle and Stone to EVFS staff. The threats prompted EVFS to file a report with the police and obtain an order of protection.

EVFS records indicate that the alleged threat Bogle referenced in his explanation seems to have taken place around November 2, 2018, but EVFS had relinquished the keys to the storage unit(s) to a Right Space Storage manager on October 15, 2018.

For context, EVFS records show that on November 2, 2018, EVFS staff traveled to the storage units to meet with Chalmers regarding items missing from storage. Apparently,

during that time, Chalmers allegedly made threats or implied gun violence against Bogle and Stone resulting in EVFS filing a police report on November 2, 2018, and also seeking an injunction against harassment against Chalmers on November 15, 2018.

In his complaint Chalmers also said he was denied access to the storage units. However, Chalmers' assertion is not supported by EVFS records. On several occasions, EVFS staff billed for time to accompany Chalmers to storage units and at each of those visits, Chalmers retrieved various items and belongings.

With his complaint allegation, Chalmers noted Exhibit "S," which appeared to be a screen capture of text messages between himself and Griffing involving Chalmers accessing a storage unit. Pertinently, in one of the text messages, dated September 19, 2018, Chalmers asked "When can I get the code and the keys to the units?" The response, seemingly from Griffing, was that she needed to get approval from Bogle first, but she would have an answer for Chalmers some time that same date. Griffing later replied to Chalmers noting that Lelonek could meet with him on September 19, 2018, to "pick up the keys to your storage lockers. You will need to sign a receipt and release and change the billing address for the units. Next payment is due on September 24, 2018." Chalmers noted that he refused to sign a release and he reiterated that he needed access to his storage unit on September 20, 2018.

The next text message that Chalmers provided with his complaint was dated October 25, 2018, wherein Griffing replied "I will not be available tomorrow but the manager, Bob, at the storage unit has your set of keys. There is no need to return the keys when you are done. They are yours to keep." The conversation continued involving other matters. On October 26, 2018, Chalmers sent a text message to Griffing asking why no one told him that his keys were available for him on October 18, 2018. He noted that he could have hired movers to assist with emptying the units, had he known.

On October 18, 2018, Chalmers sent an email to Bogle and Doyle with the subject line "I need access to storage units." In the email, Chalmers said "I need to get access to my storage unit so that I can try and sell items and avoid spending qualified funds to sustain myself. This is a critical situation if I am unable to sell some item [sic]very soon I will run out of funds be [sic] the end of the month. Please treat this request as urgent."

EVFS records show that on October 18, 2018, Letonik billed the estate for time involving travel to Right Space Storage to drop off Chalmers' storage unit keys and let storage staff know that Chalmers would pick up the keys himself.

Trip to 10/18/2018 Directions from MB; drove to Right Space storage and dropped off client's storage unit keys. Let the staff know that client will pick the keys up himself.	Alex Lelonek	\$45.00	0.40	\$18.00
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In addition, billing entries as late as October 30, 2018, reflected time billed involving EVFS staff and moving Chalmer's tax returns and tax files into a storage unit at Right Space.

Inventory 10/30/2018 Received directive from BG to move client's 2015 - 2016 to Right Space Unit 481 with AL	Bill McAdams	\$85.00	0.10	\$8.50
Other 10/30/2018 Gave directive to AL and BM to move client's 2015-2016 tax returns to storage unit #481.	Bonnie Griffin	\$105.00	0.10	\$10.50
Inventory 10/30/2018 Directive from BG to move client's 2015-2016 tax files to Right Space storage unit #481 with BM.	Alex Lalonek	\$45.00	0.10	\$4.50

There were no records demonstrating that anyone from EVFS billed for time to travel to Right Space Storage on October 30, 2018. Billing reflected that on November 2, 2018, EVFS staff met with Chalmers at the storage unit and that is when the alleged threats were made. However, records suggest that EVFS continued to control and have access to the storage units until October 18, 2018, one month after the conservatorship ended. EVFS should have relinquished the keys to the storage units by the end of the conservatorship thereby surrendering control of Chalmers' property at the end of the conservatorship. By holding the keys to the storage units and continuing to have access to the storage units after the conservatorship ended, EVFS did so though the conservatorship ended on September 18, 2018.

ACJA §7-202(J)(1)(b):

b. The fiduciary shall not act outside of the authority granted by the court and shall seek direction from the court as necessary and court authorization for actions that are subject to court approval.

A.R.S. §14-5430. Termination of proceeding

B. The court, on determining after notice and a hearing that the minority or disability of the protected person has ceased, shall terminate the conservatorship unless the court has continued the conservatorship or other protective order pursuant to section 14-5401, subsection B.

C. On termination, title to assets of the estate passes to the formerly protected person or to the person's successors. The order of termination shall provide for expenses of administration and shall direct the conservator to execute appropriate instruments to evidence the transfer.

c) Financial and Other Records

Chalmers alleged that EVFS failed to perform any type of transition of records to him at the end of the conservatorship. He said he sought records that would help him “put the pieces of my life back together,” including bank statements, status of credit cards, medical bills, debts etc. He said EVFS “finally provided a drop of scant discovery in open court on July 19, 2019, but the discover was incomplete” because of missing bank statements, and emails were presented in .sg format and neither Chalmers nor his attorney found a utility that allows for the reading of the files. Chalmers said the banking files were labeled as Statement 1, 2 etc. “with no way to uniquely identify a file to a bank account with a specific accounting period and monthly statement date.

With his complaint, Chalmers provided a letter to EVFS’ Moore, erroneously dated January 8, 2018, rather than January 8, 2019. The letter stated, “ORIGINAL REQUEST FOR INFORMATION.” [sic] In that letter, Chalmers stated:

Please prepare my entire file for me to pick up within 7 days. I expect the file to include everything requested:

- 1. Pleadings**
- 2. Motions & other court papers filed**
- 3. Minute Entries**
- 4. Orders**
- 5. Accountings**
- 6. Any & all correspondence, including but not limited to all US Postal Service mail**
- 7. Emails recorded**
- 8. Any electronic communications, including but not limited to, text messages**
- 9. Any & all electronic files**
- 10. Notes**
- 11. Telephone messages**
- 12. Billing notes & records**
- 13. Fee applications**
- 14. Exhibits to be used by any party at any hearing even if they were not offered or admitted at trial or hearing**
- 15. Personal property held on premise**
- 16. Expert reports**
- 17. Deposition transcripts**
- 18. All contents of ‘Therefore’**
- 19. All bank statements from any banks used to conduct business of any kind in support of conservatorship. Including, but not limited to Arizona Bank and Trust**
- 20. Anything else that are is my file or should be in my file**

Note. I want and expect my original file, not a copy of my file

If you don't intend to provide any of the items please provide an explanation of why and your legal justifications.

In the supplemental response to the complaint, EVFS said if there was any validity to Chalmers' claims that EVFS failed to provide records, the Probate Court would have presumably taken some action on them, but the Court did not. EVFS stated that according to Chalmers, in January 2019, he asked for all his records to be returned to him, but at that time, although the formal conservatorship was over, the Court had not held the final hearings and had not released EVFS from its duties. EVFS said on July 19, 2019, in open Court, EVFS turned over a flash drive to Chalmers' counsel with copies of all the records. EVFS disputed that the records EVFS provided to Chalmers were incomplete.

Court records demonstrate that on November 16, 2018, Chalmers, by and through counsel, filed with the Court a Petition for Order to Show Cause Re Compliance with Stipulated Amended Order Appointing Temporary Limited Conservator of an Adult and, Motion for Order Regarding Termination of Temporary Conservatorship and Transfer of Assets and Information to Ward. Chalmers requested an expedited hearing on the grounds that it had been over seven weeks when the temporary limited conservatorship was terminated on September 17, 2018²³ and as of the date of filing, EVFS "has failed to transfer and turn" Chalmers assets and financial information to him.

On November 21, 2018, EVFS, by and through counsel, filed with the Court a Response to Petition for Order to Show Cause. Regarding financial accounts, EVFS said it "completely turned over custody of all accounts through AXA Financial to Chalmers and any lingering issues regarding such assets should be directed to the account custodian and not EVFS." Regarding personal property, EVFS said it has already turned over custody of the storage units that housed Chalmers' personal property.

The Court's Minute Entry, dated July 17, 2019, regarding a status conference and initial hearing regarding certain Rule 33 Applications, pertinently:

In open Court, Mr. Scharber presents Mr. Cook with the former temporary conservator's file as requested for discovery purposes.

The Division asked EVFS to provide documentation showing what financial records EVFS turned over to Chalmers. EVFS provided electronic records with folders identified as Financial, Legal, and Medical. The financial folder contained the following subfolders:

- Asset Split
- Cindy Williams Reports
- Credit Reports

²³ The Temporary Limited Conservatorship was terminated on September 18, 2018, according to Court records.

- Creditor's Log
- Divorce
- Documents from House
- Inventory
- Invoices
- LOI
- Receipt and Release

The Financial Folder also contained the following individual documents:

- Administrative costs list.xls
- Budget June 2018.xlsx.
- Chalmers notes.docxs.
- Chalmers Renter Insurance Coverage.pdf
- Chalmers Retirement Account Old Statements.pdf
- Chalmers)_Personal Receipts.pdf
- Email from Marcy Hall.pdf
- Firearms and Accessories Worksheet 8.14.2018.pdf
- Merle Cunningham Inventory.pdf
- Notes from Curt La Manana.pdf
- Notes with meeting with Merle.docxs

The Division reviewed each file and document. EVFS appeared to have provided Chalmers with a comprehensive set of documents and information from his file while EVFS served as temporary conservator, but EVFS did not appear to provide a full record of certain documents. For example, regarding Chalmers' bank accounts, EVFS provided only four monthly bank statements for Chalmers' account ending ***[REDACTED] from April 2018 through August 2018. Regarding statements for Chalmers' account ending ***[REDACTED] EVFS provided only two monthly statements for August 2018 and September 2018.

Regarding credit card statements, EVFS provided one monthly statement for Costco, which was from April 2017 - May 2017 prior to the conservatorship, Arizona Federal for December 2017 - January 2018, and no statements for the Capital One credit card.

The issue to resolve in Allegation 7 is whether Chalmers was entitled to certain records involved in EVFS' administration of the estate and, if so, whether EVFS provided or timely provided those records to him. EVFS provided Chalmers with files involving the conservatorship on or about July 17, 2019, approximately 10 months after the conservatorship ended on September 18, 2018.

The temporary conservatorship was in effect from August 21, 2107, until September 18, 2018. Though the temporary conservatorship formally ended on September 18, 2018, EVFS was not discharged of its liabilities as temporary conservator until the Court approved the conservator's final account, which occurred on January 15, 2021. Further,

there were ongoing and protracted legal filings with the Court and disputes between Chalmers and EVFS after the conservatorship ended.

Notwithstanding Chalmers' January 28, 2018, letter to EVFS, referenced above, EVFS was not required by the ACJA, statutes, or court rules to provide everything on Chalmer's list, nor was EVFS required to provide original records instead of copies. Chalmers was entitled to receive records involving this conservatorship.

ACJA §7-202(J)(5)(m):

m. Unless otherwise ordered by the court, the fiduciary shall provide timely access to and copies of documents associated with the conservator's annual account, as specified in A.R.S. § 14-5418(C).

A.R.S. §14-5418. Inventory and records

C. Unless otherwise ordered by the court, a person who is entitled to notice of the conservator's annual account pursuant to section 14-5419, subsection C may request in writing that the conservator do one of the following not more than once every thirty days:

1. Allow the person to view the protected person's financial records, the conservator's billing statements, the billing statements of the conservator's attorney or other records related to the protected person under the conservator's control.
2. Provide the requesting person with copies of these documents. Unless otherwise ordered by the court, the conservator shall allow the person to view or provide copies of the requested documents to the person as soon as practicable but no later than thirty days after receiving the request. The requesting party must pay reasonable copying costs.
3. Provide a report of receipts and disbursements of the conservatorship.

After the temporary conservatorship ended on September 18, 2018, Chalmers' rights were fully restored. To assist Chalmers in rebuilding and proceeding post-conservatorship, copies of financial records maintained during the pendency of the conservatorship including monthly bank and financial account statements, credit card statements, invoices and disbursements made from the estate, and a creditor's log showing debts and the amounts owed, should have been made available to him.

EVFS acknowledged that Chalmers asked for the return of his records in January 2019 but said, at that time, although the formal conservatorship had ended the Court had not held the final hearings and had not released EVFS from its duties. EVFS turned over a flash

drive of Chalmers' financial records to Chalmers' counsel in open Court on or about July 19, 2019. EVFS disputed Chalmers' claim that the records turned over were incomplete records, as alleged by Chalmers.

Under the authorities stated above, EVFS should have provided Chalmers with copies of records within 30 days of his request.

Allegation 7 is substantiated (involving EVFS and Bogle).

Allegation 8: East Valley Fiduciary Services, Inc., failed to provide 120 days of funding to the ward at the end of the conservatorship, in violation of a Court order.

In his complaint, Chalmers stated that the final Court order for the conservatorship required EVFS to provide 120 days of funding. Chalmers said he provided a detailed budget via his Court-appointed counsel, but EVFS failed to provide any funds to him as part of the transition. With the complaint, Chalmers included as Appendix "t" the Stipulated Amended Order Appointing Temporary Limited Conservator of an Adult ("Stipulated Order") that Chalmers, by and through counsel, filed with the Court on September 6, 2018.

Paragraph 2(e) of the Stipulated Order states:

AND IT IS, THEREFORE, FURTHER ORDERED:

2. Directing that Letters of Temporary Limited Conservatorship be issued to EAST VALLEY FIDUCIARY SERVICES, INC. upon the acceptance of appointment with the following limitations and restrictions:
 - e. The Temporary Limited Conservator shall provide to and release funds to WILLIAM CHALMERS that are necessary for his needs during the next 120 days. WILLIAM CHALMERS is directed to provide the Temporary Limited Conservator with a reasonable budget to determine what funds should be released to him. The Temporary Limited Conservator shall retain control of the balance of the unreleased funds but is only authorized to spend funds to satisfy any current needs of WILLIAM CHALMERS. [emphasis in original]




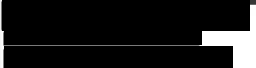

In the response to the complaint, EVFS stated that Chalmers alleged that EVFS failed to provide him with 120 days of funding at the end of the conservatorship thereby violating a Court order, but EVFS said there was no such Court order and the order Chalmers provided with his complaint as Appendix "t" does not say this nor did the Court conclude that EVFS violated such an Order.

Notwithstanding EVFS' statement that there was no such Court order to provide Chalmers with 120 days of funding, Commissioner Passamonte executed the Stipulated Order on September 5, 2018:

DATED: 9-5-18


Honorable Carolyn K. Passamonte

The Stipulated Order was executed by relevant counsel on August 27, 2018:

1 Stipulated to this 27th day of August, 2018.
2  AUTHORIZED BY
3 Ryan Scharber Esq.
4 Attorney for Temporary Conservator
5 Stipulated to this 27th day of August, 2018.
6  AUTHORIZED BY
7 Brian J. Theut Esq.
8 Guardian Ad Litem for William Chalmers
9 Stipulated to this 27th day of August, 2018.
10 
11 Michael J. Doyle, Esq.
12 Court Appointed Counsel for William Chalmers
13 ORIGINAL LODGED and copies of the foregoing
14 emailed/hand-delivered this 27th day of August, 2018 to:
15 Honorable Carolyn Passamonte
16 Maricopa County Superior Court
17 Ryan Scharber Esq.
18 
19 HOOPER, ADAMS & ALEXANDER, PLC
20 Attorney for Temporary Conservator
21 Brian J. Theut Esq.
22 
23 THEUT, THEUT & THEUT, PC
24 Guardian Ad Litem for William Chalmers
25 BY: C. Murphy

The corresponding Minute Entry issued by the Court on September 10, 2018, included items from the Stipulated Order but did not specifically mention the 120 days of funding.

However, in the Minute Entry, the Court ordered appointing EVFS as Temporary Limited Conservator. Upon the appointment of EVFS as temporary limited conservator, EVFS was subject to the terms and condition set forth in Paragraph 2(e) of the September 5, 2018, order.

EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, did not show any disbursements to Chalmers after July 17, 2018, including no disbursements to Chalmers in September 2018.

ACJA §7-202(J)(1)(a)

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

Allegation 8 is substantiated (involving EVFS and Bogle).

Allegation 9: East Valley Fiduciary Services, Inc., breached its fiduciary duty to the estate by failing to take post-decree action against Renata Chalmers involving the sale of firearms accessories and a 1998 Ford Truck.

Pursuant to the Rule 69 Agreement, the firearms were marital property and would be sold and the proceeds divided equally between Chalmers and Renata. Chalmers told the Division that he disabled the guns by removing firing pins and/or other accessories and he stored the firearm accessories at his uncle Merle's home. Merle sold the firearms accessories and gave Renata \$7,552.00 which represented the proceeds of the sale. Merle later returned the unsold firearm accessories, valued at approximately \$1,908.00, to EVFS.

Chalmers alleged that EVFS breached its fiduciary duty to the estate by failing to take post-decree action against Renata to recover what he believed he was owed from the proceeds of the sale of the firearms accessories. In addition, Chalmers alleged that EVFS failed to enforce the Rule 69 Agreement relating to a 1998 Ford Truck and/or take post-decree action involving the truck.

a) Firearms Accessories

Chalmers' assertion appears to be rooted in his belief that he should have been compensated for 50% of the \$7,552.00 that Renata received from sale of the firearm accessories from Merle.

After Court-appointed counsel, Doyle, learned that Merle sold the firearm accessories, on July 19, 2018, Doyle sent an email to Scharber and Theut expressing his concern that the items had been sold. Doyle wrote asking EVFS to hold any further proceeds from going to

Renata and Doyle questioned that Renata and her attorney “forgot” to tell them about this deal at the settlement conference.

Theut appeared to support EVFS taking post-decree action regarding this issue, evidenced by Theut’s email of July 10, 2018, to Scharber and Doyle, stating that Theut has authorized EVFS to “immediately take action against the parties involved including Renata” before Commissioner Passamonte.

Scharber, counsel for EVFS, emailed Theut and Doyle on July 10, 2018, stating, in part, that EVFS still held approximately \$9,000.00 in liquid assets from Renata’s share of the tax refund and her share of the IRA account “so we may have some leverage” if Theut or Doyle was willing to file a petition, with Scharber joining, to put this in front of Commissioner Passamonte. If Commissioner Passamonte orders, then EVFS could “simply transfer the damages from Renata’s share of the tax refund into Chalmer’s [sic] account.”

There is no record Theut, Doyle, or EVFS filed a petition with the Court to address the issue. Bogle told the Division that Chalmers’s estate was not compensated for a portion of the proceeds from the sale of the firearms accessories. EVFS did not take any formal post-decree action involving this issue.

Given the highly contentious and litigious history of the divorce, Renata might have contested a petition from Chalmers, Theut, Doyle, or EVFS regarding the money from the sale of the firearm accessories. Renata stated her position in her July 17, 2018, email to Scharber, Bogle, and Stone, regarding the firearms accessories. Pertinently:

I made the decision to keep some of the gun parts. My rationale was that they were joint property, he was not allowed to possess them, and I could sell them to offset some of the expensive stuff I gave him. I asked Merle to help me in that endeavor to help me recover some of the money spent. Merle was doing me a favor and in reality had no right to give the my property back to EVFS. Also EVFS had no right to ask or accept it. It is my property. This is no different than Bill selling some of the woodworking equipment and me coming back and asking for some of that money back. In addition to that, Bill sent an email (see attached) to Merle that he sold the Chris Kyle collector gun (prior to OOP) and has a receipt to prove it. I never received my half. I have also shown everyone that there are multiple missing guns of very high value that no one wants to investigate, including the police. My point is that I am not coming back and complaining to everyone that I need half and things aren’t “fair”. That money received from the sale of the gun parts are my proceeds of my property sold. I have not asked for nor expect half of anything Bill has sold.

Theut, Doyle, and/or EVFS could have filed a petition with the Court regarding Renata receiving the \$7,552.00 from the sale of the firearms accessories and sought compensation

for the estate. As conservator, EVFS is obligated by code to ensure that all costs incurred on behalf of the estate are necessarily incurred and to determine whether those costs exceed the probable benefit for the ward.

ACJA §7-202(J)(5)(b)(1) and (2)(a),(b), and (c):

b. Pursuant to A.R.S. § 14-1104:

1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order.
2. A guardian ad litem, fiduciary, fiduciary's attorney for the ward or protected person have a duty to:
 - (a) Act in the best interest of the ward or protected person.
 - (b) Avoid engaging in excessive or unproductive activities.
 - (c) Affirmatively assess the financial costs of pursuing any action compared to the reasonably expected benefit to the ward or protected person. . .

There is evidence that the estate had liquidity and sustainability issues. In an interview with the Division, Chalmers told the Division that the estate had liquidity problems. In addition, Chalmers provided email records purporting to show that on November 15, 2017, Stone sent an email to Doyle, Theut, Scharber and Bogle, regarding a budget, wherein Stone wrote, "All, Please [sic] see the attached budget. Based on the projected spending, we will have about two and a half months of sustainability."

In a December 6, 2017, email that Chalmers sent to McKindles, Stone, Doyle, Scharber, and Theut, Chalmers discussed mediation/divorce, and of no longer wanting the conservatorship. Chalmers wrote, pertinently, "I will run out of money by the 2nd week of January [2018] and I will be no closer to a divorce and I will be facing homeless status again."

In addition, in Chalmers' written complaint,²⁴ he alleged that EVFS failed to file an estate budget and he commented on the insolvency of the estate, writing, in part, "even with the knowledge that the estate was insolvent Mr. Stone did not create a yearlong budget for the estate. If Mr. Stone had created a long-term budget for the estate, all parties, including the court, would have recognized that the estate spending was not sustainable." Chalmers added, "In reality, the estate was insolvent and if the court had been made aware of the

²⁴ Allegation 31 of the written complaint Chalmers submitted to the Division.

estate insolvency, the ward strongly believes that spending would have been reduced by the court.” The specific allegation involving EVFS failing to file an estate budget is detailed in Allegation 5 of this Investigation Summary.

Despite the estate’s insolvency, Chalmers contends that EVFS breached its fiduciary duty by not pursuing post-decree action against Renata, an endeavor that would cause the estate to incur additional fiduciary fees and costs and legal fees and costs. If Chalmers was entitled to \$3,776.00 which represents 50% of the \$7,552.00 that Renata received from the sale of the firearms accessories, Merle returned, to the estate, the unsold firearms accessories which were informally valued at \$1,908.00, of which Renata would be entitled to half or \$954.00. Chalmers would be entitled to receive approximately \$4,730.00. Using those valuations, Chalmers expected EVFS to file post-decree action against Renata despite the estate’s liquidity issues and that the estate would incur uncertain fiduciary fees and costs and legal fees and costs which would likely exceed what, if any, money that may potentially be recovered.

The Division reviewed EVFS’ decision-making and alleged conduct as conservator for the estate for violations or breach of fiduciary duty. For the Division to conclude that EVFS breached its fiduciary duty by failing to pursue post-decree legal action against Renata, as Chalmers alleged, the Division would need to determine that EVFS acted negligently, irresponsibly, or imprudently and/or otherwise deviated from using the degree of care commonly exercised by prudent fiduciaries engaged in similar practice under the same or similar conditions. No evidence was found that EVFS’ conduct was negligent, irresponsible, or imprudent by failing to pursue post-decree action against Renata in this instant matter.

b) 1998 Ford Truck

Chalmers alleged that EVFS failed to acquire a “1998 Ford XLT Lariat” pickup truck that was an asset awarded to Chalmers in the Rule 69 Agreement. He said when EVFS approached Renata about the truck, she claimed that she never had the truck. Chalmers said EVFS was obligated to “force” Renata to turn over the asset or file an action in Superior Court to have Chalmers compensated for the loss of the truck. Chalmers said, instead, EVFS chose to take no action against Renata for negotiating the Rule 69 Agreement in bad faith or simply took the path of least resistance and ignored Chalmers’ requests to resolve the matter of the missing truck.

The Rule 69 Agreement, executed by all parties on February 20, 2018, makes no reference to a 1998 Ford XLT Lariat truck but identifies a 1999 Ford Truck in Clause 11. The Rule 69 Agreement lists the following vehicles:

8. **2013 FORD F-150:** Awarded to Husband along with full responsibility for the obligation related thereto from which he shall hold Wife harmless. He is responsible for all payments due effective immediately. It will be paid off within 30 days of entry of the decree.
9. **2005 Honda ATV:** Awarded to Husband.
10. **2005 TRAILER:** Awarded to Husband.
11. **1999 FORD TRUCK:** Awarded to Husband.
12. **2009 HONDA ACCORD:** Awarded to Wife.
13. **2015 SUBARU XV CROSSTREK:** Awarded to Wife along with full responsibility for the obligation thereon from which she shall hold Husband harmless. She is responsible for all payments due effective immediately. It shall be paid off by Wife within 30 days of entry of the decree.

Chalmers obtained the 2013 Ford F-150 truck.

When interviewed by the Division, Chalmers could not say where the 1999 Ford Truck was located or where the truck had ended up over the years. He believed that over time, the truck may have been given to his son, but Chalmers was uncertain. He acknowledged that the 1999 Ford truck was not titled in his name.

Bogle told Division staff that EVFS checked all vehicles titled in Chalmers' name with the Arizona Department of Motor Vehicles ("DMV") and the 1999 Ford truck was not titled in Chalmers' name. Bogle said Renata did not know the whereabouts of the truck and EVFS was unable to locate the vehicle.

The 1999 Ford truck was not listed in EVFS' Inventory & Appraisal filed with the Court on November 14, 2017, nor was it listed as an asset in the Final Inventory & Accounting(s) filed with the Court.

EVFS' billing records make certain references to the 1999 Ford Truck. For example, in billing entry dated May 2, 2018, Stone billed for time involving speaking with Scharber about the truck and that Scharber would contact attorney McKindles to have him reach out to Renata's attorney regarding the truck.

On June 1, 2018, Stone billed for time involving a call with Scharber to discuss various items including the 1999 Ford truck.

On June 5, 2018, Stone billed for time involving speaking with Renata about the "1997 Ford truck."

Scharber's billings indicate there was discussion on various dates in June 2018 with the attorneys involved in the case, including Renata's attorney, about the 1999 Ford truck. On June 6, 2018, Bogle went to the Arizona DMV "to obtain title information for all vehicles owned by William Chalmers." The billing entry notes other vehicles were reported under Chalmers' name, but not a 1990s Ford truck.

McKindles' billing records do not show any time billed involving the 1999 Ford truck or reference to a vehicle.

Doyle's billing records do not reflect any time billed specific to a 1999 Ford truck or a vehicle.

The 1999 Ford Truck was negotiated into the Rule 69 Agreement and awarded to Chalmers. The Rule 69 Agreement was executed by all parties on February 20, 2018. On March 2, 2018, EVFS, by and through counsel, filed with the Court a Joint Petition for Approval of Rule 69 Agreement.²⁵

On March 15, 2018, Chalmers, by and through counsel, filed an Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Decree. Chalmers objected that Renata did not disclose various personal property, disputed the division of financial assets and other matters but there was no mention of a 1998 Ford Lariat truck or 1999 Ford Truck in the objection filed with the Court.

EVFS records show that Stone made inquiries to Scharber about the 1999 Ford Truck on May 2, 2018. Stone reached out to Renata on June 5, 2018, regarding the vehicle. On June 6, 2018, Bogle traveled to the DMV to inquire about all vehicles titled in Chalmers name and the 1999 Ford Truck was not titled in Chalmers' name.

Bogle told the Division that he could not recall when EVFS first learned about the 1999 Ford truck. He acknowledged that EVFS did not assess the value of any 1999 Ford truck including utilizing any online valuation sites such as Kelley Blue Book. The subject truck was not listed in EVFS' inventory filed with the Court on November 14, 2017, nor was it listed as an asset in the final accountings.

It is not clear when EVFS first learned about the existence of the 1999 Ford truck. The ambiguity surrounding the whereabouts of the vehicle and EVFS' inability to locate it does not necessarily establish that EVFS' conduct was negligent or careless although records suggest EVFS initiated its inquiry into the vehicle on or about May 2, 2018, even though the truck had been awarded to Chalmers in the Rule 69 Agreement, so this vehicle was likely discussed during the negotiations leading up to the settlement. This suggests that EVFS may not have timely inquired about the truck to marshal and secure the vehicle although the whereabouts of the 1999 Ford Truck were not ascertained and remains unclear.

The issue to resolve is whether EVFS' conduct pertinent to the 1999 Ford truck constitutes a breach of fiduciary duty by not pursuing post-decree action. Chalmers asserts that EVFS, on behalf of the estate, should have filed post-decree action with the Court to "force"

²⁵ PB-2017-001373.

Renata to compensate him for the 1999 Ford truck. Chalmers' contention, notwithstanding, EVFS' decision not to pursue legal action against Renata regarding the truck does not constitute a breach of fiduciary duty or rise to the level of a violation.

ACJA § 7-202(J)(5)(b)(1) and (2), in part, require conservators to protect against incurring any costs that exceed probable benefits to the protected person, to avoid engaging in excessive or unproductive activities, and to affirmatively assess the financial costs of pursuing any action compared to the reasonable expected benefit to the protected person. EVFS would have to determine whether there was a financial advantage to the estate by pursuing court action against Renata, with the associated legal fees and costs, to compensate the estate for a 1999 Ford Truck with unknown title ownership.

The Division's task is to determine whether the fiduciary's conduct violated code, statute, or rule. By all accounts, the whereabouts of the vehicle was unclear. EVFS contacted Renata to inquire about the vehicle, but, apparently, she did not know where the truck was located. The 1999 Ford truck was not referenced in Chalmer's March 15, 2018, Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Decree filed with the Court wherein he objected to many of the terms with which he previously agreed, including his allegations that Renata was holding estate items.

The analysis contained in the post-decree action for the sale of the firearms accessories applies in this matter. The estate would incur associated attorneys' fees and costs and fiduciary fees and costs to pursue post-decree action against Renata at a time when the estate was confronting insolvency.

Allegation 9 is not substantiated.

Allegation 10: East Valley Fiduciary Services, Inc., failed to take action to terminate the Conservatorship on October 17, 2017.

As stated in the Summary of Procedural History, on August 11, 2017, Theut filed with the Court an Emergency Petition for Appointment of Temporary Conservator for an Adult, in PB2017-001373. Theut detailed his concerns about Chalmers and stated a Conservatorship was in Chalmer's best interest. Theut nominated EVFS to be appointed as Temporary Conservator for Chalmers. Dr. Gwen Levitt²⁶ ("Dr. Levitt") provided a medical report which was included in the Emergency Petition that Theut filed with the Court regarding the conservatorship. EVFS was appointed as Temporary Conservator for Chalmers on August 21, 2017, per Letters of Appointment of Temporary Conservators and Acceptance of Temporary Appointment in PB2017-001373.

²⁶ Dr. Gwen Levitt (DO) is a Psychiatrist. She provided a Medical Professionals Reports and Medical Professionals Report – Addendum, involving Chalmers in PB2017-001373, filed with the Court on August 11, 2017 and August 24, 2017, respectively.

Court records demonstrate that shortly after EVFS was appointed as temporary conservator for Chalmers on August 21, 2017, circumstances with Chalmers changed rapidly, resulting in a situation that involved police, mental health intervention, and resultant charges against Chalmers. The events prompted Theut to file with the Court an emergency petition for guardianship with inpatient mental health powers on August 24, 2017. Theut detailed his concerns for Chalmers in the emergency petition. EVFS was appointed as temporary guardian with mental health powers on August 29, 2017, per Letters of Temporary Guardianship.

Chalmers alleged that EVFS had an obligation to take action to terminate the conservatorship on October 17, 2017, and that EVFS failed to do so. A hearing on the temporary guardianship was held on October 17, 2017. Chalmers said Bogle and Stone were present for the testimony of Dr. Phillip Barry²⁷ (“Dr. Barry”), who, days prior to the hearing had met with Chalmers to complete an evaluation on him. Chalmers said Dr. Barry did not think that a guardianship or a conservatorship was necessary. Chalmers believed that EVFS had an obligation to seek the least restrictive “circumstance” for him and, in this case, least restrictive was to terminate the conservatorship.

Throughout the Division’s investigation, Wulff and Chalmers routinely communicated with the Division stating that the guardianship and conservatorship appointments were unnecessary from the outset and EVFS should not have been appointed by the Court. Wulff’s and Chalmers’ statements that the guardianship and conservatorship were unnecessary are not supported by Court records and the Court’s ruling(s). The Court determined there was clear and convincing evidence to appoint EVFS as Temporary Conservator on August 21, 2017, and as Temporary Guardian with Mental Health Powers on August 29, 2017. Conversely, the Court terminated the temporary guardianship on October 17, 2017, effective October 19, 2017, per the Court’s order.

At the October 17, 2017, hearing, Commissioner Passamonte addressed the attorneys for Chalmers and EVFS, collectively, as to whether that day’s hearing was solely for the temporary guardianship to which the attorneys agreed they wished to proceed with the temporary guardianship matter on that day. The issue of temporary conservatorship was not addressed on October 17, 2017. Bogle and Malos of EVFS testified, as did Chalmers. Drs. Levitt and Barry provided testimony to the Court telephonically. At the conclusion of the October 17, 2017, hearing, the Court terminated the temporary guardianship. The Minute Entry, pertinently:

THE COURT FINDS that a guardianship is no longer needed.

IT IS ORDERED denying the request for a temporary limited guardianship.

²⁷ Dr. Phillip Barry is a Board-Certified Neuropsychologist, Southern Desert Medical Center.

IT IS FURTHER ORDERED granting the request to terminate the temporary guardianship, terminating the temporary guardianship, and discharging East Valley Fiduciary Services Inc. as Temporary Guardian of William Chalmers without releasing East Valley Fiduciary for liability for any acts as Temporary Guardian. This order is effective on October 19, 2017.

IT IS FURTHER ORDERED reinstating William Chalmers' right to obtain a driver's license and right to vote... Mr. Chalmers will be responsible for obtaining his driver's license without the assistance of East Valley Fiduciary Services Inc.

The Court affirms a settlement conference in the dissolution matter is set and expects East Valley Fiduciary Services Inc. to be present at the settlement conference as the Temporary Conservator. Mr. Chalmers shall also be present to make decisions for his own person. [original emphasis]

Chalmers told the Division that, in addition to Dr. Barry's testimony on October 17, 2017, his medical report was filed with the Court by October 17, 2017. Chalmers said after hearing he told EVFS; his own attorney, Doyle; and GAL Theut that Chalmers no longer wanted the temporary conservatorship, yet no one "filed anything" in Court that terminated the conservatorship.

Dr. Barry's medical report was likely filed with the Court under seal for the October 17, 2017, hearing. There were no Court records showing the medical report was entered on or around that date. Court records showed that Doyle filed with the Court Dr. Barry's medical evaluation²⁸ on May 17, 2018. Dr. Barry's report, in part, noted that the referral source was Doyle, and that Dr. Barry did not think that Chalmers required a guardian or conservator.

It is Dr. Barry's medical evaluation and recommendations and his testimony on October 17, 2017, that Chalmers bases his contention that EVFS breached its fiduciary duty by not terminating the temporary conservatorship on that date.

The issue is whether EVFS' conduct violated code, rule or statute. ACJA §7-202(J)(1)(c)(4)(a) and (b) bars fiduciaries from "knowingly interfering with a transmission to the court" that a ward or protected person is no longer incapacitated or is no longer in need of protection.

ACJA §7-202(J)(1)(c)(4)(a) and (b):

c. The fiduciary shall:

²⁸ Mental Status For Guardianship & Conservatorship, dated October 13, 2017

(4) Not knowingly interfere with the transmission of a request to the court:

(a) From the ward for an order that the ward is no longer incapacitated;

(b) From the protected person for an order that the protected person is no longer in need of protection;

The facts suggest that EVFS did not “knowingly” interfere with the transmission of any request to the Court regarding Chalmers’ medical status or suppressed information that Chalmers opposed the conservatorship. Chalmers’ opposition to the conservatorship was known to the Court. The Court was also aware of Chalmers’ opposition to the temporary conservatorship. A status conference was held on December 18, 2017. The Minute Entry documents, pertinently:

Guardian Ad Litem Brian Theut requests that the January 17, 2018, hearing be converted to a return hearing for the parties to determine if the conservatorship should be extended.

The Court’s Minute Entry, dated January 17, 2018, involving EVFS’ Temporary Conservator’s Emergency Petition for Instructions filed with the Court on January 8, 2018, stated, pertinently:

Let the record reflect that William Chalmers has an objection to the permanent petition.

The Order Extending Appointing Temporary Conservator for an Adult dated February 15, 2018, pursuant to the oral argument presented to the Court on January 17, 2018, the Court ordered extending the temporary conservatorship of Bogle, Stone and EVFS, without restriction until March 23, 2018.

The Minute Entry dated February 23, 2018, pertinently:

Let the record reflect that William Chalmers has an objection to continuing the conservatorship hearing.

IT IS ORDERED denying the oral request to continue the permanent hearing without prejudice.

The Court affirms the March 20, 2018 permanent conservatorship hearing.

IT IS FURTHER ORDERED, pursuant to A.R.S 14-5310, extending the temporary conservatorship to 4-10-18. [sic] [original emphasis]

The Court's Minute Entry of March 8, 2018, pursuant to the Court's February 23, 2018, hearing, pertinently:

IT IS ORDERED extending the temporary conservatorship appointment to April 10, 2018...

The Court's Minute Entry of April 3, 2018, involved the hearing regarding the Permanent Appointment of a Conservator of an Adult. Pertinently:

IT IS FURTHER ORDERED extending the temporary conservatorship to April 17, 2018.

Dr. Levitt submitted a medical evaluation report, dated April 6, 2018, to Theut, involving a re-evaluation she completed on Chalmers on March 21, 2018. Relevant to the conservatorship, Dr. Levitt provided her recommendations as those pertained to completing the divorce settlement to ensure all assets were preserved. Dr. Levitt's report was filed with the Court.

The Court's Minute Entry of April 10, 2018:

IT IS ORDERED extending the temporary conservatorship to April 17, 2018...

Although Chalmers generally opposed the appointment of a conservator, on September 13, 2018, Chalmers, by and through counsel, filed a Motion to Extend Temporary Limited Conservatorship of an Adult and Supplement. Chalmers sought the extension so that EVFS could complete certain tasks involving the QDRO that had not yet been completed.

In response to Chalmers' Motion to Extend Temporary Limited Conservatorship of an Adult and Supplement, the Court's Minute Entry, dated September 18, 2018, stated, in part:

IT IS ORDERED denying the Motion to Extend Temporary Limited Conservatorship of an Adult.

Chalmers alleges that EVFS breached its fiduciary duty by failing to terminate the temporary conservatorship on October 17, 2017. A licensed fiduciary does not have authority to terminate a conservatorship. The Court decides if a conservatorship is warranted, based on evidence, and the Court appoints a conservator with or without restriction. The Court also decides when the conservatorship ends and when the conservator is formally discharged of its liability as conservator.

ACJA §7-202(J)(1)(c)(4)(a) and (b) sets out that a fiduciary cannot "knowingly interfere with the transmission of a request to the court" from a protected person for an order that the protected person is no longer in need of protection.

The Court was aware of Chalmers' ongoing objection to the appointment of a conservator throughout the probate proceedings and, despite the objections, the Court determined that a temporary conservatorship and/or a limited temporary conservatorship was necessary, and the Court continued to extend the temporary conservatorship or limited temporary conservatorship until the appointment was terminated on September 18, 2018.

Chalmers or an interested party could have petitioned the Court to terminate the temporary conservatorship, but no such petition was filed with the Court.

A.R.S. §14-5430. Termination of proceeding

A. The protected person, the conservator or any other interested person may petition the court to terminate the conservatorship. A protected person seeking termination is entitled to the same rights and procedures as in an original proceeding for a protective order.

To substantiate the allegation, the Division would have to conclude that EVFS suppressed or "knowingly interfered" with the transmission of a request to the Court "from the protected person that the protected person is no longer in need of protection," as required by ACJA §7-202(J)(1)(c)(4)(b). There was no evidence found that EVFS knowingly obstructed or interfered with Chalmers' wish to have the conservatorship terminated or that EVFS knowingly interfered with the transmission of a report to the Court from Chalmers that he was no longer in need of protection.

Allegation 10 is not substantiated.

Allegation 11: East Valley Fiduciary Services, Inc. overstated the value of the estate on Probate Rule 33 Applications to justify higher fiduciary fees.

Chalmers alleged that EVFS "systematically" overvalued the estate in each of EVFS' Rule 33 Applications, stating the valuations EVFS provided to the Court were completely void of the money that had already been spent. Chalmers said by looking at just the Rule 33 Applications, which he included in his complaint allegation as a "table," a simple picture is painted that the estate had sufficient income to cover costs and the estate would only be depleted by \$25,000 over the 13 months of the conservatorship. The table Chalmers included is shown below:

Rule 33 Summary Estate Value's by professional via Probate ECR See Minute Entry applications for professional fees		
Date	Professional	Estate Value sited in Rule 33
March 23 rd , 2018	B. Theut	~\$1,000,000
April 2 nd , 2018	J. McKindles	~\$1,000,000
April 5 th , 2018	EVFS	~\$1,000,000
April 5 th , 2018	R. Scharber	~\$1,000,000
June 29 th , 2018	B. Theut	~\$500,000
December 13 th , 2018	R. Scharber	\$975,592.85
December 15 th , 2018	EVFS	\$975,592.85
December 17 th , 2018	J. McKindles	\$975,592.85
January 17 th , 2019	B.Theut	~\$250,000

Chalmers said the estate was not generating any income and all payments sustaining the ward and paying estate costs were coming directly from the principal of the estate. He said the estate was insolvent but questioned how the Court would learn of this when approving the Rule 33 Applications. Chalmers said because the Court did not know, EVFS “cooked their books in this malicious attempt to rob the estate of even more money.” Chalmers added that when the Court looks at a Rule 33 Application for fees of \$45,000.00 on a \$1,000,000.00 estate, it does not look “onerous,” but if you adjust the number to \$45,000.00 fees on a \$600,000.00 estate “with 95% of those funds being qualified exempt funds with a surcharge tax of 10% then the conclusion “isn’t so obvious.”

Chalmers stated EVFS overstated the value of certain accounts because EVFS used older account statements and not current statements.

The Division reviewed the Rule 33 Applications filed with the Court by EVFS, Scharber, McKindles, Theut, and Doyle.

a) EVFS

EVFS filed two Rule 33 Applications. The Rule 33 Application for the period July 20, 2017, through March 27, 2018, filed with the Court on April 5, 2018, valued the estate at “approximately \$1,000,000.00.” EVFS sought approval for fiduciary fees and costs of \$79,680.00 of which \$14,451.86 had been paid, leaving a balance of \$65, 228.32.

The Rule 33 Application for the period March 28, 2018, through September 18, 2018, filed with the Court on December 13, 2018, noted that the value of the estate was valued at \$1,109,190.06 when the temporary conservatorship was terminated on September 18, 2018, exclusive of the \$125,597.18 holdback monies for the payment of outstanding professional fees. EVFS sought approval of \$24,105.14 of which \$3,411.73 had been paid, leaving a balance of \$20, 693.41.

b) Scharber

Scharber filed two Rule 33 Applications with the Court. The Rule 33 Application for the period August 16, 2017, through March 29, 2018, filed with the Court on April 5, 2018, mirrored the valuation provided by EVFS, “approximately \$1,000,000.00.” Scharber sought approval of attorney’s fees and costs of \$37, 275.57, of which \$2,695.00 had been paid, leaving a balance of \$34,580.57.

The Rule 33 Application for the period March 30, 2018, through September 18, 2018, filed with the Court on December 13, 2018, mirrored the language EVFS used in its Rule 33 Applications, that the value of the estate was valued at \$1,109,190.06 when the temporary conservatorship was terminated on September 18, 2018, exclusive of the \$125,597.18 holdback monies for the payment of outstanding professional fees. Scharber sought approval of attorney’s fees and costs of \$30,746.50.

Scharber filed a China Doll Application Regarding Attorney’s Fees and Costs for the period March 14, 2019, through September 16, 2020.

c) McKindles

McKindles filed two Rule 33 Applications with the Court. The Rule 33 Application for the period September 28, 2017, through March 27, 2018, filed with the Court on April 2, 2018, mirrored the valuation provided by EVFS, “approximately \$1,000,000.00.” McKindles sought approval of attorney’s fees and costs of \$45,000.00, of which \$6,660.00 had been paid, leaving a balance due of \$38,340.00. McKindles also sought approval of \$39,750.00, of which \$6,600.00 had been paid, leaving a balance of \$33,090.00. It is possible that McKindles erroneously entered the two amounts. The Court approved the attorney’s fees and costs of \$39,750.00, not the fees of \$45,000.00.

The Rule 33 Application for the period March 28, 2018, through October 30, 2018, filed with the Court on December 17, 2018, mirrored the valuation provided by EVFS, that the value of the estate was valued at \$1,109,190.06 when the temporary conservatorship was terminated on September 18, 2018, exclusive of the \$125,597.18 holdback monies for the payment of outstanding professional fees. McKindles sought approval of attorney’s fees and costs of \$16,193.50.

d) Theut

Theut filed three Rule 33 Applications with the Court. Theut’s Rule 33 Application for the period from July 5, 2017, through February 28, 2018, filed with the Court on March 23, 2018, mirrored EVFS’ valuation of “approximately \$1,000,000.00.” Theut sought approval of attorney’s fees and costs of \$69,280.00. He said a partial payment of \$5,000.00 was received from EVFS, of which \$1,200.00 was paid to Dr. Levitt for services rendered, leaving a balance of \$65,835.94.

The Rule 33 Application for the period March 1, 2018, through May 21, 2018, filed with the Court on June 29, 2018, noted that the value of estate is “approximately \$500,000.00.” Theut sought approval of attorney’s fees and costs of \$20, 910.18.

The Rule 33 Application for the period May 22, 2018, through September 17, 2018, filed with the Court on January 17, 2019, stated that the value of the estate was “approximately \$250,000.00.” Theut sought approval of attorney’s fees and costs of \$9,773.36.

Theut filed a China Doll Application Regarding Attorney’s Fees and Costs for the period March 14, 2019, through October 16, 2020.

e) Doyle

Court-appointed counsel, Doyle, filed two Rule 33 Applications. The Rule 33 Application for the period from August 11, 2017, through March 29, 2018, filed with the Court on March 30, 2018, did not provide a valuation of the estate. Doyle sought approval of attorney’s fees and costs of \$48,496.46.

The Rule 33 Application for the period from March 30, 2018, through June 30, 2018, filed with the Court on July 13, 2018, did not provide a valuation for the estate. Doyle sought approval of attorney’s fees and costs of \$17,191.84. for the billing period. Doyle noted that EVFS paid \$28,274.22 from the outstanding balance of \$48,496.48, from the previous Rule 33 Application, leaving a total balance owing of \$37,44.08.

f) Valuation of the Estate

EVFS’ Inventory & Appraisalment, as of August 15, 2017, filed with the Court on November 14, 2017, provided a conservative appraisalment of the estate as \$1,937, 700.00, because the Inventory & Appraisalment was limited to captured cash and various bank and investment accounts. Three of the eight listed investment accounts were in Renata’s name. EVFS noted the investment accounts were community property and that Chalmers was owed at least half of the assets which was roughly \$948,350.00. EVFS wrote that the assets were frozen until the divorce was finalized and that the values listed in the accounts reflected the disclosed values provided by Renata and were circa October 2016.

The Inventory & Appraisalment did not capture valuations of any real property, vehicles, furniture and personal affects therefore, at that time, the conservative estimated total value of the estate was \$1,937,700.00, of which Chalmers’ estimated share was \$948, 350.00.

EVFS’ Rule 33 Application for the period July 29, 2017, through March 27, 2018, filed with the Court on April 5, 2018, provided an estate valuation of “approximately \$1,000,000.00.” EVFS sought Court approval for fees and costs of \$79,680.00. EVFS’

estate valuation appears to be within the estimated value EVFS provided to the Court on November 14, 2017, as noted above.

EVFS' Rule 33 Application for the period March 30, 2018, through September 18, 2018, filed with the Court on December 13, 2018, documented that the estate was valued at \$1,109,190.06 when the temporary conservatorship was terminated on September 18, 2018, exclusive of the \$125,597.18 in hold back money for payment of professional fees. If deducting the \$125,597.18 in holdback money, the valuation of the estate is \$983,592.88.

EVFS' estate valuations differed from those that Theut included in his second and third Rule 33 Applications filed with the Court:

- 1) \$500,000.00 for the period March 1, 2018, through May 21, 2018. Theut sought approval of attorney's fees and costs of \$20,910.18.
- 2) \$250,000.00 for the period May 22, 2018, through September 17, 2018. Theut sought approval of attorney's fees and costs of \$9,773.36

Chalmers alleged that EVFS "systematically" overvalued the estate when filing the Rule 33 Applications with the Court, to mislead the Court so that the Court would not know the estate was insolvent and the Court would approve the Rule 33 Applications. Chalmers said the Court could not know the estate was insolvent by looking at the Rule 33 Applications therefore EVFS "cooked their books in this malicious attempt to rob the estate of even more money." Chalmers also claimed that EVFS overvalued the estate by failing to account for monies already spent and by using financial statements that were not current.

The Division notes that Rule 33 Applications do not contain the comprehensive financial information that is required in the conservator's accounts which include, for example, opening balances, valuation of assets, income and receipts, disbursements, financial statements, and ending balances.

ARPP Rule 33(B)(1) and (3) require:

1. If compensation is requested based on hourly rates, a detailed statement of the services provided, including the tasks performed, the date each task was performed, the time expended in performing each task, the name and position of the person who performed each task, and the hourly rate charged for such services;
3. An itemization of costs for which reimbursement is sought that identifies the cost item, the date the cost was incurred, the purpose for which the expenditure was made, and the amount of reimbursement requested, or, if reimbursement of costs is

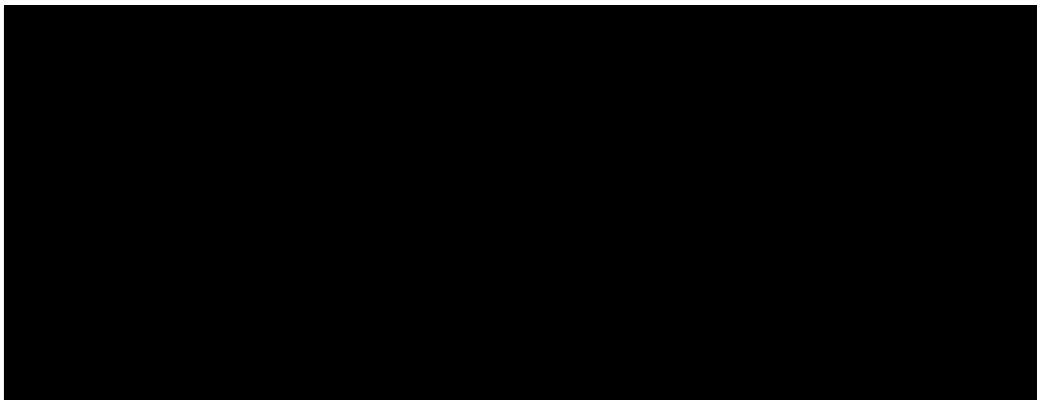
based on some other method, an explanation of the method being used for reimbursement of costs;

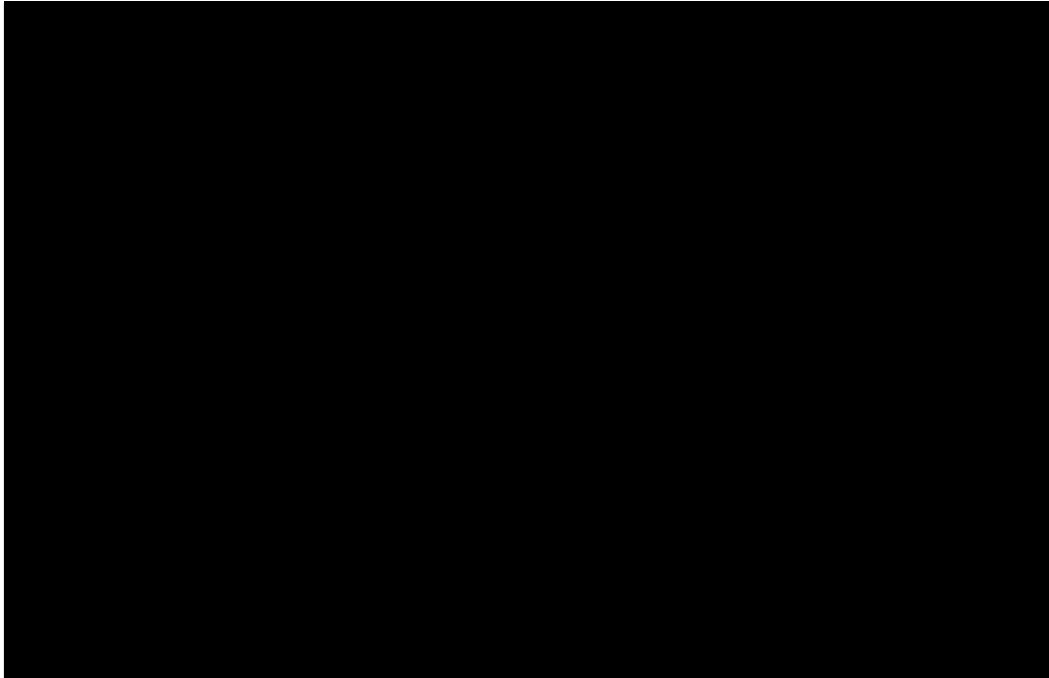
Therefore, the Rule 33 Applications reviewed by the Division contained the requisite information.

As to Chalmers' assertion that EVFS overvalued the estate because it failed to account for monies already spent, the Division reviewed the Final Inventory & Accounting, filed with the Court on December 6, 2018. The temporary conservatorship was in place for approximately one year, from August 21, 2017, per Letters issued, to September 18, 2018, when the conservatorship ended.

The Final Inventory & Accounting reflects an opening balance of [REDACTED] (Schedule 1), disposition of divorce and non-divorce assets (Schedule 2), receipts (Schedule 3), disbursements (Schedule 4), and ending balance of [REDACTED] (Schedule 5). The opening balance seems to reflect the entire estate value when EVFS began administering the estate and did not reflect only Chalmers' portion of the estate after the divorce decree and distributions of assets, per the divorce decree/Rule 69 Agreement.

The Division notes that EVFS failed to provide an appraisal of several vehicles belonging to Chalmers' estate nor did EVFS provide a valuation of certain business interests and a life insurance policy. Below is the pertinent excerpt from the Final Inventory & Accounting:

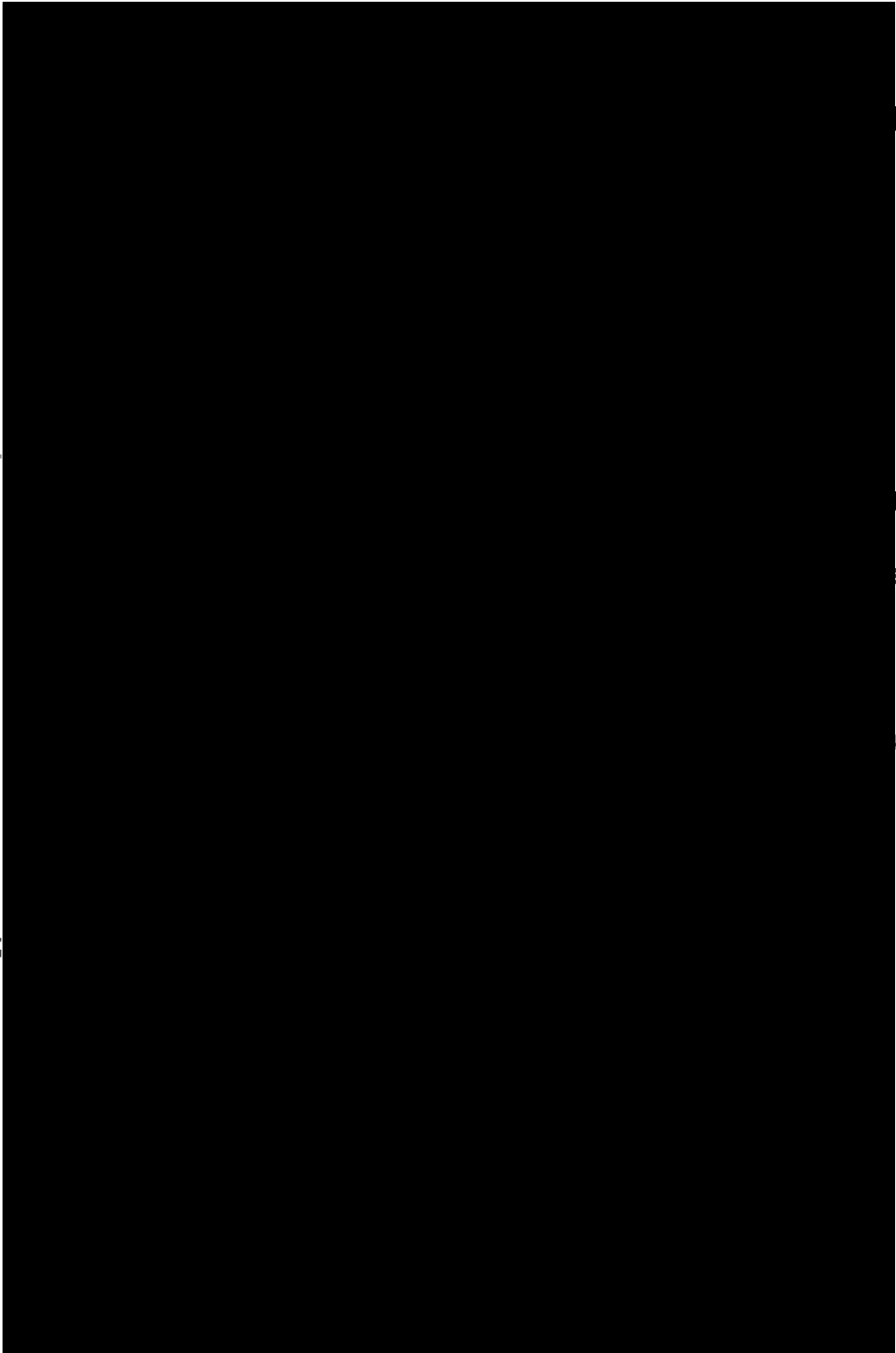


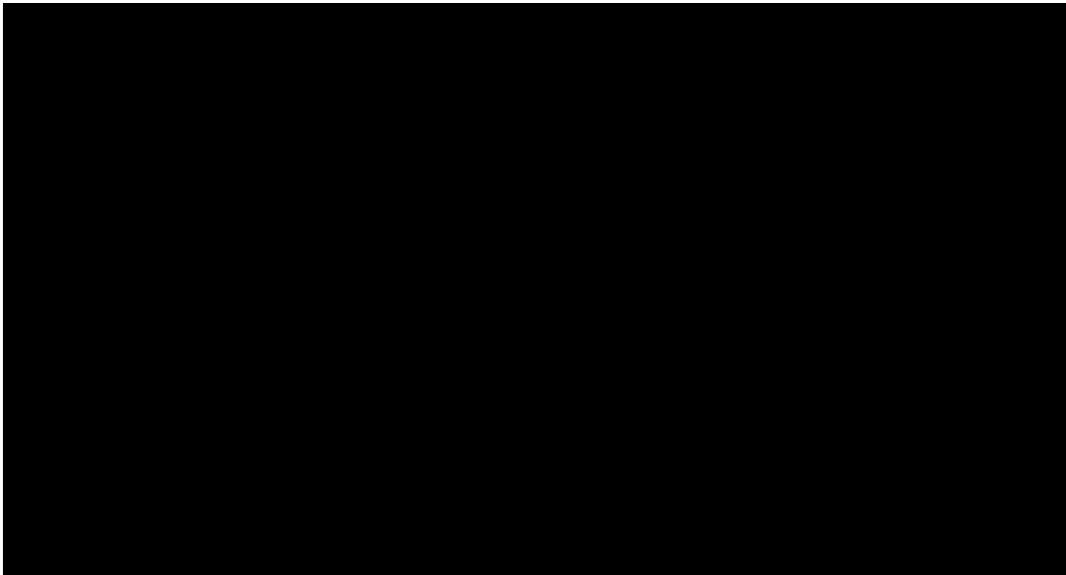


It is not clear why EVFS did not provide those valuations. If EVFS provided the valuations of those items Chalmers received, the overall valuation of the estate would increase. The Final Inventory & Accounting detailed the distributions and disbursements throughout the pendency of the conservatorship.

In his complaint, Chalmers alleged EVFS overvalued the estate by over \$315,000.00 and he disagreed with EVFS' final balances because EVFS used financial statements that were not current. He said EVFS could have contacted the financial institutions and obtained current balances, but EVFS did not. Chalmers said EVFS made significant transactions from the AXA qualified funds totaling \$288,000.00 and the tax consequences were not reflected in the final accounting. He said EVFS also overvalued the Intel SERPLUS account when the QDRO was done in July 2018 because the actual value of that account was \$114,000.00 and not \$306,000.00 as EVFS documented in its final accounting. Chalmers disputed other financial figures and he believed that EVFS should have included tax consequences of liquidating his tax-exempt investments, but EVFS failed to do so.

The following are examples taken from the Final Inventory & Accounting and reflect the dates when those balances were taken.





The issue to resolve in Allegation 11 is whether EVFS intentionally overvalued the estate on its two Rule 33 Applications filed with the Court thereby knowingly misleading the Court so that the Court would approve the fiduciary fees and costs.

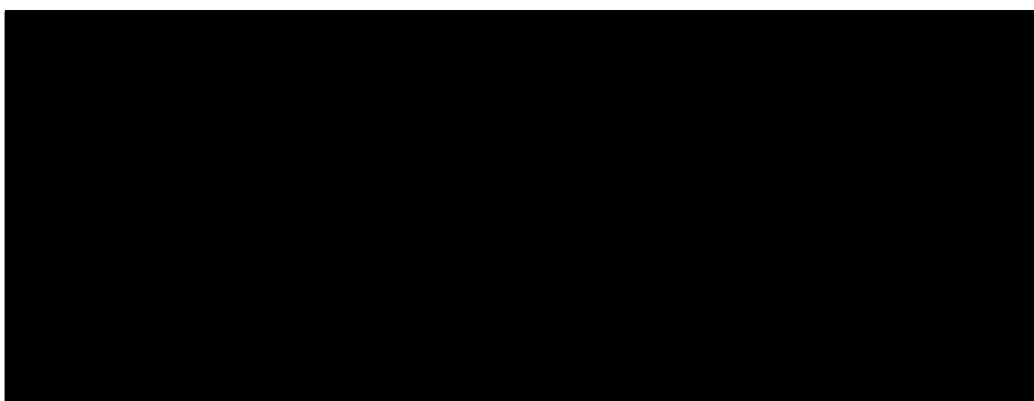
The first Rule 33 Application that EVFS filed with the Court on April 5, 2018, covered fiduciary fees and costs for the period July 20, 2017, through March 27, 2018. EVFS sought approval for \$79,680.00 in fiduciary fees and costs for that billing period. In that Rule 33 Application, EVFS provided a valuation of the estate of “approximately \$1,000,000.00.” The valuation of the estate is consistent with the valuation provided in the Inventory & Appraisement filed with the Court on November 14, 2017.

There was no evidence found by the Division that EVFS manipulated or filed a misleading Rule 33 Application with a deceptive valuation when EVFS filed the first Rule 33 Application on April 8, 2018.

The second and final Rule 33 Application EVFS filed with the Court on December 13, 2018, covered fiduciary fees and costs for the period March 28, 2018, through September 18, 2018. EVFS provided a valuation of the estate as of September 18, 2018, when the conservatorship was terminated and valued the estate at \$1,109,190.06. EVFS sought fiduciary fees and costs of \$24,105.14 for that billing period. The billing period of the second Rule 33 Application was shorter than the billing period of the first Rule 33 Application.

There was a difference of \$55,574.86 between the fiduciary fees and costs in the first Rule 33 Application (\$79,680.00) and those fees and costs reflected in the second and final Rule 33 Application (\$24,105.14).

The Final Inventory & Accounting was reviewed by the Court's accountant and was subject to three Court Accountant's Report and Recommendations ("CARR"). In response to recommendations, EVFS submitted amended accountings and the final accounting submitted was on May 22, 2018. The ending balance was adjusted on the amended accounting to [REDACTED] from the initial ending balance of [REDACTED], with a difference of [REDACTED]. The adjustments were made to bank account information. The examples below reflect the initial bank account balance and the adjusted bank account balance.



EVFS' estate ending balance of [REDACTED] is reflected by adding Chalmers' assets:

- Vehicles:
- Business ownership interests:
- Household items and personal effects:
- Tax-deferred assets:
- Other general assets:
- Bank accounts:




Total: [REDACTED]

EVFS also subtracted [REDACTED] for various disbursements reflecting a net value of [REDACTED]. That figure was in the amended accounting and was different from the initial Final Inventory & Accounting which reflected a valuation of [REDACTED].

EVFS included receipts in the amount of [REDACTED] which is the same in the Final Inventory & Accounting and the amended accounting.

Chalmers stated that EVFS overvalued the estate by over [REDACTED] because of outdated financial statements and for not including the tax consequences of liquidating tax-deferred assets. Chalmers said EVFS used the [REDACTED] figure on the Intel SERPLUS account when actual value was [REDACTED]. The accounting shows the Intel SERPLUS account

as having \$306,489.74 as of June 30, 2018, and that Chalmers would receive half of this amount.



EVFS captured the Intel SERPLUS account statement as of June 30, 2018, apparently because EVFS did not receive the third quarter statement for this account. As temporary conservator, EVFS had the authority to contact the financial institutions holding estate funds and EVFS could have likely obtained an updated and more current account balance as of September 2018 rather than relying entirely on the June 2018 statement. However, EVFS disclosed the information to the Court, noting the account balances were as of certain dates. There was no evidence found that EVFS overvalued the estate to mislead the Court to have EVFS' fiduciary fees and costs approved by the Court.

Allegation 11 is not substantiated.

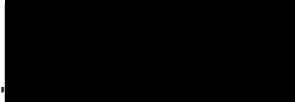
Allegation 12: East Valley Fiduciary Services, Inc., failed to involve the protected person in his divorce proceedings.

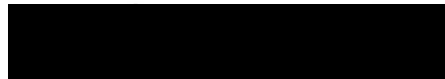
In his complaint, Chalmers alleged that EVFS had a policy of having no direct communication with him which resulted in Chalmers not being involved in his own divorce. Chalmers alleged EVFS did not discuss with him how the divorce should proceed and EVFS "literally forbid any communication between the ward and John McKindles, EVFS divorce attorney..." Chalmers said the lack of communication with him violates EVFS' obligation to include the preferences of the ward in all key decisions.


In his interview with the Division, Chalmers reiterated much of what he stated in the complaint.


In his interview with the Division, Bogle denied that EVFS forbade or denied communication between Chalmers and McKindles or that EVFS did not include Chalmers in the divorce matters.


Throughout the probate proceedings, Court-appointed GAL, Theut; Court-appointed counsel, Doyle; and attorney, McKindles, retained by EVFS for the purpose of assisting Chalmers with the divorce settlement, were extensively involved. The Rule 69 Agreement, dated February 20, 2018, was executed by the relevant parties. See below:



 William Chalmers


 Renata Chalmers


 John McKindles, counsel for respondent


 Angela Wilson-Goodman


 Brian Theut, Guardian ad Litem


 Gary Doyle

Communication with McKindles

Chalmers' assertion that EVFS "literally forbid any communication between the ward and John McKindles, EVFS divorce attorney..." is not supported by McKindles' billing records, attached as Exhibit "A" in McKindles' Rule 33 Application filed with the Court on April 2, 2018, for the period September 28, 2017, through March 27, 2018. McKindles' billing records detail ongoing communication with Chalmers, EVFS and counsel, Theut, Doyle, and Renata's attorney, Angela Wilson-Goodman. Specific to communication with Chalmers, the following examples are taken from McKindles' billing records.

October 2017

10/19/2017	JMM	Email from Bill. File review and notes to file.	0.30	90.00
10/24/2017	JMM	Emails from and to Angela Wilson-Goodman with attachments. File review and notes to file. Emails from and to Bill and others. Emails from and to Brian.	1.90	570.00
10/30/2017	JMM	Emails from and to various counsel and Court and Bill. File review and notes to file.	1.20	360.00

November 2017

11/01/2017	JMM	Emails from and to Andrew, et al. with attachment. File review and note to file. Emails from Bill and to Andrew.	1.10	330.00
11/07/2017	JMM	Conference with Bill. File review and notes to file.	2.30	690.00
11/14/2017	JMM	File review. E-letter to Angela Goodman-Wilson with copy to Andrew and Bill. Email from Bill. File review and document collation. Emails from and to Andrew.	1.40	420.00
11/15/2017	JMM	Received and reviewed various emails among Angela Wilson-Goodman, Andrew and Bill. File review and notes to file. Email to Bill.	1.60	480.00
11/16/2017	JMM	Emails from and to Bill. File review and notes to file.	0.50	150.00
11/20/2017	JMM	Conference with Bill Chalmers. File review and notes to file. Telephone call to Andrew. Brief research.	4.70	1,410.00
11/21/2017	JMM	File review. Collation of documents. Email to Angela with copies to Andrew and Bill.	1.20	360.00
11/28/2017	JMM	Various emails with attachments among Marshall Martin, Bill, Andrew, Angela, Gary, Brian and Ryan. File review and notes to file. Work on mediation preparation. Telephone call from Bill.	4.30	1,290.00
11/29/2017	JMM	Various emails among Bill, Andrew, Brian, Mike, Ryan and Gary. File review and collation of documents. Notes to file.	2.80	840.00
11/30/2017	JMM	File review and notes to file. Conference with Bill. Collation of documents.	4.40	1,320.00

December 2017

12/05/2017	JMM	Emails from Angela with attachments. Emails to Bill, Andrew and Gary. File review and work on Settlement Conference Memorandum. Telephone call to and telephone call from Cindy. Emails from and to Cindy with attachments. Completion of draft of Settlement Conference. Email of same to all attorneys and Bill.	3.90	1,170.00
12/08/2017	JMM	Telephone call from and telephone call to Bob Budoff. Emails from Bill. Final draft of Settlement Conference Memorandum with several attachments. Submittal of same to mediator, Bill, Brian, Andrew, Gary and Ryan. Emails from Bob Budoff and Brian.	3.50	1,050.00
12/07/2017	JMM	Emails from and to Bill, Gary and Brian. Telephone call from Bill. File review and notes to file.	1.30	390.00
12/11/2017	JMM	Various emails among Angela with attachments, Brian and Bill. File review and collation of documents. Notes to file. Telephone call from Court. Letter from Angela with enclosures. Emails from and to Bill. Telephone call from Bill.	1.80	570.00
12/14/2017	JMM	Emails from and to Bill with attachment. Received and reviewed pleadings from AWG. File review and notes to file.	0.80	240.00
12/19/2017	JMM	Emails from Brian and Bill. File review and notes to file. Preparation and attendance at telephonic emergency hearing.	1.50	450.00

January 2018

01/02/2018	JMM	Emails from and to Brian Theut, Bill and Ryan. File review and notes to file.	0.90	270.00
01/15/2018	JMM	Email with attachment from Ryan. Telephone call to Ryan. Email from Bill. File review.	0.70	210.00
01/18/2018	JMM	Emails from and to Bill and Mike. File review and notes to file.	0.50	150.00
01/31/2018	JMM	File review and notes to file. Conference with Gary, Mike and Bill (telephonically). Collation of file documents.	2.80	840.00

February 2018

02/19/2018 JMM	Emails from and to Mike Bogle, Ryan, AWG, Brian, Gary and Bill with attachments. File review and collation of documents. Email to Bob Budhoff with attachments. Notes to file. Preparation for Settlement Conference. Emails from Bill attached to Mediation Memorandum. Telephone call from Brian.	4.40	1,320.00
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March 2018

03/12/2018 JMM	Email from Bill. Received and reviewed Court Minute Entry. Telephone call to Mike Bogle. Telephone call to Ryan. File review and notes to file.	1.30	390.00
03/26/2018 JMM	Email from Bill. Email from and telephone call to Ryan Scharber. File review and notes to file. Work on pleadings. Conference with Mike Bogle.	5.60	1,680.00

In addition, Chalmers was a participant in the settlement conference which resulted in the Rule 69 Agreement.

EVFS billing records demonstrated that EVFS had extensive communication with Chalmers throughout the administration of the conservatorship.

There was no evidence found that EVFS forbid communication between McKindles and Chalmers involving the divorce and settlement nor was any evidence found that EVFS prohibited Chalmers from participating in his divorce proceedings. The records reviewed indicate that Chalmers was able to communicate and conference with McKindles, contrary to Chalmers' allegation(s).

Allegation 12 is not substantiated.

Allegation 13: East Valley Fiduciary Services, Inc., filed a false police report and violated the Health Insurance Portability and Accountability Act by sharing confidential medical information about the ward/protected person.

In his complaint, Chalmers alleged that EVFS filed a police report on November 5, 2018, for an incident that EVFS believed occurred on November 2, 2018. Chalmers said EVFS, by way of information provided by EVFS staff, Griffing, claimed Chalmers made comments "when I get my guns back, I am going to kill both Andrew Stone and Mike Bogle or words to that affect." Chalmers said the City of Mesa filed threatening and intimidation charges against him. Chalmers asserted Griffing was not credible, based on her alleged criminal past. He said on the day of the hearing the prosecutor learned from Chalmers' attorney that an eyewitness to the incident was present in the courtroom and would provide testimony contradicting Griffing's statements of the incidents, and the prosecutor required that the case be dismissed.

Chalmers acknowledged that he met with Griffing and noted that meeting was “contentious but it was polite.” He said he asked her to come to the storage unit so they could discuss and to document damaged property contained within the storage unit. Chalmers said he told Griffing that he was going to hold EVFS accountable for its conduct during the conservatorship as well as for damages to his property. He denied that he threatened or implied bodily harm to anyone. Chalmers said the police report was intended to “character assassinate the ward and EVFS continues to use this incident in the court pleadings to disparage my reputation and prejudice the court.” Chalmers said whenever EVFS mentions this incident EVFS fails to inform the Court(s) that charges were dismissed due to Griffing’s credibility.

Chalmers further alleged that when EVFS filed the “false police report” on November 5, 2018, Bogle shared private medical information with the police officer that is normally protected under the Health Insurance Portability and Accountability Act (“HIPAA”). Chalmers said during the “fictitious police report,” Bogle can be heard on body worn camera footage of the responding officer stating that Bogle no longer had any obligation to protect Chalmers’ HIPAA privacy because Bogle was not employed as Chalmers’ fiduciary. Chalmers said Bogle is mistaken that his obligation to protect Chalmers’ privacy of a ward is strictly tied to the employed status of EVFS, and its obligation to respect/protect privacy does not end at the termination of the conservatorship. Chalmers pointed out that EVFS was not released as the conservator until completion of the final accounting and release from the Court.

EVFS’ billing records show that on November 2, 2018, EVFS staff members, Griffing and Lelonek traveled to Right Space Storage to meet with Chalmers to discuss missing items from storage. On the same date, Bogle billed for time involving conferring with staff “regarding threat made by Bill Chalmers directed at MB and AS. This threat was made directly to BG and AL. Discuss context of threat and give directive to document language used.”

On November 5, 2018, Bogle billed for time involving meeting with staff to follow up on the “threat from Friday. Work with BG to file police report with Mesa PD. Meet with officer to give historical background on the matter.”

On November 6, 2018, Bogle billed for time involving follow up with counsel regarding a threat by Chalmers and to discuss contact with police officers in Gilbert to discuss the threat.

On November 9, 2018, Bogle billed for time involving texts and calls to La Manna regarding interactions with Chalmers and concerns regarding access to guns.

On November 13, 2018, Bogle billed for time involving a call with counsel to proceed with orders of protection for EVFS and staff.

On November 14, 2018, Bogle and Stone met with McKindles regarding the threats from Chalmers and what protections EVFS and staff have from him. The billing reflects reviewing statutes and developing a plan for filing a workplace injunction against harassment.

On November 15, 2018, Bogle billed for time to travel to the courthouse to file an injunction against harassment.

On November 19, 2018, Bogle, in part, billed for time involving travel to Chandler municipal offices “for service of injunction.”

a) Police Report

Chalmers’ allegation that EVFS filed a false police report is based on his disputing the circumstances that allegedly occurred on November 5, 2018, at Right Space Storage, as described herein. Chalmers denied that he made any threat of gun violence or implied any gun violence toward Bogle and Stone.

Conversely, billing records indicate EVFS took significant steps to address what the fiduciary’s office understood to be a threat made by Chalmers, resulting in EVFS taking the protective actions described herein.

EVFS denied filing a false police report on November 5, 2018. EVFS asserted that the police report was accurate and, as a result of the incident, a Court granted EVFS a protective order in response to EVFS’ claims. EVFS said the that the prosecutor ultimately dismissed the criminal case proves nothing. EVFS said its understanding is that the prosecutor dismissed the case because one of EVFS’ witnesses did not want to have to get involved and testify. EVFS said Griffing and EVFS stand by the truthfulness of the criminal report.

The Division did not review the police report that Chalmers said EVFS filed with the Mesa Police Department on November 5, 2018. The circumstances that occurred on November 5, 2018, involving the alleged threats of violence are disputed. The Division does not have a regulatory role in determining the veracity of the information EVFS provided in the police report as EVFS understood the events of November 2, 2018, the accuracy of statements Bogle and others may have provided to the police officer and detective assigned to the case, or the validity of the circumstances of November 2, 2018, that caused EVFS to take protective actions.

Records reviewed by the Division document that on November 15, 2018, Bogle filed with the Court an Injunction Against Harassment²⁹ (“Injunction”) involving Chalmers. The

²⁹ CV2018-097121

Injunction was signed by the judicial officer on the same date. The Injunction ordered that Chalmers shall not commit any act of harassment against Bogle, Stone, Griffing, or Lelonek. Chalmers was ordered to have no contact with Bogle et al. except through attorneys, legal process, and court hearings. Chalmers was prohibited from going near residences, workplace and schools, and addresses (protected).

b) HIPAA

Chalmers further alleged that Bogle violated HIPAA when Bogle provided statements and information to the police officer. Chalmers claimed that Bogle can be heard on body worn camera footage of the responding officer stating that Bogle no longer had any obligation to protect Chalmers' HIPAA privacy because Bogle was not employed as Chalmers' fiduciary. Chalmers stated that Bogle is mistaken that his obligation to protect Chalmers' privacy of a ward is strictly tied to the employed status of EVFS, and its obligation to respect/protect privacy does not end at the termination of the conservatorship. Chalmers pointed out that EVFS was not released as the conservator until completion of the final accounting and release from the Court.

The issue to resolve is whether Bogle and EVFS were bound by HIPAA. According to the U.S. Department of Health & Human Services website,³⁰ as required by Congress in HIPAA, the Privacy Rule³¹ applies to covered entities:

- Health plans including health insurance companies, HMOs, company health plans, and certain government programs that pay for healthcare, such as Medicare and Medicaid;
- Most Healthcare professionals who conduct certain business electronically, such as electronically billing health insurance – including most doctors, clinics, hospitals, psychologists, chiropractors, nursing homes, pharmacies and dentists;
- Healthcare clearinghouses – including organizations that process non-standard health information they receive from another entity into a standard electronic format or data content.

Business Associates³² are identified as a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, a covered entity. Business associate functions and activities include claims processing or administration; data analysis; processing or administration; utilization review; quality assurance; billing; benefit management; practice management; and

³⁰ [190-Who must comply with HIPAA privacy standards | HHS.gov](#)

³¹ [Summary of the HIPAA Privacy Rule | HHS.gov](#). Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule").

³² [Business Associates | HHS.gov](#)

repricing. Business associate services are legal; actuarial; accounting; consulting; data aggregation; management; administrative; accreditation; and financial.

Examples of Business Associates included:

- A third-party administrator that assists a health plan with claims processing.
- A CPA firm whose accounting services to a health care provider involve access to protected health information.
- An attorney whose legal services to a health plan involve access to protected health information.
- A consultant that performs utilization reviews for a hospital.
- A health care clearinghouse that translates a claim from a non-standard format into a standard transaction on behalf of a health care provider and forwards the processed transaction to a payer.
- An independent medical transcriptionist that provides transcription services to a physician.
- A pharmacy benefits manager that manages a health plan's pharmacist network.

ACJA §7-201(H)(6)(k)(17) makes licensed fiduciaries subject to discipline if the board finds the fiduciary engaged in unprofessional conduct, including violating any statutory, court rule, or applicable section of the ACJA regarding a confidentiality requirement. HIPAA's Privacy Rule and privacy standards set out that covered entities, including healthcare providers, are bound by HIPAA. Licensed fiduciaries and licensed fiduciary business entities in Arizona are not healthcare providers and health-related statements to a law enforcement officer do not rise to an actionable violation under the ACJA.

Allegation 13 is not substantiated.

Allegation 14: East Valley Fiduciary Services, Inc. failed to seek Court clarification on an unclear Court order.

In his complaint, Chalmers stated that a Court order allowing the liquidation of estate assets was "unclear" and that it was EVFS' responsibility to seek further clarification but did not seek clarification. Chalmers referenced Appendix "u," included in the complaint, which he noted was the Court's Minute Entry of July 7, 2018. He said in that Minute Entry, the Court calls out the fiduciary firm "Childs and Coventry," [sic] but the Minute Entry referenced Chalmers' probate case number. He said, "In my opinion, this is an unclear order from the court."

Chalmers added that while the Court's order "may have been a simple typographical mistake that listed "Childs and Coventry" [sic] as the fiduciary the typographical mistake certainly could have been the insertion of my probate cause number. No matter how you look at the mistake the order is unclear and confusing and EVFS had an ethical

responsibility to seek clarity, as per the Fiduciary Code of Conduct, prior to executing an unclear order.”

Chalmers further contended that since the Court’s order did not specify an exact amount regarding the liquidation of estate assets, EVFS should have “come back to the court clarifying the exact amount that was going to be withheld and called attention to the tax consequences of the withdrawal asking the court for clarification on whether to withhold the taxes at the time of withdrawal or leave the burden to the ward at a later date.” Chalmers said this was a “critical event in the conservatorship once one understands that this withdrawal is what led the ward to file for Chapter 13 bankruptcy protection and EVFS’s failure to pay credit card debt. EVFS should have made sure their instructions from the court were very clear and concise.”

In the supplement response to the complaint, EVFS stated that the Court’s order was not unclear and that it simply had an “obvious mistake” in using the name “Childs and Coventry.” [sic]

The Division reviewed the Minute Entry that Chalmers included in the complaint as Appendix “u.” The Minute Entry was dated July 3, 2018, and electronically filed on July 6, 2018. It was not a July 7, 2018, Minute Entry as Chalmers stated in the complaint.

The Minute Entry contained the correct probate cause number (PB2017-001373) and identified “IN THE MATTER OF THE CONSERVATORSHIP OF WILLIAM CHALMERS AN ADULT.” [emphasis in original] The Minute Entry identified counsel involved in the matter including Court-appointed counsel, Doyle; GAL, Theut; EVFS counsel, Scharber; and Renata’s attorney, Angela Wilson-Goodman. Within the Minute Entry, Commissioner Passamonte appears to have erroneously referenced “private fiduciary Childers and Coventry” on two occasions. Notwithstanding what appears to be a typographical error, as Chalmers suggested in his complaint, the case before the Court involved PB-2017-001373 in the matter of Chalmers’ conservatorship and identified the appropriate attorneys involved in this case, as noted above. The Court’s order is clear that the matter before the Court is Chalmers’ probate case. That EVFS did not seek further clarification on what is evidently a typographical mistake by the Court does not rise to the level of a violation or breach of fiduciary duty.

Chalmers also contended that EVFS had a responsibility to clarify the Court’s “unclear” order and ask the Court to specify the amount of estate assets that were to be liquidated, but that EVFS failed to do so.

Specific to the Court’s orders, the July 3, 2018, Minute Entry stated, pertinently:

IT IS ORDERED granting the Emergency Petition for Release of Funds to the Ward, as modified and set forth in the order signed by the Court July 2, 2018.

IT IS FURTHER ORDERED the Conservator shall satisfy the orders entered by the Court regarding payment of attorney fees and costs for representation of the Ward, in PB2017-001373 and FC2016-053887.

IT IS FURTHER ORDERED the Conservator shall convert qualified (non-liquid) assets to liquid assets to satisfy these orders. [emphasis in original]

The Court did not specify an amount regarding EVFS converting qualified non-liquid estate assets to liquid assets because the Court ordered EVFS to convert assets to satisfy the orders entered by the Court involving payment of attorneys' fees and costs and release of funds to Chalmers, which were enumerated in the Court's July 2, 2018, order.

The Order Granting Emergency Motion for Release of Funds to Ward, dated July 2, 2018, signed by Commissioner Passamonte, pertinently:

IT IS ORDERED that Temporary Conservator East Valley Fiduciary Services, shall release a total of \$30,200.00 to Ward for the following purposes:

1. LEGAL REPRESENTATION IN APPELLATE MATTERS - \$10,000.00
2. FOOD AND DAILY EXPENSES - \$7,000.00
3. CAR LOAN PAYMENT - \$10,000.00
4. MEDICAL INSURANCE - \$3,200.00

The Court ordered EVFS to convert non-liquid estate assets to liquid assets to satisfy two Court orders including the order to release of funds to Chalmers, which totaled \$30,200.00, and the order to satisfy whatever cost certain amounts involving payment of attorney fees and costs for representing Chalmers in PB2017-001373 and FC2016-053887. Based on review of the Court's order, EVFS was not required to seek further clarification from the Court regarding how much of Chalmers' estate assets were to be liquidated, and failure to seek clarification did not violate a fiduciary requirement.

Chalmers' allegation includes that EVFS breached fiduciary duty by either not immediately or later seeking direction from the Court as to whether EVFS should include any resultant tax consequences from converting non-liquid estate assets to liquid assets. As temporary conservator, EVFS' obligation was to take the actions required to comply with the Court's order to convert non-liquid assets to liquid assets to satisfy the previous orders for funds that were to be released to Chalmers, and payments of attorney fees and costs, in PB2017-001373 and FC2016-053887.

Allegation 14 is not substantiated.

Allegation 15: East Valley Fiduciary Services, Inc., acquired assets after the termination of the conservatorship and failed to report those assets to the Court.

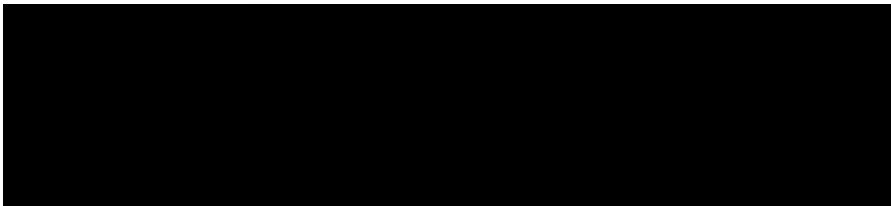
In his complaint, Chalmers said, "On information and belief," EVFS "employed" La Manna to visit Merchant Firearms in March 2019 and, "acting as conservator acquired 4 silencers valued at nearly \$4,000.00." Chalmer said this acquisition was done well outside the timeframe of the conservatorship and EVFS is refusing to assist Chalmers in getting property or proceeds from Chalmers' firearms from La Manna.

Chalmers said nearly \$4,000.00 in assets have not been accounted for in the final accounting. He said he has not received any proceeds from the sale of any weapons or accessories, specifically these silencers.

In his interview, Chalmers told Division staff that the silencers were at Merchant Firearms, and he was contacted by someone he knows at Merchant Firearms. This individual gave Chalmers the information about the four silencers.

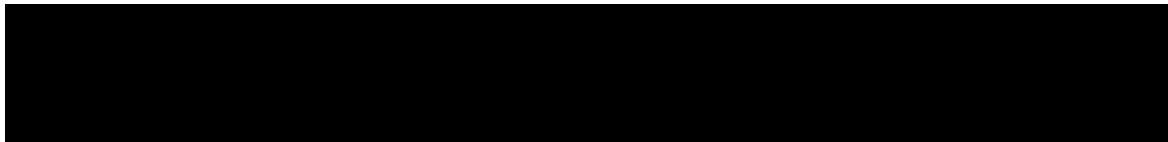
Though Chalmers stated the four silencers were acquired by EVFS or La Manna in March 2019, and that the four silencers were not accounted for in the conservator's final account, EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, did include the four silencers.

The Final Inventory & Accounting included a total valuation of [REDACTED] of Chalmers' firearms, per Schedule 5. This valuation was provided by La Manna.



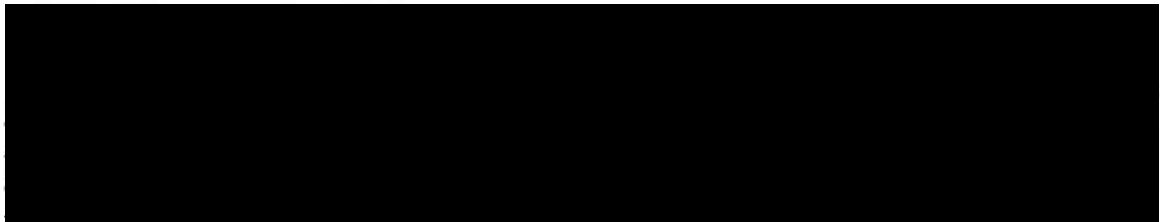
In addition, EVFS' Final Inventory & Accounting included an inventory and listing of the firearms according to reference number, make, model, and serial number. This included a section on comments, type, GPD-ID#, value as of December 2017 and current value. The list included all the firearms, but the cut and paste shown below involves only the four silencers, per reference numbers 26 through 29. The four silencers were identified as Silencerco silencers that were located at Merchant Firearms.





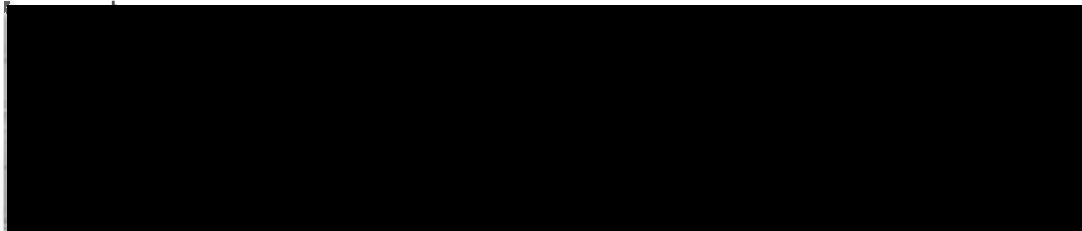
The Final Inventory & Accounting also included the information, noted above, on a document called “Chalmers, William J. Firearms List,” identified as Exhibit “A,” documenting which of the firearms were turned in to the Gilbert Police:

**Chalmers, William J
Firearms List**



The website of SilencerCo³³ features that the company offers the Octane, Omega, and Sparrow series of silencers that are listed above.

EVFS records included handwritten notes from La Manna on November 30, 2017, and December 21, 201. Regarding silencers, La Manna’s notes of December 21, 2017, stated that all four “suppressors” are at Merchant Firearms.



On December 2, 2017, La Manna emailed Stone and Bogle regarding Chalmers’ firearms. La Manna listed the firearms and provided a valuation. Regarding silencers, La Manna noted the following:



³³ SilencerCo: Gun Silencers and Accessories

On August 10, 2018, La Manna emailed Stone and Bogle regarding Chalmers' firearms and he provided a valuation for the firearms given that many of the firearms were "missing major components..." In that email, La Manna identified four silencers. See below:



The facts demonstrate that EVFS accounted for the four silencers as early as December 2017 and accounted for the silencers in the Final Inventory & Accounting filed with the Court on December 6, 2018.

As to actions taken in March 2019, per Chalmers' allegation, EVFS' billing records from January 2019 through May 2019 did not reflect any time billed regarding calls with La Manna. On June 17, 2019, Stone billed the estate for time for speaking with La Manna "regarding gun sale proceeds." Stone documented "resolved that Curt would mail the proceeds to S. Alan Cook; emailed Curt Cook's address." On July 24, 2019, Stone billed for time involving a call from La Manna regarding the sale of guns. La Manna said he had not distributed Chalmers' portion of the sale to Chalmers.

Allegation 15 is not substantiated.

Allegation 16: East Valley Fiduciary Services, Inc., failed to share the costs of the storage of marital assets as outlined in the Court's Minute Entries.

In his complaint, Chalmers said that in the family court case, FC2016-053887, presiding Judge Jay Polk ("Judge Polk") "ordered that if there was any disagreement about ownership of items stored in the storage facility then both parties would share in the total cost of the storage facility." Chalmers said EVFS was informed of the Minute Entry on several occasions, via Griffing and Stone, but EVFS took no action to resolve the dispute or to balance it in the divorce settlement. Chalmers cited various examples of disputed item ownership including:

- Bedroom set
- Wood working tools
- Ex-wife's grandparents rocking chair
- Children's property and art prints

Chalmers did not provide a copy of the Court order that he referenced in his complaint. The Division reviewed Court records involving FC2016-053887. The Court resolved a number of issues in the divorce case, including the issue of personal items and storage. Pertinent to personal property and storage, a July 10, 2017, Minute Entry provides, as follows:

IT IS FURTHER ORDERED that Petitioner [Chalmers] and Respondent [Renata] shall work with the Guardian ad Litem and provide him or his designee with the authority to determine which personal property items should be donated or stored. GAL is directed to speak with counsel for further discussion.

IT IS FURTHER ORDERED that by **August 11, 2017**, Respondent shall work with Ms. Feyen and arrange to secure storage for the personal property left in the workshop and house either through a storage pod placed on the property or a storage unit off-property, whichever is the most appropriate storage mechanism. Petitioner may have input on this issue but Ms. Feyen shall direct how the property will be stored. Respondent shall also arrange to donate those items that are deemed to be suitable for donation.

IT IS FURTHER ORDERED that if the parties agree that all items in storage are Petitioner's personal property, Petitioner shall be solely responsible for the fees incurred for the storage. If there are disputed items in storage, then the costs shall be evenly split between the parties. [emphasis in original]

There were no further Court filings in FC2016-053887 regarding the personal items and storage that Chalmers references.

Email records demonstrate that on October 19, 2017, Chalmers sent an email to Stone with a copy to Doyle, Bogle, Scharber, and Theut, wherein Chalmers stated, pertinently:

I can not [sic] take all of the items from the shop e.g. [sic] table saws, drill press, workbench, cabinets, wood, dust collectors, Phoenix 3 Phase converter, larger Coleman air compressor. I also can not [sic] take the 22 year old couches [sic].

Chalmers' complaint indicates that because there was personal property in dispute, EVFS should have taken action to either resolve the dispute or balance it in the divorce settlement. It is not clear from the information provided or records reviewed, what, if any items, were in dispute.

The Rule 69 Agreement, executed by Chalmers, Renata, and the relevant attorneys, on February 20, 2018, was the binding agreement. The Rule 69 Agreement stated that Chalmers and Renata entered into the agreement knowingly, voluntarily and intelligently with the advice of counsel. The couple understood and intended that the agreement would be binding by Rule 60 of the Arizona Rules of Family Law Procedure. The couple asserted that the agreements made with regard to the division of their community property and debt is equitable and not unfair and in the best interest of the parties.

William Chalmers (Husband) and Renata Chalmers (Wife) enter into the agreements as set forth herein in accordance with Rule 69 of the Arizona Rules of Family Law Procedure (ARFLP). They are entering into these agreements knowingly, voluntarily and intelligently with the advice of his probate counsel, Gary Doyle, counsel John McKindley for East Valley Fiduciary Services, Husband's court appointed conservator, Brian Theist as Husband's Guardian ad Litem and Angela Wilson Goodman for Wife. They understand and intend that the agreements stated will be binding as provided by Rule 69. They assert that the agreements made with regard to the division of their community property and debt is equitable and not unfair and in the best interests of the parties.

On March 2, 2018, EVFS, by and through counsel, filed with the Court a Joint Petition for Approval of Rule 69 Agreement. Pertinent to personal property, the Rule 69 Agreement Paragraph 16, stated that each party shall retain all personal property of any kind, including furniture, clothing, jewelry and personal effects currently in his/her possession and control.

16. PERSONAL PROPERTY AND EFFECTS: EXCEPT AS OTHERWISE STATED each party shall retain all personal property of any kind, including furniture, furnishings, clothing, jewelry and personal effects currently in his/her possession or control. If Wife locates any of Husband's computers she will provide it to him. Wife will make reasonable efforts to locate and provide to Husband his computer and the "Letter of Providence" as to the child. Wife will provide digital copies of the family photographs to Husband. If Wife does not provide the computer her equalization payment will be reduced by \$2,000.

Paragraph 24 of the Rule 69 Agreement included a waiver which noted that the parties each agreed to waive any and all claims that they may have against the other concerning the division of their community property and debt.

24. WAIVER: The parties each agree to waive any and all claims that may have against the other concerning the division of their community property and debt.

Despite executing the Rule 69 Agreement on February 20, 2018, Chalmers filed an objection to the Rule 69 Agreement.

On March 15, 2018, Chalmers, by and through counsel, filed with the Court an Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Agreement. Though Chalmers took issue with property he claimed Renata failed to properly disclose and other issues, he did not take issue with certain items including those in the workshop. Chalmers stated that because items in the workshop were moved on very short notice, the equipment "is now damaged and its value substantially lowered." However, Chalmers did not dispute any items in storage, nor did he contest costs he said he was incurring related to items in storage.

On May 21, 2018, in PB2017-001373, consolidated with FC2016-053887, Chalmers, by and through counsel, filed with the Court a Motion for Reconsideration of Order Approving Rule 69 Agreement. Pertinent to items in storage, Chalmers stated Renata left behind a full 1000 square foot workshop filled with wood working supplies and wood working

equipment, but this was a liability and not an asset. He said the couple agreed to sell the contents of the workshop because of Chalmers' disability and inability to utilize the equipment. The parties knew at the time of the mutual decision that the value of the large woodworking equipment would likely not offset the costs of having it sold. Chalmers said he communicated to EVFS that the majority of the workshop items were marital property and that EVFS should request that Renata "be forced to share in all the cost associated with dealing with the workshop." He said EVFS asserted "their superior position" over Chalmers and "simply ignored the tangible and relevant costs of these issues."

On July 13, 2018, the Court's Minute Entry denied Chalmers' Motion to Reconsider.

Though the Court resolved the matter, Chalmers' complaint contends that the items were still in dispute. The Division reviewed the Court's Minute Entry of July 10, 2017, in FC2016-053887, wherein the Court stated, in part,

IT IS FURTHER ORDERED that if the parties agree that all items in storage are Petitioner's personal property, Petitioner shall be solely responsible for the fees incurred for the storage. If there are disputed items in storage, then the costs shall be evenly split between the parties. [emphasis in original]

However, the executed Rule 69 Agreement set forth the distribution of personal property and though Chalmers later objected to the approval of the Rule 69 Agreement, the Court denied Chalmers' objection and then later denied Chalmers' Motion to Reconsider the order approving the Rule 69 Agreement, in PB2017-013737.

In response to the complaint allegations, EVFS stated that Chalmers alleges that, because he disputed ownership of certain items, EVFS should have charged Renata for part of the storage costs. EVFS said no Court ever determined that Chalmers had a credible claim to the items he identified.

The Division did not find evidence that the fiduciary was required to address the costs of the storage of marital assets or alternatively, that the fiduciary complied with Court orders related to the storage of marital assets.

Allegation 16 is not substantiated.

Allegation 17: East Valley Fiduciary Services, Inc., failed to include the estate's tax liability in the final accounting.

In his complaint, Chalmers said the Court believed his estate was worth almost one million dollars and the Court approved the withdrawal of sufficient funds to pay professional fees from qualified exempt assets. Chalmers said Bogle made withdrawals of \$110,000.00 and \$178,630.00 but in neither transaction did Bogle "elect to pay any federal or state income

tax, creating a “huge tax burden” that later forced Chalmers to file for Chapter 13 bankruptcy protection.

Chalmers said that Bogle’s website advertises that he has extensive financial advisor experience, yet he failed to foresee the significant tax consequence of making withdrawals of \$288,000.00. Chalmers said it is obvious Bogle “simply didn’t care about the financial damage” Bogle’s decision was inflicting on Chalmers. He said Bogle’s experience would allow him to understand that Chalmers would be required to pay ordinary income tax plus a 10% penalty generating in excess of a \$100,000.00 in tax liability between federal and state.

Chalmers said Bogle further compounds “his unethical actions” when he omitted the tax liability from any of the final accounting schedules. Chalmers alleged that this omission could not be “a simple mistake” because Bogle is too experienced as a fiduciary and as a financial planner/professional to fail to recognize a \$100,000.00 tax liability as a debt to the estate. Chalmers said Bogle did not want the Court to know that Bogle reduced the value of the estate by \$100,000.00 so the fees of the professionals are less consequential when compared to EVFS’ final accounting and their “deceptive” Rule 33 Applications.

Chalmers added that it is unimaginable that Bogle did not understand the tax consequence, so the only logical conclusion is that Bogle was “attempting to hide his actions from the court in his failure to include the tax consequences in the final accounting.” Chalmers said it should also be noted that Scharber and McKindles all used the \$975,000.00 estate valuation in their final Rule 33 Applications, and they relied on EVFS’ valuation. Chalmers added that as of the writing of his complaint, he has yet to see a “true and complete final accounting from EVFS so determining the ‘new math’ and data they used to determine the value of the estate is next to impossible...” Chalmers said Bogle is “clearly hiding his gross incompetence or trying to hide is [sic]breach of fiduciary duty to the ward.

Chalmers included Appendices “pp” and “qq.” In addition, Chalmers referenced his bankruptcy case number and bankruptcy attorney. Appendix “pp” was a copy of the 2018 Federal Tax Return and Appendix “qq” was a copy of the 2018 State tax return. The tax returns were prepared by HRB Tax Group, Inc. on or about September 12, 2019.

The 2018 Federal tax form indicated that Chalmers had a balance due of \$88,970.00, and the 2018 State tax form indicated that Chalmers had a balance due of \$12,393.00.

EVFS’ response to the complaint stated that the Court approved the final accounting per the January 13, 2021, Minute Entry and the Court having approved the final accounting, no probable cause existed to support Chalmers’ allegation that the accounting was defective in any way.

Chalmers' allegation states Bogle and EVFS engaged in "unethical actions" by omitting the estate's tax liabilities as a debt when EVFS filed its final accounting with the Court. Chalmers further asserted that EVFS' failure to pay any federal or state income taxes and/or account for the tax penalty created a "huge tax burden" on him that later forced him to file for Chapter 13 bankruptcy.

Tax liabilities to the estate would have been caused when EVFS, per the Court's July 3, 2018, order, converted tax-exempt/non-liquid assets to liquid assets. Court records indicate that GAL Theut made an oral motion in Court on June 26, 2018, that the Court authorize EVFS to use qualified retirement funds for the payment of the professional fees associated with Chalmers' case.

By way of procedural background, on June 22, 2018, Chalmers, by and through counsel, filed with the Court an Emergency Petition for Release of Funds to Ward and Expedited Appearance Hearing Requested. In part, Chalmers sought the release of \$24,000.00 to cover \$10,000.00 for his legal representation in appellate matters in FC2019-053887, \$4,000.00 for food and daily expenses, and \$10,000.00 to pay down a car loan on a vehicle he recently purchased. Chalmers concluded:

Based upon the foregoing, the Ward is now responsible for all other financial matters not contained within the foregoing five categories. The only way for the Ward to exercise that authority and meet his financial responsibilities is to have funds available as needed.

Parenthetically, the Ward is aware that it may be necessary to draw up his retirement funds and pay the necessary taxes and penalties to meet the foregoing requests; however, under the circumstances the Ward believes such a course of action is justified.

On June 27, 2018, Chalmers, by and through counsel, filed with the Court a Supplement to Emergency Petition for Release of Funds to Ward, wherein Chalmers sought additional \$3,000.00 for food and daily expenses, and \$3,200.00 for medical expenses.

On June 29, 2018, Chalmers, by and through counsel, filed a Protected Person's Objection to Oral Motion For Use of Qualified Retirement Funds. Chalmers objected to an oral motion by GAL Theut in a June 26, 2018, telephonic hearing that the Court authorize EVFS to use qualified retirement funds for the payment of the professional fees associated with this case.

On July 3, 2018, pursuant to the Minute Entry of the same date, the Court ordered

IT IS ORDERED granting the Emergency Petition for Release of Funds to the Ward, as modified and set forth in the order signed by the Court July 2, 2018.

IT IS FURTHER ORDERED the Conservator shall satisfy the orders entered by the Court regarding payment of attorney fees and costs for representation of the Ward in PB2017-001373 and FC2016-053887.

IT IS FURTHER ORDERED the Conservator shall convert qualified (non-liquid) assets to liquid assets to satisfy these orders.

On July 10, 2018, Chalmers, by and through counsel, filed with the Court a Motion to Reconsider July 3, 2018, Ruling Regarding Oral Request to Allow Release of Funds. In part, Chalmers argued that the Court's July 3, 2018, Minute Entry did not indicate that the Court considered the Protected Person's Objection to Oral Motion for Use of Qualified Retirement Funds.

On July 13, 2018, the Court denied Chalmers' Motion to Reconsider.

On July 27, 2018, Chalmers, by and through counsel, filed Ward's Reply to Objection to Amended Order Appointing Temporary Limited Conservator of an Adult, wherein Chalmers renewed his argument contained in the Protected Person's Object to Oral Motion for Use of Qualified Retirement Funds filed with the Court on June 29, 2018. Chalmers maintained that his qualified retirement funds should not be liquidated, and he should not be subjected to the "catastrophic penalties and taxes associated with such a liquidation until this court engages in a detailed evaluation of the reasonableness of all the professional fees incurred herein."

In a Minute Entry, dated August 1, 2018, the Court ruled on a number of issues before the Court. The Minute Entry did not specifically address Chalmers' Reply to Objection, nor did Chalmers renew his argument before the Court.

Chalmers' highly contentious divorce and probate matter had financial consequences and, in addition to the division of marital property including financial and other assets, incurred high professional fees. The estate retirement account/tax-exempt assets were included in Paragraph 21 of the Rule 69 Agreement, executed by the parties on February 20, 2018.

21: RETIREMENT ACCOUNTS: the following community retirement accounts of the parties are awarded/divided as indicated:

- a. AXA Advisors xx9967 (IRA (Husband)): Wife receives \$185,000 and the balance equally divided.
- b. Intel Surplus Account: 2018 payment to the conservator who will release ½ of the net amount to Wife. Future payments will be subject to a QDRO prepared at an equally shared expense by Georgia Wilder.
- c. Intel 401 K: Awarded to Husband.
- d. Intel Profit Sharing: Awarded to Husband.
- e. Fidelity Account xx3608 (Husband Pension): Awarded to Husband.
- f. USAA xx3809 (Wife SEP IRA): Awarded to Wife.
- g. USAA xx5809 (Wife IRA): Awarded to Wife.
- h. Franklin Templeton Investment Account IRA xx5041: Awarded to Wife.

The tax-exempt assets were subject to the QDRO Order,³⁴ dated June 19, 2018. The QDRO was prepared and administered by attorney Georgia Wilder.

The Division's review indicates the value of Chalmers' estate diminished exponentially due to the contentious divorce and division of marital assets, expenses, and fiduciary and attorney fees and costs incurred during the administration of the family and probate cases. In July 2018, the Court ordered Chalmers' tax-exempt assets to be converted to liquid assets to satisfy various Court orders and tax liabilities resulted. Chalmers demonstrated a significant tax burden, evidenced by the 2018 Federal and State tax returns he provided to the Division with his complaint.

The issue to resolve in Allegation 16 is whether Bogle and EVFS breached its fiduciary duty to the estate by not including an estimate of the estate tax liabilities as a debt in Schedule 2 of the conservator's final accounting filed with the Court, and whether EVFS should have paid or set aside estate funds to cover the resultant tax consequences of converting tax-exempt assets to liquid assets.

ACJA §7-202(J)(5) requires fiduciaries to provide competent management of the property and income of the estate and to exercise the highest level of fiduciary responsibility, intelligence, prudence, and diligence in the discharge of all duties. ACJA §7-202(J)(5)(k) requires fiduciaries to prepare complete, accurate and understandable accounts and inventories. ACJA §7-202(J)(1)(c)(2) and (3) require that fiduciaries ensure that reports, notices, financial accountings, and other documents are timely and accurately filed with the Court and that the fiduciary not knowingly file any document with the Court or present testimony to the Court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts.

The Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons, dated August 18, 2017, involving EVFS, also specifies certain obligations for the conservator:

9. File annual accountings with the Court.
 - A. Unless otherwise ordered by the Court, all subsequent accountings shall reflect all activities relating to the conservatorship estate from the ending date of the most recent previously filed accounting through and including the last date of the twelfth month thereafter...
 - B. Each accounting must list all conservatorship property at the beginning of the accounting period and the conservatorship property at the end of the accounting period. It must describe all money and property received or paid out by you during the accounting period. As to money and property received, the

³⁴ FC2016-053887.

accounting must state the date received, the source (who or where it came from), for what purpose, and the amount or value received. As to money and property disbursed (paid out), you must provide the date of each disbursement, who the money or property went to, for what purpose, and the amount or value of the disbursements. With each accounting you also must submit a bank statement or financial account statement that supports the ending balances of each account shown on the accounting.

ARPP Rule 30(B) reflects the same or similar language as noted above in the Order to Guardian and Conservator for an Adult and Acknowledgement and Information to Interested Persons.

ARPP Rule 30(B)(2):

2. Unless otherwise ordered by the court, all subsequent ACCOUNTS accountings shall reflect all activity relating to the conservatorship estate from the ending date of the most recent previously filed ACCOUNT accounting through and including the last date of the twelfth month thereafter, and shall be filed with the court on or before the anniversary date of the issuance of the conservator's permanent letters. For each bank or securities account listed on the ending balance schedule of the ACCOUNT accounting, the conservator shall attach to the ACCOUNT accounting a copy of the monthly statement that corresponds to the ending balance of such account as reflected on the ACCOUNT accounting. [emphasis in original]

ACJA §3-302(D)(2)(b) addresses the exclusive forms used by conservators including Form 8 which is the conservator's final account, germane to this allegation. ACJA §3-302(D)(3) contains information regarding the forms being available at Court self-service centers and includes a link to <http://www.azcourts.gov/>. The URL contains a link to instructions on filing the various forms including final accountings.

The conservator's Transaction Log Instructions³⁵ provides general information on what is required in the transaction logs filed with the conservator's accountings including but not limited to, income, expenses, date, transaction type, and purpose. The conservator's final account instructions indicate, in part, that Schedule 1 is required.

Schedule 1 is a summary of statement of receipts and disbursements of the estate. Conservators are also required to provide supporting details for Schedule 1. Line 7 of Schedule 1 involves any receipts that are not already included in Lines 3 through 6 such as distributions from tax-deferred investments including 401K or IRA funds, an amount from selling an asset, or the proceeds from any new loan to the estate. Line 9 deals with assets and liabilities as receipts and includes money the conservator expects to receive such as from selling or liquidating an assets or money received from a new debt or liability.

³⁵ [Transaction Log Instructions \(maricopa.gov\)](http://www.maricopa.gov)

Schedule 2, Line 7 deals with tax-deferred assets and the conservator is required to enter the present value of any tax-deferred assets. Lines 16 deals with Bills & Payables more than 30 days old which includes past-due bills and payables including fiduciary and attorney fees and costs for services already provided but not yet paid, as of the end of the account period. Line 17 addresses other debts which includes any debt not already included in Line 16 for example, mortgages, credit cards and personal loans.

Chalmers asserted that EVFS should have included an estimation of the future tax liability that was incurred in 2018 from converting tax-exempt assets to liquid assets, in the final accounting's Schedule 2, in Lines 16 or 17, which are line items involving bills and payables more than 30 days old or other debt such as mortgages, credit cards, etc. Chalmers thought that EVFS should have paid income taxes or possibly set aside money for the inevitable tax liability to the estate. He concluded that EVFS failed to take such accounting action, resulting in EVFS' breach of fiduciary duty and that EVFS did so in a self-serving way by "hiding" this debt from the Court.

The Division reviewed EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, and the subsequent resubmission of the Final Inventory & Accounting filed with the Court on May 22, 2019.

The accounting's Schedule 1: Net Assets, reflected the estate's Tax-Deferred Assets on Line 7; and documented the value of the tax-deferred assets as of August 18, 2017, in Column A, and the updated amount as of September 18, 2018, in Column B. EVFS recorded that there was a 51.35% reduction in the tax-deferred assets from 2017 to 2018.

Consistent with the purpose of Line 16 which should include past-due bills & payables more than 30 days old, EVFS identified various bills and payables outstanding including credit card debts, auto loans, medical invoices, etc. EVFS did not include an estimated tax liability for liquidating tax-deferred assets in Lines 16 because it was not a past-due bill. EVFS did not include any potential tax liability as a debt in Line 17 which involves other debts such as loans or mortgages, etc.

The Division did not identify a standard in code, statute, rule or regulation that mandates conservators to record, as a debt, any potential, projected and/or estimated tax liability that may have been incurred by an estate in the same year that the conservator's accounting or final accounting is filed with the Court.

Chalmers' concerns about tax liabilities were raised in some of the filings with the Court. In September 2019, Chalmers retained a tax preparer to prepare his 2018 income taxes and tax liabilities that were caused, in part, by the Court-ordered liquidation of tax-deferred assets to satisfy various Court orders, resulted.

However, not including tax liabilities in the final accounting did not violate a statute, code, rule, regulation, or Court order or directive. The Court was aware of the tax implications of converting non-liquid assets to liquid assets because Chalmers, by and through counsel, filed various motions and petition that either opposed or sought limits to using tax-exempt assets and he routinely raised the issue of the resultant tax consequences.

Allegation 17 is not substantiated.

Allegation 18: East Valley Fiduciary Services, Inc., failed to inform the Court that the fiduciary failed to complete all the terms of the divorce prior to the end of the conservatorship and did not comply with the Court order about the same.

In his complaint, Chalmers said EVFS was “explicitly ordered to communicate in writing all of the elements of the conservatorship items that were not complete” but EVFS failed to comply with the Court’s order. He said EVFS failed to inform the Court that EVFS was working to complete these items after the conservatorship ended on September 18, 2018. Chalmers did not provide a copy of the Court order that he referenced with his complaint. He renewed previous allegations involving EVFS conducting transactions after the conservatorship ended.

a) Failed to inform the Court

The Division reviewed Court records that involved, pertinently, EVFS’ responsibilities before and around the time when the conservatorship ended and/or that “explicitly ordered” EVFS to communicate in writing all of the elements of the conservatorship items that were not complete.

The only Court record that uses language resembling Chalmers’ complaint is in the Court’s Minute Entry dated September 18, 2018, issued on the same day that the conservatorship was going to end. The Court stated:

The Court received Motion to Extend Temporary Limited Conservatorship of an Adult and Supplement, both filed by the Court Appointed Counsel for Mr. Chalmers on 9-13-2018, [sic] and both requested expedited ruling. The Court has also reviewed the stipulated order signed by the Court on 9-5-2018. [sic] The time for response has not expired and no response has been filed.

The Court would expect that the limited temporary conservator’s actions would be self-evident as to the duties set forth in the Court’s order signed 9-5-2018. [sic] To the extent that the limited temporary conservator determined that there is ambiguity in what they have done with respect to each of their duties under the order, they must inform Mr. Chalmers, in writing, of what they have done.

Similarly, if Mr. Chalmers believes that the temporary limited conservator is a necessary witness at an OSC [sic] hearing in the post-decree matter he may retain them or subpoena them to appear at any evidentiary hearing that the family court may schedule in connection with the OSC. [sic]

The Court's September 18, 2018 Minute Entry was in response to Chalmers' Motion to Extend Temporary Limited Conservatorship of an Adult and Supplement that Chalmers, by and through counsel, filed with the Court on September 6, 2018. In the Supplement to Motion to Extend Temporary Limited Conservatorship of an Adult, Chalmers identified certain duties that EVFS should complete prior to the termination of the temporary conservatorship. The outstanding duties were identified as follows:

1. Resolution of the QDRO;
2. Dealing with the accounts that are in collection belonging to Mr. Chalmers in the manner set forth on the record;
3. Deal with the IRS refund and the current denial posture of the IRS;
4. Taking any and all action necessary to address and remediate WILLIAM CHALMERS [sic] credit history and rating by resolving accounts in collections in a manner that is beneficial to WILLIAM CHALMERS and his credit score.
5. Pursuit of "arguable claims of post-decree relief that the Ward has in FC2016-053887."
6. Attend and participate in the proceedings related to the hearing on the Respondent's (Wife) Petition for Contempt which is set before Judge Jennifer Ryan Touhill on September 27, 2018 at 9:00 a.m.

Chalmers requested an expedited ruling from the Court on the grounds that the pending and subject temporary conservatorship was set to expire on September 18, 2018. He said because EVFS had been handling Chalmers' financial matters since August 2017, EVFS should continue to undertake and ultimately complete those tasks which it assumed and for which EVFS has been "handsomely paid." Chalmers added that neither himself nor his counsel have been provided with any material information or proof that, other than partial liquidation of the guns and related items, any of the foregoing responsibilities have been addressed and completed.

For context, the Court's order that was signed on September 5, 2018, referenced by Commissioner Passamonte in her September 18, 2018, ruling, is found in the Stipulated Amended Order Appointing Temporary Limited Conservator for an Adult, referenced previously as "Stipulated Order," that Chalmers, by and through counsel, filed with the Court on September 6, 2018. The Stipulated Order referenced and incorporated language that was included in the Court's May 17, 2018, Minute Entry and added language that formed the Stipulated Order. The May 17, 2018, Minute Entry, the Court, at that time, ordered, in part:

IT IS ORDERED that East Valley Fiduciary as limited temporary conservator shall continue for a period of 120 days from the date of the current expiration.

IT IS FURTHER ORDERED that East Valley Fiduciary would have to deal with issues related to the Rule 69 Agreement and the Decree of Dissolution in the following areas:

1. Liquidation of the guns
2. Resolution of the QDRO
3. Dealing with accounts that are in collection belonging to Mr. Chalmers in the manner set forth on the record
4. IRS refund and the current denial posture of IRS
5. East Valley Fiduciary will need to holdback liquid assets of Mr. Chalmers

The Stipulated Order continued, in part:

AND IT IS, THEREFORE, FURTHER ORDERED:

2. Directing that Letters of Temporary Limited Conservatorship be issued to EAST VALLEY FIDUCIARY SERVICES, INC. upon the acceptance of appointment with the following limitations and restrictions:
 - a. The Temporary Limited Conservator is authorized to arrange for the sale of the firearms as provided in the Rule 69 Agreement. The Temporary Limited Conservator is authorized and directed to request WILLIAM CHALMERS [sic] assistance in making sure that any parts necessary for the sale of the firearms be identified and located.
 - b. The Temporary Limited Conservator is authorized to execute or otherwise resolve the issues related to the Qualified Domestic Relations Order (QDRO) for the IRA (account ending in 9967) to be divided equally between WILLIAM CHALMERS and RENATA CHALMERS as provided by the Rule 69 Agreement.
 - c. The Temporary Limited Conservator is authorized and directed to take any and all actions necessary to address and remediate WILLIAM CHALMERS [sic] credit history and rating by resolving accounts in collections in a manner that is beneficial to WILLIAM CHALMERS and his credit score. The parties are directed to assist each other in resolving WILLIAM CHALMERS' credit issues and concerns. The Temporary Limited Conservator is not authorized to compromise any matters in collections without WILLIAM CHALMERS' agreement or by the further order of this Court.
 - d. The Temporary Limited Conservator is authorized and directed to provide any information requested by the Internal Revenue Service as it relates to the refunds requested pursuant to the amended tax returns filed for years 2014 and 2015.
 - e. The Temporary Limited Conservator shall provide to and release funds to WILLIAM CHALMERS that are necessary for his needs during the next 120 days.

WILLIAM CHALMERS is directed to provide the Temporary Limited Conservator with a reasonable budget to determine what funds should be released to him. The Temporary Limited Conservator shall retain control of the balance of the unreleased funds but is only authorized to spend funds to satisfy any current needs of WILLIAM CHALMERS. [emphasis in original]

Commissioner Passamonte further said that EVFS was “specifically limited to the powers and duties as are enumerated in this Order and...shall have no other powers or authority to act other than those explicitly provided under this Order.” The Court added that EVFS was ordered to provide Chalmers the documents and information to prepare and file his income taxes for 2017. The Court ordered that the conservatorship would end on September 18, 2018 unless extended further from the Court and that within 60 days of the date of the entry of the Order, EVFS was ordered to file a formal accounting for the entire period of the appointment since August 17, 2017 until termination of the temporary limited conservatorship. EVFS would only be discharged upon the approval of the accounting. The Order was executed by Commissioner Passamonte on September 5, 2018.

Chalmers alleged that EVFS was explicitly ordered by the Court to communicate in writing all of the elements of the conservatorship items that were not completed by the end of the conservatorship. The Division did not find a Court order with language that supported Chalmers’ assertion. It appears that Chalmers’ complaint arises from the language in Paragraph 2, second sentence, of the Court’s September 18, 2018, Minute Entry, specifically:

The Court would expect that the limited temporary conservator’s actions would be self-evident as to the duties set forth in the Court’s order signed 9-5-2018. To the extent that the limited temporary conservator determined that there is ambiguity in what they have done with respect to each of their duties under the order, they must inform Mr. Chalmer, in writing, of what they have done.

The Court stated that the Court would expect that EVFS’ actions as to the duties set forth in the previous order was self-evident and to the extent that EVFS determined that there was ambiguity in what EVFS has done with respect to the duties under the order, EVFS was to inform Chalmers, in writing, of what EVFS had done. The Court placed the responsibility on EVFS to determine if there was ambiguity in what EVFS had done. There was no directive that EVFS was to inform the Court of which of the duties set forth in the Court’s order that EVFS was unable to complete at the end of the conservatorship.

The Division did not identify a Court record ordering EVFS to inform the Court of any duty previously ordered by the Court that EVFS was unable to complete prior to the end of the conservatorship.

b) Failed to Comply with the Court's Order

Chalmers also alleged that EVFS failed to comply with the Court's order regarding completion of EVFS' responsibilities involving the Rule 69 Agreement. On September 13, 2018, Chalmers, by and through counsel, filed with the Court a Motion to Extend Temporary Limited Conservatorship of an Adult. This was filed for the purpose of allowing and requiring that EVFS comply with the obligations imposed by the Court in its May 17, 2018, Minute Entry and those set forth in the Stipulated Amended Order Appointing Temporary. Chalmers said it appeared that EVFS was attempting to walk away from its fiduciary duties and responsibilities previously imposed by the Court. Chalmers asserted that allowing EVFS to do so would essentially place him in the position of not having access to EVFS and its attorney, who, since August 2017, had exclusively handled Chalmers' financial affairs and more specifically, the Family Court dissolution proceeding. Terminating the temporary conservatorship would have the effect of leaving Chalmers in an isolated position in the Family Court proceeding and leave him unable to defend himself because EVFS and its attorneys had exclusive knowledge of the strategy employed to that time and the evidence and information upon which that strategy was based. By filing the Motion on September 13, 2018, Chalmers alerted the Court that EVFS had not yet completed the tasks required by the Court's May 17, 2018, Minute Entry and the terms of the Stipulated Order of September 5, 2018.

On September 18, 2018, the Court denied Chalmers' Motion. The Court took no further action regarding EVFS not completing the tasks set forth in the May 17, 2018, Minute Entry and September 5, 2018, Stipulated Order. In the denial of Chalmers' motion, the Court said Chalmers could retain or subpoena EVFS to appear at an evidentiary hearing in any post-decree matter that the Family Court may schedule in the Order to Show Cause matter:

The Court received Motion to Extend Temporary Limited Conservatorship of an Adult and Supplement, both filed by the Court Appointed Counsel for Mr. Chalmers on 9-13-2018, [sic] and both requested expedited ruling. The Court has also reviewed the stipulated order signed by the Court on 9-5-2018. [sic] The time for response has not expired and no response has been filed.

The Court would expect that the limited temporary conservator's actions would be self-evident as to the duties set forth in the Court's order signed 9-5-2018. [sic] To the extent that the limited temporary conservator determined that there is ambiguity in what they have done with respect to each of their duties under the order, they must inform Mr. Chalmer, in writing, of what they have done.

Similarly, if Mr. Chalmers believes that the temporary limited conservator is a necessary witness at an OSC [sic] hearing in the post-decree matter he may retain them

or subpoena them to appear at any evidentiary hearing that the family court may schedule in connection with the OSC. [sic]

ACJA §7-202(J)(1) requires licensed fiduciaries to perform all duties and discharge all obligations in accordance with, in part, Court orders. EVFS was unable to complete the responsibilities set forth in the May 17, 2018 and September 8, 2018, Court orders because the conservatorship was terminated by the Court on September 18, 2018. Though Chalmers' allegation that EVFS did not complete the Court-ordered tasks as described herein is verifiable, this does not rise to the level of a violation because the facts do not demonstrate that EVFS negligently and/or intentionally disregarded the Court's orders. EVFS' ability to complete the Court-ordered tasks ended when the temporary limited conservatorship was terminated by the Court on September 18, 2018.

Allegation 18 is not substantiated.

Allegation 19: East Valley Fiduciary Services, Inc., failed to provide documentation pursuant to Arizona Revised Statutes §14-56519(A)(3) and Michael Bogle and Andrew Stone failed to inform the Court that Barbara Livingston had the most recent Durable Power of Attorney, pursuant to A.R.S. §14-5410.

In his complaint, Chalmers said no representative of EVFS provided him or his sister, Livingston, "with any such document," pursuant to A.R.S. §14-56519(A)(3) [sic]. He said his sister has been his durable power of attorney for financial, medical and mental health matters prior to probate proceedings. Chalmers may have erroneously cited "A.R.S. §14-56519(A)(3)."

Chalmers also alleged that "[p]ursuant to Rule 33's and on information and belief," on August 30, 2017, Bogle and Stone spoke with Chalmers' sister, Livingston, at which time she informed both of them of her durable powers of attorney for financial, medical and mental health matters. During the telephone call, the parties discussed a possible move to Florida since Livingston was ready, willing and able to provide the necessary care to avoid the entire conservatorship. Chalmers said Bogle and Stone failed to inform the Court of Livingston's status "via ARS 14-5410." [sic]. Chalmers said Livingston was the person nominated in the protected person's power of attorney executed on May 11, 2017. Chalmers said he selected his sister to be his power of attorney because she had successfully cared for their parents during their final days. He said Livingston is the person aware of his preferences for life sustaining care, final financial and burial wishes.

Chalmers did not include a copy of power of attorney documents with his complaint, but Livingston did, as noted below.

In its response to the complaint, EVFS said the statute Chalmers referenced in his complaint does not exist and it is not clear what he is talking about.

The A.R.S §14-56519(A)(3) statute Chalmers referenced in the complaint does not exist. A.R.S. § 14-5651(A)(3) relates to fiduciaries providing written information to wards, but Chalmers' complaint did not provide enough information to know which statute he intended to reference in his complaint. A.R.S. §§14-5501 through 5507 deal with powers of attorney.

Chalmers also cited A.R.S. §14-5410 which sets out who may be appointed as conservator and priorities. A.R.S. §14-5410(3) and (7) contain language regarding appointment for conservator involving powers of attorney and regarding relatives of the protected person:

3. The person nominated to serve as conservator in the protected person's most recent durable power of attorney.

7. Any relative of the protected person with whom the protected person has resided for more than six months before the filing of the petition.

Livingston's complaint referenced powers of attorney stating that a power of attorney was drafted on May 11, 2017, prior to the conservatorship. Livingston provided a copy of a Durable Health Care Power of Attorney and Durable Mental Health Care Power of Attorney, both dated May 11, 2017.

In her complaint, Livingston criticized GAL Theut stating that Theut believed he had the authority to "overtake my power attorney for my brother and act as Guardian ad litem for my brother." Livingston also said that according to Chalmers, Theut was refusing to "turn over any of his records to the court."

As previously noted in this Investigation Summary, Theut was appointed as GAL by the Court due to ongoing concerns of diminished capacity that Chalmers' attorney, Keller, retained for the divorce proceedings, had for Chalmers. Theut filed with the Court an Emergency Petition for Appointment of Temporary Conservator for an Adult on August 11, 2017, wherein he identified Livingston as Chalmers' relative and noted that Livingston had a Health Care power of Attorney for William Chalmers.

6. The name and address of the nearest relative known to Petitioner of the person alleged to be incapacitated and in need of protection are:

- a. **Name: Barbara Livingston
Health Care Power of Attorney For William Chalmers**

Theut wrote that Livingston possessed a Health Care Power of Attorney for William Chalmers but said that Livingston believed Chalmers "may have revoked it." Theut added that Livingston resided in Florida, and she was recently informed by Keller that Chalmers

“will not speak to her anymore and that Charles Keller is not allowed to speak to Barbara Livingston.”

In his Petition, Theut further wrote that on July 6, 2017, Livingston received a call from Chalmers while he was in Fry’s getting groceries and she told him to buy groceries because he reported that he had not eaten in the past 24 hours. The Petition further stated that while Chalmers was in Fry’s, he had an anxiety attack or an episode due to low blood sugar because he complained of chest pain and breathing issues. Chalmers was taken by ambulance to the emergency room. According to Theut’s Petition, Chalmers was very paranoid about getting out of the ambulance to go to the emergency room and thought the Gilbert police were going to take him to Desert Vista Hospital.

Theut later filed with the Court an Emergency Petition for Appointment of Temporary/Permanent Guardian with Inpatient Mental Health Powers on August 24, 2017. In this Petition, Theut identified Livingston as Chalmers’ sister and who had a Health Care Power of Attorney for Chalmers but that she believed that Chalmers may have revoked it. Theut said that Livingston lives in Florida, and she was recently informed by Keller, counsel for Chalmers, that Chalmers will not speak to Livingston anymore and that Keller is not allowed to speak to Livingston.

Theut’s billing records, per his Rule 33 Application filed with the Court on March 23, 2018, for the period July 5, 2017 through February 28, 2018, showed that on July 20, 2017, Theut billed the estate 0.40 hours for time involving a telephone conference with Livingston. On July 24, 2017, Theut billed for time involving reviewing a message from Livingston that Chalmers was involuntarily checked into Community Bridges³⁶ by police and that based on a diagnosis, Chalmers would be going to Desert Vista.³⁷

EVFS billing records show that on August 30, 2017, Bogle and Stone billed the estate for time involving participation in a call with Livingston where they discussed “historical perspective of case and develop better understanding of needs of Bill. Begin discussions of possible move to Florida.”

Chalmers’ allegation is that EVFS failed to inform the Court about the powers of attorney after EVFS spoke with Livingston on August 30, 2017. Theut disclosed Livingston as Chalmers’ nearest relative and that she had a Health Care Power of Attorney for Chalmers when Theut filed an emergency petition on August 11, 2017, involving the appointment of a conservator; and on August 24, 2017, involving the appointment of a guardian with mental health powers.

The Court appointed EVFS to serve as temporary conservator and shortly thereafter appointed EVFS to serve as temporary guardian for Chalmers. The power and authority

³⁶ Community Bridges, Inc, Integrated Behavioral Healthcare.

³⁷ Desert Vista Behavioral Health Center.

granted by the Court to a Court-appointed conservator and guardian exceed the agency relationship and authority designated to an agent under powers of attorney.

Regarding Chalmers' assertion involving EVFS providing Livingston "with any such document," pursuant to A.R.S. §14-56519(A)(3), [sic] there is no such section of the A.R.S. and the Division could not determine a potential violation from the context of the allegation. It does not appear that Livingston was an interested person in the proceedings, nor was there record that Livingston filed with the Court to be notified as an interested person.

A.R.S. §14-1201. Definitions.

33. "Interested person" includes any trustee, heir, devisee, child, spouse, creditor, beneficiary, person holding a power of appointment and other person who has a property right in or claim against a trust estate or the estate of a decedent, ward or protected person. Interested person also includes a person who has priority for appointment as personal representative and other fiduciaries representing interested persons. Interested person, as the term relates to particular persons, may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

A.R.S. §14-5406 Protective proceedings: request for notice: interested person [italics added]:

On payment of any required fee, any interested person who desires to be notified before any order is made in a guardianship or conservatorship proceeding, including any proceeding subsequent to the appointment of a guardian pursuant to section 14-5313, or subsequent to the appointment of a conservator pursuant to section 14-5416, may file a demand for notice with the clerk of the court in which the proceeding is pending. The person demanding notice shall mail a copy of the demand to the guardian and the conservator if one has been appointed. A demand is not effective unless it contains a statement showing the interest of the person making it and the person's address, or that of the person's attorney, and is effective only as to matters occurring after the filing. Any governmental agency paying or planning to pay benefits to the person to be protected is an interested person in protective proceedings.

Allegation 19 is not substantiated.

Allegation 20: East Valley Fiduciary Services, Inc., made a poor decision by hiring a convicted felon as the property manager.

In his complaint, Chalmers takes issue with EVFS staff member, Griffing, because of her criminal history. Chalmers' complaint mentioned missing property items, saying of

Griffing, “Quite simply there is a fox in the hen house of incapacitated wards under the responsibility of EVFS.” Chalmers made other allegations that Mike Bogle created at a minimum the appearance of an unethical organization by making Griffing property manager.

In the response to the complaint, EVFS stated that Chalmers made the “wholly-unfounded and ill-considered allegation” that EVFS made an irresponsible decision to hire Griffing, who had a criminal record. EVFS said all make mistakes in life and Griffing paid for her mistake years ago, but she is an ideal employee and EVFS did not make a mistake or use bad judgement to hire her. EVFS said Chalmers’ attorney, Alan Cook³⁸ (“Cook”) made similar smears against Griffing in the probate case and such unfounded smears were part of the reason the probate court sanctioned Cook.

EVFS referenced a Minute Entry dated January 15, 2021, attached as Exhibit 7, where the Court stated, pertinently:

Mr. Cook also made baseless allegations against Bonnie Griffing, who has seemingly done nothing to deserve having her name listed as a suspect of a crime. Mr. Cook offered no evidence that she had her civil rights restored “with Bogle vouching for Griffing, nor any indication as to why this claim is relevant to the case at bar. More outrageously, there was seemingly zero basis to accuse Ms. Griffing of a crime. Assuming that Ms. Griffing does have a criminal background...her past is not a basis for counsel to accuse her of criminal conduct.

Griffing is not a licensed fiduciary in Arizona. The Division does not have regulatory authority over a licensed fiduciary or licensed fiduciary business entity’s employment practices. Bogle, as president and designated principal of EVFS, has responsibility for providing active and direct supervision of all staff employed by EVFS.

ACJA §7-201(A), (E)(f)(1)(a), and (F)(9):

A. Definitions. In addition to the Arizona Code of Judicial Administration (ACJA) § 7-201(A), the following definitions apply: “Active and direct supervision” means “supervision by a licensed fiduciary or designated principal who provides or exercises routine and regular control over the services of and assumes personal professional oversight and responsibility for the services of other licensed fiduciaries and certified and licensed professionals, trainees, and support staff to whom the licensed fiduciary delegates non-informed consent and non-contract entering authority. Active and direct supervision does not require a principal’s constant physical presence if the supervising

³⁸ S.Alan Cook filed a Notice of Appearance on March 14, 2019 on behalf of Chalmers in PB2017-0013737.

principal is or can be easily in contact with the fiduciary, trainee, or staff by radio, telephone, or electronic communication.

f. Responsibilities of Principal.

(1) The principal shall:

(a) Provide active and direct supervision of all other licensed fiduciaries, trainees, and support staff who work with wards, protected persons, or decedent estates and who work for the corporation, limited liability company, or partnership, Department of Veterans' Services, or Office of the Public Fiduciary;

9. Support Staff and Professionals. A licensed fiduciary or designated principal may, under the licensed fiduciary or designated principal's active and direct supervision, utilize support staff and other professionals to perform office functions and client services. Support staff and professionals may be used to gather and provide necessary information to the licensed fiduciary regarding a client and to make recommendations based on their knowledge and expertise to the licensed fiduciary. The licensed fiduciary or designated principal may not delegate informed consent or contractual agreement decision making authority to trainees, non-licensed staff or professionals.

There was no evidence found that Bogle and EVFS committed any violation of its fiduciary duty to the estate nor evidence of any ethical violation, as alleged by Chalmers.

Allegation 20 is not substantiated.

Allegation 21: East Valley Fiduciary Services, Inc., sent Patrick Moore to a settlement conference knowing he had no knowledge of the ward's case.

In his complaint, Chalmers said Bogle scheduled a personal vacation on the same day Chalmers had his divorce settlement conference scheduled. Chalmers noted that the settlement conference had been scheduled with six to eight weeks of advanced notice. Chalmers said Stone had been the primary fiduciary on day-to-day activities, but Stone appeared to have a scheduling conflict with another ward on the morning of the conference.

Chalmers said Bogle decided that it would be best to send Moore to attend the settlement conference, charging for his time. Chalmers said Moore's role in the settlement conference was revenue generating by way of "baby-sitting services" for Chalmers. Chalmers said this statement is supported by an audio recording Chalmers made of the entire settlement conference which "will clearly show" that Moore, by his own admission, knew "nothing" about Chalmers' case and instead he loved to tell golf stories which were of no use to Chalmers. Chalmers said Moore's uninformed presence at the settlement conference was further compounded that Stone charged for his time for attending the entire settlement conference "which is a fraudulent charge." Stone can be heard on the audio records

announcing when he arrived at the conference nearly 3.5 hours after it began. Chalmers stated that neither Moore nor Stone provided any meaningful counsel or communication to or with Chalmers during the entire conference.

In the response to the complaint, EVFS grouped the information in this allegation into various other allegations involving the Rule 69 Agreement. EVFS said the allegation(s) relates, in some measure, to Chalmers' continued unhappiness with the rule 69 divorce settlement agreement that he personally signed and to which he agreed. EVFS said the Family Court and Court of Appeals³⁹ thoroughly discussed and rejected Chalmers' claims about such and, in addition, one of the reasons the judge in the civil tort case sanctioned Chalmers for his continued attempts to litigate issues related to the Rule 69 Agreement.

EVFS said Moore was at the settlement conference to provide oversight, not to negotiate the settlement. EVFS said two months prior to the final settlement meeting, at which the agreement was actually signed, there had been an earlier meeting with all the parties during which the main elements of the settlement had been discussed and Stone attended that meeting in its entirety. At the final settlement meeting, McKindles represented EVFS in negotiating the final details, to which Chalmers personally agreed.

Chalmers takes issue with EVFS sending Moore to the settlement conference because he apparently knew little about the case and that Stone eventually attended the conference hours after the conference was in session. Chalmers asserted that Stone's charges for his attendance at the settlement conference was "fraudulent."

The Division reviewed billing records and invoices from the various professionals per the Rule 33 Applications filed with the Court involving the settlement conference. Records indicate that the settlement conference was scheduled on February 20, 2018, for five hours from 9:00 a.m. to 2:00 p.m.

On February 20, 2018, Theut billed the estate 5.0 hours for time involving "Mediation 9 am to 2 pm 5 hours." Theut also billed 2.0 hours to prepare for mediation and billed for a total of 1.0 hours for travel to and from mediation.

On February 20, 2018, Doyle billed the estate 4.5 hours for "Conference/mediation" and billed 1.0 hour for "travel to/from mediation."

On February 20, 2018, McKindles billed the estate a total of 6.8 hours for time involving "Preparation for and attendance at Settlement Conference" and for other tasks.

³⁹ Court of Appeals Cause Number 1 CA-CV 18-0294

On February 20, 2018, Moore billed the estate 5.10 hours for time involving “Travel to the Law Office of Robert Budoff⁴⁰ at request of EVFS and Bill Chalmers divorce attorney. Was replaced by AS [Andrew Stone] after his court appearance for other EVFS client.”

On February 20, 2018, Stone billed the estate 3.0 hours for time involving “Traveled to settlement conference; participate in settlement conference.”

The professionals involved in the settlement conference generally billed the estate one hour for travel to and from the mediation and approximately 4.5 to 5 hours for the mediation. Based on Stone’s billings, he attended the conference for approximately two hours and based on Moore’s billing, he attended for approximately four hours.

Moore and Stone are licensed fiduciaries. Moore attended the settlement conference as a representative of EVFS as did Stone albeit later apparently due to a Court appearance in another matter, according to Moore’s billing entry of February 20, 2018. It did not appear that Moore attend the settlement conference in a decision-making capacity or was tasked with negotiating terms on Chalmers’ behalf. Chalmers was present at the mediation as was his Court-appointed attorney, Doyle, GAL Theut, and McKindles, who was specifically retained by EVFS to represent Chalmers in the divorce settlement matter.

Bogle and EVFS can determine how to utilize trainees, non-licensed support and professional staff, as well as its licensed fiduciaries. The Division does not have a regulatory role or oversight over EVFS’ utilization of its employees unless Bogle and EVFS delegated informed consent or contractual agreement decision-making authority to trainees, non-licensed staff or professionals, prohibited by ACJA §7-202(F)(9), though this was not alleged by Chalmers. In addition, Bogle and EVFS have a responsibility to provide competent management of the estate including managing costs and protecting against incurring costs that may exceed the probable benefits to the protected person or estate, pursuant to ACJA §7-202(J)(5) and A.R.S. §14-1104. That Moore attended the settlement conference on February 20, 2018, and Stone later joined the conference for a portion of time does not rise to the level of a violation or breach of fiduciary duty.

Allegation 21 is not substantiated.

Allegation 22: East Valley Fiduciary Services, Inc., paid off Renata Chalmers’ Subaru violating the Rule 69 Agreement and/or charged services to the estate.

In his complaint, Chalmers said that the latest version of the conservator’s final accounting showed that EVFS used estate funds to pay off Renata’s Subaru Crosstrek car loan. He said the Rule 69 Agreement clearly states that Renata was responsible for that encumbrance. Chalmers said EVFS has claimed that EVFS paid off the Subaru as part of

⁴⁰ The mediation/settlement conference was scheduled before former Judge Robert Budoff.

a larger divorce settlement balance, but, if this was true, EVFS has not kept and provided appropriate recordkeeping to indicate how this payoff fits into an overall divorce settlement balance. He said EVFS created an aura of suspicious behavior by not openly documenting the actions in a manner that allows him or the Court to understand.

In the response to the complaint, EVFS stated that the Rule 69 Agreement awarded the Subaru Crosstrek to Renata, and she was required to pay it off. EVFS said “[f]or convenience EVFS simply paid off the vehicle by using funds allocated to the wife under the Rule 69 Agreement. Mr. Chalmers’s [sic] funds were not used to pay off the vehicle.”

Regarding the Subaru Crosstrek, the Rule 69 Agreement, dated February 20, 2018, stated:

19. 2015 SUBARU XV CROSSTREK: Awarded to Wife along with full responsibility for the obligation thereon from which she shall hold Husband harmless. She is responsible for all payments due effective immediately. It shall be paid off by Wife within 90 days of entry of the decree.

On April 2, 2018, over the objections of Court-appointed counsel and Guardian Ad Litem, the Court entered a Decree of a Dissolution of Non-Covenant Marriage in FC2016-053887, with the deletion of line 14, paragraph 5 of Page 2 of the decree which struck the line involving that there was significant domestic violence between the parties.

On April 4, 2018, over objections of Court-appointed Counsel for the ward and objections of the Guardian Ad Litem of the ward, the Court ordered approving the Rule 69 Agreement dated February 20, 2018, in PB2017-001373.

EVFS’ Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 4 - Disbursements, Line 14 - Payment on Debt, shows that on March 12, 2018, EVFS issued Check No. [REDACTED] to Subaru Motors Finance, “Per Rule 69 Agreement,” for the amount of \$13,057.54, from Chalmers’ conservator account ending ***[REDACTED], to Subaru Motors Finance.

[REDACTED]

On May 22, 2019, EVFS filed with the Court an Accounting Response which was in response to a CARR and represented an amended final account. The information pertinent to Subaru Motors Finance was the same as the information that appeared in the December 6, 2018, Final Inventory & Accounting.

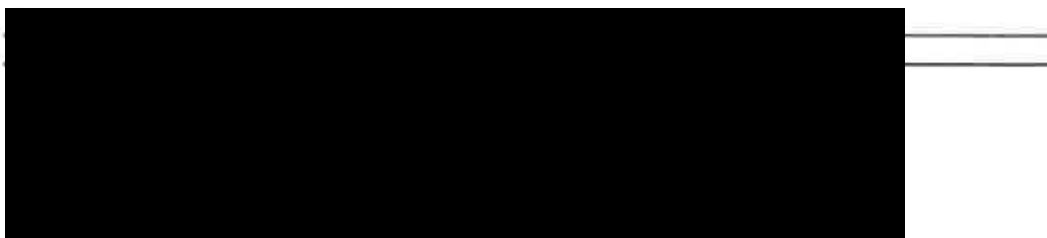
EVFS’ Rule 33 Application filed with the Court on April 5, 2018, for the period from July 20, 2017, through March 27, 2018, EVFS billed the estate \$385.50 for tasks related to the Subaru even though Renata was to assume full responsibility for the Subaru including paying off the car loan. EVFS’ actions included:

- On February 23, 2018, EVFS staff, per Bogle's direction, billed for time involving contacting Subaru Motors Finance to confirm the payoff amount and payment due date.
- On February 26, 2018, EVFS billed for time to issue Check No. [REDACTED] to Subaru Motors Finance in the amount of \$13,057.54 for the loan payoff.
- On March 5, 2018, EVFS staff billed for incoming mail from Subaru Motors Finance, dated February 26, 2018, regarding the payoff amount of the loan.
- On March 8, 2018, EVFS billed for time to call Subaru Motors Finance regarding payoff of the loan and learned that the loan had not been processed.
- On March 8, 2018, Stone billed for time involving a call to Renata concerning the Subaru loan payoff and Stone resolved to contact Subaru Motors Finance again the next day.
- On March 9, 2018, Stone called Subaru Motors Finance to check on the status of the loan payoff and was told it was not yet received.
- On March 12, 2018, Stone again called Subaru Motors Finance to check on the status of the payoff and was told it had not yet been paid. EVFS decided to have a stop payment made on the check and to reissue a new check and to overnight the check to Subaru Motors Finance. EVFS staff billed to reissue a new check to Subaru Motors Finance.
- On March 15, 2018, Stone billed for time involving reviewing an email Bogle forwarded from Renata concerning the Subaru payment. Stone responded to Renata.
- On March 15, 2018, Stone billed for time to call Subaru Motors Finance to discuss payment of the loan and confirmed that the loan had been paid. EVFS was told that the payment verification had been sent electronically to the DMV but that it could take a couple of weeks to get a paper title. Subaru Motors Finance would issue a refund for the payment Renata recently made.
- On March 16, 2018, Stone billed for time to email Renata to provide an update on the payment of the loan.
- On March 22, 2018, EVFS billed for time to process a check from Subaru Motors Finance.

- On March 23, 2018, EVFS billed for time to electronically deposit the check from Subaru Motors Finance into Chalmers' conservator account ending ***[REDACTED]

On April 3, 2018, Stone billed for time involving collecting the title for Subaru, requesting a refund check for Renata's overpayment of loan, drafting a receipt and release for Renata and calling Renata to inform her that she could pick up the check and title. The estate incurred a cost of \$50.00 for that task, but this appeared on the Rule 33 Application that EVFS filed with the Court on December 13, 2018, for the period March 28, 2018, through September 18, 2018, but the Court denied that Rule 33 Application, so this amount was not ultimately paid by the estate although EVFS intended to bill the estate for the tasks.

The Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 1, notes that the 2016 Subaru XV Crosstrek was titled in Chalmers' name but was in Renata's possession.



Pursuant to the terms of the Rule 69 Agreement, Renata was responsible for the Subaru Crosstrek including all payments due effective immediately and paying off the car loan within 30 days of the entry of the decree. EVFS seems to have arbitrarily decided to take on the responsibility of paying off the vehicle and, in the process, engaged in actions that were not required and which unnecessarily cost the estate approximately \$385.00 in fiduciary fees to tasks involving the Subaru Crosstrek.

ACJA §7-202(3)(e) and (5)(b)(1) and (j):

e. The fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Subject to orders of the court, Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward, protected person, or estate. The fiduciary shall maintain accurate and complete records to support the decisions made in the administration of a case, in compliance with court rules and the applicable sections of the Arizona Code of Judicial Administration

5. Conservatorship. The fiduciary acting as conservator for the estate shall provide competent management of the property and income of the estate. The fiduciary shall exercise the highest level of fiduciary responsibility, intelligence, prudence, and

diligence in the discharge of all duties. A fiduciary shall avoid any self-interest in the discharge of this duty.

b. Pursuant to A.R.S. § 14-1104:

1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order

j. The fiduciary shall ensure that all fees and expenses incurred for the protected person by the fiduciary, including compensation for the services of the fiduciary, are reasonable in amount, and necessarily incurred for the welfare of the protected person, and in compliance with ACJA § 3-303.

EVFS has denied that Chalmers' funds were used to pay the Subaru loan and said the payoff came from funds that were allocated to Renata under the Rule 69 Agreement.

At the May 17, 2018 hearing, Bogle testified that none of Chalmers' funds were used to pay off the Subaru Crosstrek and that EVFS used monies that were allocated for Renata from her share of the marital residence proceeds.

EVFS told the Division that on February 22, 2018, Bogle and Stone received an email from Renata requesting EVFS pay off the loan from her share of the marital residence proceeds. EVFS used Renata's share of the marital residence sale proceeds to pay off the Subaru Crosstrek loan. EVFS initially put all the marital residence sale proceeds into Chalmers' conservator account ending ***[REDACTED] where they would remain until the divorce was finalized and there was instruction on where to send the funds.

The Division reviewed an email from Renata to Bogle and Chalmers dated February 22, 2018, wherein Renata, in part, said she was under a time crunch and that Chalmers took her Subaru registration but the registration expired in six days. Renata requested that EVFS "please use my funds from the sale of the house and pay off the Subaru loan ASAP. I authorize you to overnight a check to Chase Loan or even better to take it in to a location if that works. I would greatly appreciate your experience in this matter."

EVFS told the Division that on February 23, 2018, EVFS transferred \$42,443.98 from Chalmers' account ending ***[REDACTED] to his conservator account ending ***[REDACTED], shown on page 23 of the Final Inventory & Accounting. This represented one half of Chalmers' portion of the remaining marital residence proceeds and tax refunds to that point. Renata was also entitled to the identical \$42,443.98 for her one-half share of the marital residence proceeds. On March 12, 2018, EVFS paid off the Subaru loan for \$13,057.54 and on April

10, 2018, EVFS distributed the remaining \$29,386.44 to Renata that she was owed. EVFS said the two amounts paid either to Renata or on her behalf for the Subaru Crosstrek payoff thus totaled \$42,443.98 which represented one half share of the marital proceeds, which was identical to that of Chalmers.

Page 23 of the Final Inventory & Accounting shows the \$42,443.98 transfer from accounting ending ***[REDACTED] to account ending ***[REDACTED] on February 23, 2018.

2/23/2018 AZ B&T [REDACTED]	AZ B&T [REDACTED]	\$42,443.98
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However, EVFS billed the estate \$385.50 for tasks related to the Subaru even though Renata was to assume full responsibility for the Subaru including paying off the car loan, pursuant to the Rule 69 Agreement. By doing so, EVFS did not prudently manage costs as required by ACJA§702(J)(5) and A.R.S. §14-1104, referenced above.

Allegation 22 is substantiated only for billing the estate for time involving paying off the Subaru Crosstrek for Renata (involving EVFS and Bogle).

Allegation 23: East Valley Fiduciary Services, Inc., engaged in an inappropriate relationship with Renata Chalmers allowing infringement by a third party and failed to include the ward in communications with Renata Chalmers regarding the divorce.

In his complaint, Chalmers said on several occasions he, Doyle, and Theut, warned EVFS that communication directly with Renata was inappropriate without counsel and keeping Chalmers informed. Chalmers said EVFS continued to not only have direct communication but went further and had an “inappropriately close relationship and meetings” with Renata without legal counsel present. Chalmers said he and Theut demanded that all communication with Renata should be via attorneys and that Chalmers should be copied on all communications regarding the divorce, but EVFS never complied. He alleged that EVFS ignored the wishes of the ward, Doyle, and Theut regarding communications with Renata. He said numerous emails can be provided by Chalmers, but a subpoena of EVFS’ mail server would show even more critical information.

In addition, Chalmers alleged that EVFS provided a variety of services including notary services and charged Chalmers to provide those services to Renata. Chalmers said EVFS met with Renata three days after the conservatorship ended and filled out paperwork to “illegally transfer funds” from Chalmers’ account to Renata’s account.

Chalmers also reasserted the previously alleged transactions involving the TD Ameritrade transaction and \$7,273.73 after the conservatorship ended. Chalmers said EVFS’ relationship with Renata “creates the appearance of allowing that relationship to cloud their

judgement on key issues” such as pursuing a post-divorce decree to keep EVFS’ relationship with Renata amicable.

Chalmers said it is impossible for him to completely understand the relationship between EVFS and Renata but said EVFS “lost sight that as a representative of the ward by proxy they were in a lawsuit with the ward’s ex-wife, and they failed to keep the best interest of the ward in the front of their minds” Chalmers stated that he was not saying a friendly professional relationship would not be beneficial, but EVFS should not have paid off her car or notarized documents as the Rule 33 Applications show.

In its response to the complaint, EVFS said because Chalmers “had a strong animus” against Renata, the only way to “maintain peace” was for EVFS not to alert Chalmers each time EVFS met with Renata which EVFS sometimes needed to do in the course of carrying out the Rule 69 Agreement. EVFS said there is nothing sinister or forbidden about doing so.

Though Chalmers titled his allegation that EVFS allowed third party infringement due to what Chalmers considered to be “an inappropriate” relationship between EVFS and Renata and that EVFS failed to include him in communications, the narrative of his allegation went beyond and included several assertions.

First, Chalmers renewed a previous allegation that EVFS, post-conservatorship, performed two financial transactions including issuing a check to Renata for \$7,2273.73 on September 20, 2018, and the \$46,314.88 TD Ameritrade transaction on September 21, 2018. The issues involving the two financial transactions conducted after the temporary conservatorship was terminated were previously addressed in Allegation 1 of this Investigation Summary.

Second, Chalmers asserted that the \$7,273.73 check to Renata was not reflected in the conservator’s final accounting therefore, overvaluing the estate.

The Division found that the \$7,273.73 payment to Renata was not specifically documented as a disbursement in Schedule 4 – Disbursements of the Final Inventory & Accounting filed with the Court on December 6, 2018. EVFS included with the final accounting a copy of Arizona Bank & Trust statement ending September 30, 2018, involving Chalmers’ conservator account ending ***[REDACTED]. The bank statement showed that Check No. [REDACTED] was issued for the amount of \$7,273.37. EVFS also provided a copy of Check No. [REDACTED] issued to Renata on September 20, 2018. See the cut and paste excerpts from the Final Inventory & Accounting, below:

To note, the maximum allowable fee an Arizona notary public may charge for notarial acts is \$10.00.⁴¹ Stone's billing entry documents only the time expended on three tasks including meeting with Renata to obtain her signature for the partial distribution agreement, calling counsel to confirm the agreement and for notarizing Renata's signature. In total Stone billed the estate \$82.50 for the time expended on the three referenced tasks. A fee specifically for the notarial act was not included in Stone's time entry.

The second notarial act occurred on June 7, 2018. In the billing entry, EVFS staff billed 0.10 hours for time involving "Notarized Renata Kaye Smith's signature on QDRO – Intel Surplus [sic] Court Form." EVFS billed a total of \$10.50 to the estate for time expended on this task. This notarial act involved the QDRO and financial matters.

The Division's review indicates the notarial acts were in context of administering the estate and the divorce settlement. Notarized signatures are required for certain transactions. The Division did not find evidence that EVFS acted contrary to the best interest of the estate and/or provided notarial services to benefit Renata.

Fourth, Chalmers alleged that he, Doyle, and Theut demanded that all communication with Renata should be via attorneys and that Chalmers should be copied on all communications regarding the divorce. Chalmers said that EVFS did not comply, thereby ignoring the wishes of the ward, Doyle, and Theut regarding communications with Renata. Chalmers did not include supporting documentation for this assertion with his complaint.

Wulff provided the Division with an email thread dated December 1, 2017, that involved Chalmers, Theut, Bogle, Stone, Doyle, McKindles, and Scharber. The email from Chalmers to others did not identify email addresses or recipients and did not identify a subject line. Chalmers wrote, pertinently:

All,

There appears to be confusion about communication with my wife so I would like to make a very clear and concise request.

There is to be NO communication with my wife unless it is done through her attorney, Angela Wilson-Goodman, and all of her communication must be directed at John McKindles.

John has been hired on my behalf to represent my needs to in [sic] the divorce action. Any communication with my wife by and other attorney's is from this point forward to be considered improper communication.

⁴¹ Remote & eNotary | Arizona Secretary of State (azsos.gov)

For example:

If I die in a car accident I do not wish that my wife be notified. I would like my sister notified and she will be responsible for notifying the rest of my family.

If my wife wishes to modify her lists of marital property she is to send that communication to her attorney, Angela Wilson-Goodman, and he [sic] can communicate it to me. Brian, GAL, nor not, you must refuse communication with my wife and force her to use her attorney.

Finally, ALL [sic] communication regarding my divorce should include me in the communication. The subject of my divorce will continue past the conservatorship and I need to be kept aware of all issues going forward.

Theut replied to Bogle, Stone, Doyle, McKindles, and Scharber, Subject Line: Re: No Communication with my wife, cc' me on all divorce matters. In that email, Theut asked if anyone knew what prompted Chalmers' email and asked if anybody had direct communication with Renata in the past four weeks. Theut indicated that he had not and that it was important to know if anyone had.

Scharber replied to all, indicating "I haven't communicated with Renata recently either."

The next reply was from Doyle, but he brought up other issues and did not mention communications with Renata. There was no reply from EVFS.

In his allegation, Chalmers said that EVFS was warned by Chalmers, Doyle, and Theut that communication directly with Renata was "inappropriate without counsel" and keeping him informed. Chalmers said he and Theut "demanded" that all communication with Renata should be via attorneys and that Chalmers "should be copied on all communications regarding the divorce, but EVFS never complied.

Chalmers' December December 1, 2017, email did not state that he had to be copied on all communication, as he alleged, but stated that EVFS' communication with Renata should be via Renata's attorney and that any communication from Renata/her attorney must go to McKindles. Regardless, EVFS records indicate that EVFS representatives did communicate directly with Renata and contrary to what Chalmers requested in his December 1, 2017, which created discussion between the attorneys.

Chalmers alleged that EVFS' relationship with Renata allowed "infringement by a third party." ACJA §7-202(2)(c) requires fiduciaries to "vigorously protect the rights of the ward or protected person against infringement by third parties." Chalmers did not identify how he believed that EVFS allowed infringement of his rights or privacy, nor did Chalmers identify the third party who EVFS allowed to infringe. Chalmers suggests that EVFS

allowed Renata to infringe on Chalmers' rights or privacy because he had expressed his preferences on December 1, 2017, EVFS not communicate with Renata except through her attorney and to include McKindles in the communication.

The Division did not find evidence that EVFS breached Chalmers' privacy; committed an unauthorized act; or otherwise violated, encroached or trespassed on Chalmers' rights when EVFS communicated with Renata.

EVFS did appear to act contrary to Chalmers' preferences as he made known in his December 1, 2017, email. The Division notes that throughout his complaint, Chalmers stated that his estate was insolvent. That notwithstanding, Chalmers' preference was that EVFS only communicate with Renata by involving her attorney and to have McKindles included in all communication. McKindles' additional time to review communications and/or respond to any, would likely cause the estate to incur additional fees and costs.

Regarding the preferences of the protected person, ACJA §7-202(J)(3)(a-c):

3. **Decision Making.** The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.

b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.

c. When it is not possible to determine the preferences of the ward or protected person, the fiduciary shall make decisions in the best interest of the ward or protected person.

The Division reviewed EVFS' billing records involving communications with Renata after December 1, 2017. Records demonstrated that EVFS communicated with Renata and/or received communications from Renata numerous times about a variety of issues from December 12, 2018, through July 17, 2018.

The following identifies the nature of the communications EVFS had with Renata after December 1, 2017:

- Call to Renata to discuss ongoing requests for documents.

- Call from/to Renata regarding the Subaru Crosstrek. Chalmers took the car from Renata while she at her attorney's office. Calls to coordinate the return of the Subaru and delivery of the vehicle to Renata.
- Call to Renata regarding a Mobile Angel patent – she agreed to release all interest in Mobile Angel.
- Met with Renata to review bank accounts, individual transactions, and personal property items.
- Met with Renata to review 2016-2016 tax returns.
- Call to Renata regarding payoff of the Subaru Crosstrek.
- Email to Renata to update on the payment of the Subaru loan.
- Call to Renata to pick up refund check and title to Subaru Crosstrek.
- Met with Renata to give her the final check for house sale proceeds and reimbursement of half of 2014, 2015, 2016 amended tax return.
- Met with Renata to inventory and collect gun parts with La Manna.
- Email from/to Renata regarding outstanding issue i.e., distribution of assets.
- Call from Renata regarding the 1997 Ford truck and QDRO.
- Notarized Renata's signature on QDRO – Intel Serplus Court Form.
- Email from Renata regarding the sale of the gun parts.

EVFS said because Chalmers “had a strong animus” against Renata, the only way to “maintain peace” was for EVFS to not alert Chalmers each time EVFS met with Renata which EVFS sometimes needed to do in the course of carrying out the Rule 69 Agreement. EVFS said there is nothing sinister or forbidden about doing so.

EVFS' statement suggests that EVFS sometimes avoided notifying Chalmers of communication with Renata to possibly avoid a negative response from him. However, Chalmers did make his preferences known on December 1, 2017, when he conditioned that EVFS' communication with Renata had to be done conducted via Renata's attorney and her communications were to be channeled to McKindles.

As temporary conservator, EVFS was authorized to conduct business on behalf of Chalmers and the estate. Communication with Renata was necessary throughout the administration of the estate. By December 1, 2017, EVFS knew about Chalmers' preferences regarding communication with Renata going forward. The Division did not find that EVFS made a demonstrable effort to engage in communication with Renata in accordance with Chalmers' determined preferences. The direct communication with Renata, as reflected in the billing records, did not, at the same time, include Renata's attorney or McKindles.

EVFS was require by code to make decisions, in all instances, in accordance with the determined wishes of the protected persons, unless EVFS was reasonably sure of any resultant substantial harm to Chalmers or to the estate, as set forth in ACJA §7-202(J)(3)(b). However, it does not appear that after December 1, 2017, EVFS

communicated with Renata in accordance with Chalmers' preferences or at least made efforts to include Renata's attorney and McKindles in at least some of the communication with Renata.

ACJA§7-202(3)(a) and (b):

3 Decision Making. The fiduciary shall exercise extreme care and diligence when making decisions on behalf of a ward or protected person. The fiduciary shall make all decisions in a manner that promotes the civil rights and liberties of the ward or protected person and maximizes independence and self-reliance.

a. The fiduciary shall make all reasonable efforts to determine the preferences of the ward or protected person, both past and current, regarding all decisions the fiduciary is empowered to make.

b. The fiduciary shall make decisions in accordance with the determined preferences of the ward or protected person, past or current, in all instances except when the fiduciary is reasonably certain the decision will result in substantial harm.

The Division cannot conclude that EVFS' contact with Renata was inappropriate under the circumstances, or that EVFS' communications with Renata caused any third party infringement. However, the Division's review indicates EVFS did not comply with Chalmers' stated preferences. Even if EVFS failed to communicate through counsel, they could have provided copies or summaries of communications that would have allowed Chalmers to be better informed of the status of his divorce proceedings.

Allegation 23 is substantiated only as to failure to make decisions in accordance with the determined preferences of the protected person (involving EVFS, Bogle and Stone).

Allegation 24: East Valley Fiduciary Services, Inc., Damaged or Lost Estate Items

In his complaint, Chalmers said EVFS moved him on two different occasions and during those moves many items were damaged and missing. He said he worked with EVFS to compile a list of items. Chalmers requested that EVFS provide the Division with EVFS' "version of the damaged and missing items" that Chalmers worked with Griffing and Lelonek to create and in the event that EVFS does not have this "mutually created list of damaged/missing items" he will provide his version of those items and he reserves the right to dispute EVFS' version of the damaged and missing items. He said EVFS has never attempted to work with him "to offset the damage to property and hold any movers responsible."

EVFS billing records show that Chalmers, accompanied by EVFS staff, went to the storage units several times over the pendency of the temporary conservatorship and Chalmers

retrieved personal belongings. It does not appear that there were discussions between EVFS and Chalmers regarding damaged or missing personal property until after the conservatorship ended and after Chalmers obtained keys to the storage unit on or about October 18, 2018.

Text screen captures that Chalmers provided to the Division indicate some concern he had with the condition of some of his property. On October 25, 2018, Chalmers sent a text message to Griffing noting, in part, that the units may be in his name but the condition of the items in those units were not his responsibility. Chalmers said the movers that EVFS hired “are responsible for the condition of the items. I have a list of damaged or missing items that fill 100 lines of a spreadsheet. EVFS has a fiduciary responsibility to protect the value of my property.”

EVFS records show that on November 2, 2018, Griffing and Lelonek traveled to the storage units to meet with Chalmers “to discuss missing items from storage. Client is in the process of clearing out all storage units and will provide a list of the missing items. Follow up email sent to MB and AS.”

While EVFS was appointed as temporary conservator for Chalmers, EVFS had overarching responsibility for estate assets including personal items that were placed into storage. EVFS hired movers to facilitate Chalmers’ changes of residences and transportation of personal property. EVFS billing records indicate that an inventory including a pictorial inventory of Chalmers’ personal property that was put into storage was created. There was no documentation of damaged or missing items until October 25, 2018, when Chalmers alerted EVFS of damaged and missing items.

Chalmers alleged that EVFS moved him on two different occasions and during those moves many items were damaged and missing. If so, neither Chalmers nor EVFS documented damaged or missing items prior to October 25, 2018, even though Chalmers accompanied EVFS staff to the storage units to retrieve various items, several times throughout the conservatorship.

Chalmers further alleged that EVFS has never attempted to work with him “to offset the damage to property and hold any movers responsible.” It is not clear what actions Chalmers expected EVFS to take regarding this issue because the conservatorship ended on September 18, 2018.

While EVFS was temporary conservator and if there had been confirmation that some of Chalmers’ personal items were damaged or missing, EVFS may have been able to take steps to remedy the issue. However, there is no violation of code or breach of fiduciary duty based on the circumstances the Division reviewed.

Allegation 24 is not substantiated.

Allegation 25: Michael Bogle and Tanya Malos provided false and/or misleading testimony to the Court.

a) Bogle

Chalmers alleged that on March 17, 2018, Bogle testified to the Court that EVFS executed the payoff of a 2013 Ford pickup truck when, in fact, Toyota of Chandler paid off the truck as part of Chalmers purchasing a vehicle from that dealership. Chalmers said he notified Bogle of the purchase transaction prior to the Court date therefore Bogle knew that Toyota of Chandler paid off the Ford truck by the transaction of Chalmers purchasing a Toyota Rav4. Chalmers said Bogle testified that EVFS paid off the truck to mislead the Court that EVFS was providing more value than it really was and to diminish Chalmers' capabilities. Chalmers said if Bogle had testified correctly that Chalmers negotiated a new loan, with a very low credit score, and traded in the Ford pickup while reducing his payment by \$600.00 per month and increasing his gas mileage from 12 MPG to 25 MPG, [sic] the Court would have been able to see that Chalmers was capable of making informed rational decisions on large purchases and loans.

Chalmers attached appendices "g" through "m."

The Division notes that Chalmers provided two dates of the hearing in which he alleged Bogle provided false testimony to the Court regarding the 2013 Ford Truck. Chalmers stated it was at the March 17, 2018, and also said the hearing took place on May 17, 2018.

Appendix "g" appeared to be a portion of a sales contract that Chalmers entered into with Chandler of Toyota on April 14, 2018. Appendix "i" was Check No. [REDACTED], dated April 17, 2018, from Big Two Toyota of Chandler to USAA Federal Savings Bank Auto Loan Payoff Department, in the amount of \$9,468.83.

The image shows a check from Big Two Toyota of Chandler. The check is dated 4/17/2018 and for the amount of \$9,468.83. The payee is USAA Federal Savings Bank Auto Loan Payoff Dept. The check number is 321883. The check is payable to the order of [REDACTED]. The amount is written in words as "Nine Thousand, Four Hundred Sixty-Eight Dollars and Eighty-Three Cents".

Bank of America	4/17/2018	321883
Amount	\$ 9,468.83	

BIG TWO TOYOTA of Chandler
[REDACTED]

Pay: Nine Thousand, Four Hundred Sixty-Eight Dollars and Eighty-Three Cents

TO THE ORDER OF
USAA FEDERAL SAVINGS BANK
AUTO LOAN PAYOFF DEPT
[REDACTED]

Appendix “j” involved additional documentation regarding the 2013 Ford F-150 Lariat, Loan No. **[REDACTED], balance as of April 25, 2018. See cut and paste example below:

DATE	CHECK	This remittance applies the item on the account identified below	
4/17/2018	[REDACTED]		
Balance:	\$ 9,488.83	Description:	2013 FORD F-150 LARIAT 4W
As of:	4/25/2018	Stock #:	[REDACTED]
Customer:	WILLIAM J CHALMERS		
Send title to:	BIG TWO TOYOTA OF CHANDLER		
	Attn: Title Clerk		
	[REDACTED]		

Appendix “l” involved an email Stone received from USAA informing him of the payoff of the Ford truck. Chalmers noted that EVFS had requested the email from USAA.

The email from USAA to Stone was dated May 2, 2018, Subject line: Your USAA Loan Has Been Paid in Full. Chalmers did not provide the entire email but the narrative in what Chalmers did include with the complaint congratulated him on paying off Loan No. ending in ***[REDACTED] involving a 2013 Ford F150.

Dear William Chalmers,

Congratulations, we're pleased to notify you that your loan referenced below has been paid in full:

Loan ending in: [REDACTED]
VIN: [REDACTED]
Vehicle: 2013 Ford F150

The Division notes that Appendix “j” indicates Loan No. **[REDACTED] which differs from Appendix “l” related to the payoff of Loan No. ending in ***[REDACTED].

Appendix “m” contained an email thread involving Theut, Scharber, Bogle, Stone, and Lelonek, dated May 15, 2018. Theut emailed Bogle and Scharber asking if they had any information on the purchase of a vehicle or truck that Chalmers recently purchased and asked if Chalmers was making payments on the vehicle. Lelonek replied to Bogle and Stone stating that USAA noted that the vehicle was a 2018 Toyota RAV 4. USAA was also inquiring about whether Chalmers took a loan to pay for the vehicle. Lelonek said he could get information on the color and maybe the VIN number from USAA. Lelonek later reported the information he obtained from USAA which appeared to be sent in the email as “USAA Car Insurance.pdf, but only the email was attached to the complaint and not the .pdf document.

In response to the complaint, EVFS said that the Rule 69 Agreement awarded the 2013 Ford truck to Chalmers and directed that it be paid off within 30 days. As conservator, responsible to oversee carrying out provisions of the Rule 69 Agreement, EVFS prepared

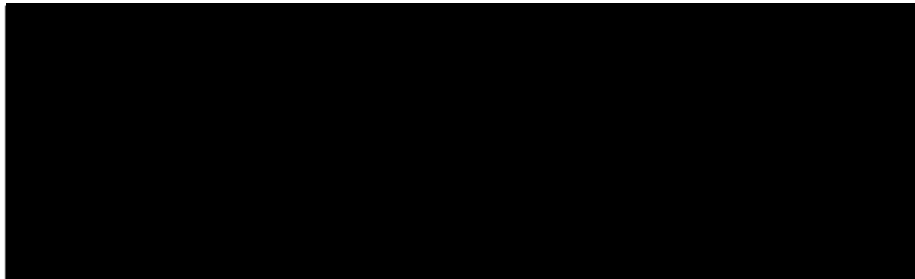
and issued a check to pay off the Ford Truck. EVFS said, unbeknownst to EVFS, Chalmers decided to trade in the truck for another vehicle, so the truck was in effect “paid off” when Chalmers traded it in to Toyota of Chandler for another vehicle. That being the case, the EVFS check was returned, making this incident a misunderstanding with no financial consequence.

The Rule 69 Agreement awarded the 2013 Ford Truck to Chalmers.

8. 2013 FORD F-150: Awarded to Husband along with full responsibility for the obligation related thereto from which he shall hold Wife harmless. He is responsible for all payments due effective immediately. It will be paid off within 30 days of entry of the decree.

The Final Inventory & Appraisement filed with the Court on December 6, 2018, Schedule 2, noted that the vehicle was traded without the consent of the conservator and that Chalmers purchased a Toyota RAV 4 without the consent of the conservator.

██████████



By all accounts, Chalmers, without EVFS’ knowledge, independently negotiated on and purchased a 2018 Toyota RAV4 from Big Two Toyota of Chandler. As part of the transaction involving Chalmers’ trading in the 2013 Ford Truck to purchase the RAV4, the dealership issued Check No. ██████████ to the USAA Auto Loans Department to pay the loan involving the 2013 Ford Truck.

EVFS billing records demonstrate that on March 21, 2018, Stone billed for time involving a call to USAA “to request loan payoff for Ford F-150; received via fax and gave to PC to process.”

EVFS’ Final Inventory & Accounting filed with the Court on December 6, 2018, provided a narrative/explanation. Pertinent to the 2013 Ford Truck:

On April 20, 2018, EVFS sent a check for \$9,469.61 for the outstanding loan on the 2013 Ford F150. A copy of the check and FedEx package slip is attached to this accounting for reference. Unbeknownst to EVFS, Mr. Chalmers had traded in his Ford F-150 to purchase a 2018 Toyota RAV4. The purchase of this vehicle and subsequent payoff of the USAA loan for the Ford truck occurred before USAA was able to process the check EVFS sent.

EVFS' billing records demonstrate that on April 20, 2018, EVFS staff billed for time involving a call to USAA "to get updated payoff quote for auto loan; spoke with Theresa who gave updated quote verbally and faxed confirmation to EVFS." EVFS staff, per Stone, "reviewed and approved the invoice for USAA Auto Loan – payoff..." Also on April 20, 2018, EVFS staff billed for time involving issuing Check No. [REDACTED] to USAA Federal Savings Bank in the amount of \$9,469.61 for the auto loan.

The Division's review indicates EVFS' actions were consistent with the terms of the Rule 69 Agreement involving the 2013 Ford F-150 and payoff of the vehicle within 30 days of entry of the decree.

Billing records show that on May 2, 2018, Stone billed for time involving a request from Bogle to check on the status of payment of the Ford F-150. Stone called USAA to confirm payment and USAA stated that the truck had been paid off on April 20, 2018. Stone received an email confirmation and forwarded it to Bogle.

On May 3, 2018, Stone billed for time to speak with Bogle about Chalmers' email that he purchased a Toyota RAV4. Stone also spoke with Scharber about Chalmers' email regarding the purchase of the vehicle.

On May 4, 2018, EVFS staff billed for time involving signing on to Chalmers' conservator account ending ***[REDACTED] and verified that Check No. [REDACTED] to USAA "did not pay. Placed a stop payment." The Final Inventory & Accounting reflects a stop payment fee of \$35.00 on May 4, 2018.

As to the May 17, 2018 hearing, pertinent to the payoff of the 2013 Ford Truck, Court-appointed counsel provided opening statements to the Court which included that Chalmers on his own accord, purchased a new vehicle, paid the truck off "all on his own," and got his name taken off the loan. By doing so, Chalmers reduced his monthly payment by \$500.00.

Bogle was sworn in and provided testimony to the Court. GAL Theut questioned Bogle about the progress EVFS made regarding the Rule 69 Agreements and division of assets. Bogle stated that there were a number of times that were addressed including, but not limited to, "specific payoff of vehicles...we first pay off Renata's vehicle. We then paid off Bill's vehicle...."

During Bogle's cross examination, Doyle stated, pertinently, "With regards to the payoff of Bill's Ford pickup truck, that was actually accomplished through bill buying a new vehicle, trading in the truck, trying to resolve the debt with himself." Bogle replied, "that's not true. We called the financial agency. They provided us with a payoff, and we sent the

check for the payoff.” Bogle noted that this was for the 2013 Ford F-150 and added that EVFS was not aware that Chalmers purchased another vehicle.

Bogle’s testimony that EVFS contacted the USAA Auto Loans department to obtain a balance on the vehicle loan and then issued a check to USAA Auto Loans to pay off the 2013 Ford F-150 is factually accurate and supported by EVFS’ billings. It is also factually accurate that Chalmers independently went to Big Two Toyota of Chandler, without EVFS’ knowledge, and purchased a Toyota Rav 4, traded in the 2013 Ford Truck, and the Toyota dealership sent a check to USAA to pay off the 2013 Ford Truck. This was done without EVFS’ knowledge. By Bogle stating, “That’s not true” when Doyle described the circumstances involving Chalmers resolving the truck debt himself, it appeared that Bogle was including EVFS’ actions involving the payoff of the Ford Truck rather than acknowledging that it was solely Chalmers who paid off the vehicle loan.

ACJA §7-202(J)(c)(3) prohibits fiduciaries from “knowingly” presenting testimony to the Court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts. The Division cannot conclude that Bogle “knowingly” provided false or misleading testimony to the Court regarding the payoff of the 2013 Ford truck.

b) Malos

Chalmers said Malos testified at the October 17, 2017, hearing that Chalmers was “drug seeking” when Chalmers had visited his homeopathic physician’s assistant and did not ask for any type of opiate. Chalmer said he was only given an anti-inflammatory and a muscle relaxer which was the normal protocol. Chalmer said immediately following the hearing he scheduled an appointment with Todd Schuster to discuss if Chalmers was drug seeking and Todd Schuster denied that behavior on October 21, 2017. Chalmers denied ever abusing opiates. He said that all interested parties knew prior to the Court date that he had not been prescribed opiates for over a year. EVFS had this information and did nothing to diligently seek out the facts behind the accusation.

In its response to the allegation, EVFS said Chalmers has no basis for accusing Malos of giving false testimony, stating Malos testified truthfully at the October 17, 2017 hearing in which many witnesses testified, including Chalmers. As a result of the hearing, the Court issued a Minute Entry ruling ordering EVFS to destroy all medication obtained from Chalmers prior to the termination of the guardianship and submit an affidavit to the Court regarding compliance with the order to destroy medications.

The October 17, 2017, Minute Entry stated, pertinently:

IT IS FURTHER ORDERED directing East Valley Fiduciary Services, Inc., to destroy all medication obtained from the Ward prior to the termination of the

guardianship and submit that they have complied with the Order to destroy all medication. [emphasis in original]

Court records show that EVFS, by and through counsel, filed with the Court an Affidavit of Tanya Malos on November 16, 2017, swearing that the medications listed on the Drug Disposal Records, attached as Exhibit "A" were destroyed on the dates and by the method indicated therein.

As to Malos' testimony on October 17, 2017, Theut introduced, as Exhibit 3, Chalmers' Care Plan. Malos testified that the Care Plan was a report done monthly for each client of EVFS. She said she participated in the Care Plan and signed off on the document. Theut asked Malos what was meant on the Care Plan that Chalmers continued to struggle with mental health issues and drug seeking behavior to which Malos said the statement was based on an appointment where she accompanied Chalmers to the primary care physician and before they went in for the appointment, Chalmers stated to Malos that he was going to let her know upfront that he was going to ask the doctor for drugs because the pain was too severe and he needed them. Malos said Chalmers asked the doctor for pain medication and muscle relaxers and the doctor provided a prescription for an anti-inflammatory medication and a muscle relaxer. Theut asked Malos if it was her impression that Chalmers was looking for something stronger than the doctor was inclined to give to which Malos answered "Yes, that was my perception."

There was discussion about the medication that was found in Chalmers' possession when he was under the temporary guardianship. Theut asked if Malos thought that the medication Chalmers had in his possession should be returned to Chalmers to which Malos stated that the list of medications found in Chalmers' possession did not contain anything terribly concerning. Theut asked Malos about her qualifications to which she stated that she has a nursing degree and a doctorate in human and social services.

While cross examined by Court-appointed counsel, Doyle, he asked Malos if she had any evidence that Chalmers has not followed a treatment plan or abused medication in past. Malos stated that there was historical evidence that Chalmers had not followed plans from different providers. When Doyle asked which providers, Malos said there was a long list of providers and that it was in the medical records. Doyle pressed about which records and what doctors have said Chalmers did not follow a treatment plan, Malos said Chalmers' primary care doctor indicated that he believed Chalmers was drug seeking and potentially abusing prescription medications. She said this was said to her during a telephone conversation, but she did not have an exact date though it was in the records.

Doyle asked Malos if Chalmers had a problem with the specific medication Chalmers had been prescribed during the visit for which she accompanied him or whether he complained, Malos said at the end of the visit, Chalmers was unhappy and would never return and said he would go to urgent care next time to get what he needed. Doyle asked about Chalmers

wanting something stronger and asked Malos what Chalmers was taking, she said there was written information and medical records including records from Desert Vista. Doyle asked if those records indicated that Chalmers was not following treatment plans and abusing medication or just to watch for that. Malos said the records indicated that he was not adhering to recommendations and suspected he was abusing. She described various medications that were found in Chalmers' possession.

Theut asked Malos about Chalmers' indicating that he was never going back to that primary care doctor and what, in her experience, that meant, Malos said her perception is that Chalmers would like a more cooperative primary care doctor.

EVFS' billing records show that Malos inventoried the medications found in Chalmers' possession. Malos also requested and received medical records from Community Bridges, Desert Vista and other providers, and Malos spoke with Dr. Riley at Desert Vista, and with Chalmers' primary care doctor, Todd Schuster. According to EVFS billing, Community Bridges provided 850 pages of medical information for Chalmers. Malos picked up medical records from Desert Vista and received 108-page fax from Chalmers' psychiatrist. EVFS records show that on September 6, 2017, Malos billed for time involving a call to Dr. Schuster regarding Chalmers' appointment for time involving a call from Dr. Schuster regarding "client care."

On September 8, 2017, Malos billed 2.60 hours for time involving accompanying Chalmers at his appointment with his primary care doctor. On that same day, Malos billed for time involving a call from Chalmers regarding the primary care doctor visit of that day. Chalmers was angry with the doctor and wanted to change doctors.

TM	Received call from client regarding his PCP visit today. He is angry with PCP and wants to change Dr.'s Discussed potential solutions and made a recommendation.	0.40 95.00/hr	38.00
TM	Drove from the office to Gilbert to meet with client's PCP. Met client at PCP's office and accompanied him to his appointment.	2.60 95.00/hr	247.00

On September 19, 2017, Malos billed for time involving a call from Chalmers requesting information about prescriptions and changing primary care doctor.

TM	Received phone call from client requesting information about prescriptions and changing PCP. We discussed options.	0.30 95.00/hr	28.50
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EVFS billing records did not reflect a call from Malos to Dr. Schuster after the September 8, 2018, appointment.

EVFS had an internal record called Client Physician's Visit Report, dated September 8, 2017, involving Chalmers' appointment with primary care physician, Dr. Schuster. Pertinently, the visit report stated that Chalmers "specifically asked for pain mediation and

muscle relaxers.” The doctor gave a prescription for two specific medications but “He explained that he wasn’t comfortable prescribing anything stronger.”

The same information is recorded in the EVFS’ CARE PLAN REPORT. [sic] This report is what Theut entered as Exhibit 3 at the October 17, 2017, hearing. The report contained a date of assessment September 2017, and it was executed on October 6, 2017, by Malos and numerous others from EVFS. The report noted that Chalmers had been seen by his primary care doctor on September 8, 2017, and Chalmers asked the doctor for pain medication and muscle relaxers.

The issue to resolve in this allegation is whether Malos knowingly provided false testimony to the Court on October 17, 2017, as alleged by Chalmers. Malos was Theut’s witness, and she was responding to his questions in direct testimony and to Doyle’s questioning during cross examination. Malos’ testimony referred to her review of medical records and as to what she directly experienced with Chalmers on September 8, 2017, when she accompanied him to his medical appointment with the primary care physician. Malos also documented her experience that Chalmers was seeking certain pain medication and muscle relaxers from his doctor and that the physician prescribed two specific medications but said he was otherwise uncomfortable prescribing anything stronger. Theut asked Malos if it was her impression that Chalmers was looking for something stronger than the doctor was inclined to give to which Malos answered “Yes, that was my perception.” Malos testified that Chalmers called her later on the same day apparently angry with the doctor and stating that Chalmers was going to find another doctor.

Chalmers said that contrary to Malos’ testimony on October 17, 2017, that he was “drug seeking,” he said when he visited the physician’s assistant he never asked for any type of opiate, and he was only given “an anti-inflammatory and a muscle relaxer which was the normal protocol when I saw Todd Schuster from Innovative Primary Care.” Chalmers said EVFS and Theut attempted to discredit him with the Court when Malos “testified that I was an addict seeking drugs from my drugs from my homeopathic physician assistant Todd Schuster.” Chalmers said he spoke to Todd Schuster at an appointment on October 21, 2017, and expressed his concern “that he would tell Ms. Malos I was drug seeking and he told me that if I was drug seeking I would no longer be a patient at that practice as they have a zero tolerance [sic] policy on this subject.”

Malos testified that just prior to the September 8, 2017, appointment with Dr. Schuster, Chalmers told her that he was going to request specific pain medications and muscle relaxers. Malos did not testify that Chalmers was an addict seeking drugs. Malos was being questioned by Theut and by Doyle and when asked her opinion or perspective, Malos answered accordingly. Based on a review of Malos’ testimony of October 17, 2017, the Division cannot conclude that Malos knowingly provided false testimony to the Court.

Allegation 25 is not substantiated.

Allegation 26: East Valley Fiduciary Services, Inc., failed to get competitive bids and a contract with licensed firearms dealer to sell firearms, per Rule 69 Agreement and failed to get competitive bids for the repair of a pet door.

a) Firearms Dealer

In his complaint, Chalmers said EVFS was tasked as part of the Rule 69 Agreement to sell all weapons and to split the proceeds between Chalmers and Renata. EVFS hired La Manna to accomplish the task of selling the firearms. Chalmers said it is his understanding that EVFS did not seek a competitive bid for the services of a Federal Firearms Licensed agent (“FFL”) to sell the weapons and therefore “rather onerous terms were established.” Chalmers said normally, an FFL will charge a percentage of the value of the sale proceeds of the weapons for the services of collecting and storing the weapons and affecting the sale of the weapons. Chalmers said La Manna informed him after the conservatorship ended that he was charging a six-thousand-dollar storage fee on top of his percentage of sales proceeds.

Chalmers said he has asked for the contract between La Manna and EVFS because no other FFL that Chalmers contacted charges for their services this way. According to Chalmers, La Manna also offered to simply exchange one of the weapons, a Bernelli Sport Stainless Steel shotgun, for storage fees. Chalmers said he declined the offer as that agreement would have violated the Rule 69 Agreement. Chalmers said it was expected that EVFS would provide a copy of their contract with La Manna, but EVFS has yet to provide that information. Chalmers said he is left to conclude that Bogle has his “own special reasons for selecting” La Manna that are likely beneficial to Bogle but not in the best interest of the ward.

In response to the complaint, EVFS referred to Paragraph 17 of the Rule 69 Agreement which stated: “Guns: To be sold with the help of Curt Lamanna [sic, LaManna] and the proceeds equally divided.” EVFS said the guns in question had initially been acquired by Chalmers, but at all times during the Family Court case and the Probate Case, Chalmers was not permitted to possess any guns. Hence, as specified in the Rule 69 Agreement, La Manna, an FFL, was to take possession of the guns and have them appraised and sold. EVFS never had possession or control of any of the guns.

EVFS stated that the problem for La Manna was that Chalmers had apparently disassembled the guns and so La Manna was only given parts of guns and those parts had little worth without all the other parts. As a consequence, the value of the guns was apparently less than La Manna’s cost for storing the gun parts. EVFS said Chalmers also suggests that Bogle got some undisclosed benefit from La Manna, an allegation EVFS denies.

EVFS wrote that Chalmers' attorney, Allen Cook, futilely raised these "gun" issues in the Probate Court and the Court declined to give Chalmers relief related to such. EVFS said Chalmers also sued La Manna in the civil tort case but never actually served La Manna with process or pursued the suit against him.

The parties executed the Rule 69 Agreement on February 20, 2018, which included the preamble that Chalmers and Renata entered into the Rule 69 Agreement "knowingly, voluntarily and intelligently" with the advice of counsel, including Doyle, McKindles, Theut and Angela Wilson-Goodman. Chalmers and Renata understood and intended that the agreement regarding division of property and debt was equitable, fair, and in the best interest of both parties.

Paragraph 17 of the Rule 69 Agreement:

17. GUNS: To be sold with the help of Curt Lamana and the proceeds equally divided.

On March 2, 2018, EVFS filed with the Court a Joint Petition for Approval of the Rule 69 Agreement.

On March 15, 2018, Chalmers, by and through counsel, filed with the Court an Objection to the Joint Petition for Approval of Rule 69 Agreement and Proposed Consent Decree. In the objection, Chalmers raised a number of issues but did not include issues with La Manna in his objection.

The allegation is that EVFS failed to obtain a competitive bid for an FFL agent and a contract. Chalmers was aware La Manna would be assisting with the sale of the guns, per the executed Rule 69 Agreement, and did not raise a concern about La Manna regarding a lack of competitive bids when he filed with the Court his objection to the Rule 69 Agreement.

There is no regulatory, statute, or rule requiring that a fiduciary obtain competitive bids or any that indicates the circumstances when a fiduciary should seek competitive bids. ACJA §3-303(F)(1) notes that the Court may order competitive bids for goods or services to be obtained, pursuant to ARPP Rule 10.1(C).⁴²

ACJA §3-303(F)(1):

F. Competitive Bids.

⁴² Supreme Court No. R-11-0023

1. Pursuant to Rule 10.1(C), Arizona Rules of Probate Procedure, the court may order that competitive bids for goods or services be obtained at any stage of Title 14 proceedings.

ARRP Rule 10.1(A) and (C):

RULE 10.1. PRUDENT MANAGEMENT OF COSTS IN A PROCEEDING BROUGHT PURSUANT TO TITLE 14:

A. THE FIDUCIARY SHALL PRUDENTLY MANAGE COSTS, PRESERVE THE ASSETS OF THE WARD OR PROTECTED PERSON FOR THE BENEFIT OF THE WARD OR PROTECTED PERSON, AND PROTECT AGAINST INCURRING ANY COSTS THAT EXCEED PROBABLE BENEFITS TO THE WARD, PROTECTED PERSON, DECEDENT'S ESTATE OR TRUST, EXCEPT AS OTHERWISE DIRECTED BY A GOVERNING INSTRUMENT OR COURT ORDER.

C. MARKET RATES FOR GOODS AND SERVICES ARE A PROPER, ONGOING CONSIDERATION FOR THE FIDUCIARY AND THE COURT DURING THE INITIAL COURT APPOINTMENT OF A FIDUCIARY OR ATTORNEY, A HEARING ON A BUDGET OBJECTION AND A REQUEST TO SUBSTITUTE A COURT-APPOINTED FIDUCIARY OR ATTORNEY. AT ANY STAGE OF THE PROCEEDINGS, THE COURT MAY ORDER THAT COMPETITIVE BIDS FOR GOODS OR SERVICES BE OBTAINED. [emphasis in original]

A.R.S. 14-1104. Prudent management of costs

In a proceeding brought pursuant to this title:

1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order.

3. Market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney and relating to a request to substitute a court-appointed fiduciary or attorney.

ACJA §7-202(5)(b)(1) and (3):

b. Pursuant to A.R.S. § 14-1104:

1. The fiduciary must prudently manage costs, preserve the assets of the ward or protected person for the benefit of the ward or protected person and protect against incurring any costs that exceed probable benefits to the ward, protected person, decedent's estate or trust, except as otherwise directed by a governing instrument or court order

3. Market rates for goods and services are a proper, ongoing consideration for the fiduciary and the court during the initial court appointment of a fiduciary or attorney and relating to a request to substitute a court appointed fiduciary or attorney.

In the absence of a specific standard or requirement that EVFS obtain competitive bids, the Division cannot conclude that a violation has occurred. There was no evidence found that a Court ordered competitive bids for goods and services be obtained in this matter and no evidence was presented that LaManna's costs exceeded market rates.

b) Pet Door

In his complaint, Chalmers said a pet door was installed at the residence he was renting on Tonto Drive. The pet door was installed with permission of the landlord and with the agreement that it would be repaired when the rental was vacated. Chalmers said when the pet door was installed, he made arrangements with the installer to preserve all the "parts" necessary to "quickly and inexpensively repair the area" to its previous condition at a cost of \$450.00. Chalmers said he informed Bogle of this arrangement when leaving the rental home, but Bogle ignored this and hired several experts that charged the estate in excess of \$1,200.00 to repair the pet door. Chalmers said in addition to spending more than required, Bogle "also ignores the preferences of the ward."

In its response to the complaint, EVFS stated that when Chalmers left the rental, the pet door had to be filled in to restore the residence to what it was when Chalmers entered it. EVFS said Chalmers offered no evidence that EVFS acted improperly. Chalmers modified the rental, it had to be fixed, and EVFS took reasonable steps to fix it.

Received call from client regarding payment to Sisco Services for doggy door installation; Spoke with Mike Sisco and made a payment over the phone in the amount of \$398.75 with EVFS CC. Received via email Sisco Services receipt.

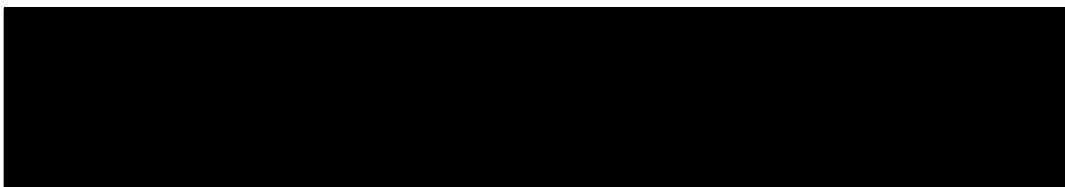
On September 11, 2017, Stone billed the estate for time involving receiving an invoice from Chalmers regarding a dog door installation. Stone contacted "handyman for dog door installation payment; left a message."

The initial installation of the dog door cost \$398.75. EVFS billing records show that on September 11, 2017, EVFS staff billed for time involving a call from Chalmers regarding payment to Sisco Services for "doggy door installation." EVFS staff spoke with Mike Sisco

and made a payment in the amount of \$398.75 with EVFS credit card. That figure is reflected in the final accountings' Schedule 4 - Disbursements identified as a reimbursement to EVFS for dog door installation on September 21, 2017.

EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 4 – Disbursements shows that on April 30, 2018, EVFS issued Check No. [REDACTED], to Crosby Custom Home, for the amount of \$593.65 for “Repair of Dog Door Drywall.”

On May 7, 2018, EVFS issued Check No. [REDACTED] to Tom Douglass, for the amount \$265.00 for “Re Key and remove dog door.” It is unclear how much of that cost involved the dog door removal.



Chalmers alleged that the repair and removal of the dog door was in excess of \$1,200.00. EVFS' final accounting indicates that it cost \$593.65 for “Repair of Dog Door Drywall” and a portion of \$265.00 for “Re Key and remove dog door.” There were no other disbursements identified in the final accounting involving the pet door.

As temporary conservator, EVFS had the discretion and authority to make decisions involving the requisite repairs to the drywall, remove the pet door, and restore the property to the pre-rental condition. In the absence of a specific standard or requirement that EVFS obtain competitive bids, the Division cannot conclude that a violation has occurred. There was no evidence found that a Court ordered competitive bids for goods and services be obtained in this matter and no evidence was presented that the costs exceeded market rates.

Allegation 26 is not substantiated.

Allegation 27: East Valley Fiduciary Services, Inc., entered into a lease agreement with a six-month upfront payment against the wishes of the ward.

In his complaint, Chalmers said the Rule 33 Applications and final accounting show a payment to Ed Vail (“Vail”), landlord for a property rental on W. Tonto Drive (“Tonto Drive”), for \$8,400.00 “which equates to six months of rent paid up front.” Chalmers said he assumed that EVFS paid this because the landlord was frustrated that EVFS would not sign up for a 12-month lease as the landlord was requesting and expecting. Chalmers said he informed all parties that he no longer wished to live at Tonto Drive “as it was too

expensive” and he independently arranged a “more attractive lease arrangement” reducing his monthly spend rate by nearly \$1,000.00 per month and it only required two months of upfront lease payment. Chalmers said it should be noted that the only reason he was required to pay two months upfront was because EVFS “had trashed the ward’s credit score already in the short term as conservator.”

Chalmers said the signing of the lease with such a large upfront payment is another example of EVFS not implementing an estate budget and understanding actual receipts and expenditures of the estate. He said the decision to pay this upfront lease payment created another cash flow issue for the estate and it was EVFS’ own decision making that compounded this cash flow shortage resulting in credit card debt not being serviced.

EVFS’ final accounting, Schedule 4 – Disbursements show that EVFS began making rent payments to landlord, Vail, beginning on September 29, 2017, for October’s rent onward. The rent payments were [REDACTED] monthly paid to Vail from October 2017 through April 2018. The final accounting shows a payment to Vail of [REDACTED] for rent from May 18, 2018, through August 18, 2018, which calculates to upfront payments of [REDACTED] monthly to Vail over those four months.

The final accounting’s Schedule 3 – Receipts, shows that on June 12, 2018, the estate received a “Rent Refund” from Vail for the amount \$8,400.00.

From April 2018 through October 2018, EVFS issued checks to Rapido Realty for Chalmer’s rent in the monthly amounts of \$2,024.93.

Chalmers alleged that EVFS paid the \$8,400.00 to Vail which included six upfront rent payments, stating this was presumably because EVFS “would not sign up for a 12-month lease as the landlord was requesting and expecting.”

Billing records show that beginning on January 18, 2018, EVFS contacted Vail to discuss “extending the lease through August 2018.” Vail requested that EVFS prepare an extension that can be signed by EVFS and Vail. Records show there was back and forth communication between EVFS and Vail regarding extending the lease.

Records show that Chalmers requested a short-term lease, but Vail declined. On February 22, 2018, Stone billed for time involving speaking with Vail regarding Chalmers’ “request to sign a short term [sic] lease; he stated he was unwilling to do this and that if he went month-to-month he intended to increase Bill’s rent to \$3,000.00.”

On February 23, 2018, Stone billed for time regarding the drafting of an email to Vail stating EVFS’ hope that Chalmers could continue on a month-to-month lease.

On February 26, 2018, Stone billed for time involving speaking with Vail regarding his response to the request for month-to-month lease...”

On March 2, 2018, EVFS staff billed for time involving an email from Vail and his wife regarding “Lease of 30 West Tonto Drive, Chandler...dated 8/31/2017; Additional terms of lease; dated 2/23/2018...”

On March 23, 2018, Stone billed for time involving meeting with Bogle to discuss Chalmers’ housing situation and for calling Vail “to discuss a possible extension of the lease for another six months, with pre-payment...”

On March 25, 2018, Stone billed for time regarding speaking with Vail about the extension of the lease through August 31, 2018, with prepayment. Stone resolved to speak with Chalmers about this. There were no billing records demonstrating that Stone spoke with Chalmers around that time.

On March 29, 2018, Stone, in part, billed for time to call Vail and confirm EVFS would be extending the lease. Stone emailed a copy of the lease agreement to Vail, Bogle and counsel. Stone discussed depositing \$11,200.00 for May to August 2018 rent.

On April 3, 2018, Bogle billed for time, in part, to email Chalmers regarding the fully-executed lease agreement.

On April 4, 2018, EVFS staff billed for time to receive four emails and five phone calls from Chalmers regarding rental home payments, utility services and moving. On the same date, Bogle billed for time for multiple calls and emails throughout the day from Chalmers regarding housing and demands made by Chalmers. On that same date, Griffing billed for time involving a call from Chalmers requesting that his move be rescheduled for April 5.th

Chalmers alleged that EVFS entered into a lease agreement with a six-month upfront payment against his wishes. That EVFS entered the six-month lease with Vail despite Chalmers preference for a short-term or month-to-month arrangement, suggests that EVFS made the decision contrary to Chalmers’ wishes. Stone indicated that after speaking with Vail, Stone was going to discuss the six-month extension with Chalmers, but there was no record of Stone contacting Chalmers about this matter before EVFS entered into the six-month lease with prepayment of rent. Chalmers opposed staying at Tonto Drive and requested to move into a different rental home.

EVFS told the Division that per the terms of the original lease, the lease for Tonto Drive was drafted as a one-year lease, with two, six-month periods. EVFS said page 6 of the lease required it to be extended for an additional six months, after February 2018, which was the end of the first six-month period. EVFS said this was done in the hope that Chalmers would no longer be under the conservatorship and could sign the lease extension himself.

EVFS said in late February, 2018, Vail sent a memo to EVFS stating that the lease was not intended to be month-to-month after February. Vail also said that, if EVFS intended to terminate the one-year lease, then the memo was his 30-day notice to terminate, and that Vail would re-take possession on April 1, 2018 unless EVFS agreed to extend the lease for the required March to August 2018 period. EVFS said when Chalmers failed to secure another residential lease by the end of March, EVFS agreed to the extension and on March 29, 2018, paid the additional rent of \$11,200.00 which represented \$2,800.00 per month for four months to allow Chalmers to continue living at Tonto Drive. But when prior to the end of April 2018, Chalmers found a new place of residence and left the Tonto Drive home, EVFS asked Vail for the return of the prepaid rent. EVFS cited a provision in the lease that required a \$2,800.00 earnest money payment that would arguably be forfeited if the tenant failed to fulfill his duty to rent the premises for the required period. Vail deducted \$2,800.00 and returned the balance of \$8,400.00.

The Division reviewed the Residential Lease Agreement regarding Tonto Drive, executed by Stone and Vail on September 1, 2017. The "Additional Terms" of the lease included, in part, that the lease would be extended an additional six months following completion of the first six months of the lease.

The Division reviewed an email from Vail (and Diane Vail), dated February 23, 2018, addressed to Chalmers/EVFS although the email addresses were not visible. Vail's email stated, in part, that the term of the lease was intended to be for 1 year with two 6-month periods from September 1, 2017 to February 28, 2018 and March 1, 2018 to August 31, 2018. Vail said the term was described in this manner at the request of the tenant [Chalmers] and was NOT [sic] intended to be an option to be exercised at the tenant's discretion. Vail wrote, "We prefer that the lease be extended for the 2nd 6-month period and NOT [sic] move forward on a month to month basis per your written email request of February 23, 2018." Vail went on to state that if Chalmers/EVFS elects not to execute the extension for the March 1, 2018 to August 31, 2018, period, Vail would take this to be Chalmers'/EVFS' request to terminate the lease and Vail would thereby be giving the 30-day notice to terminate the lease and take possession back on April 1, 2018. Chalmers' preference was for a short-term lease and/or for renting on a monthly basis. EVFS presented Chalmers' preference to Vail but according to EVFS billing records, Vail informed EVFS that he was not in favor of renting the residence on a monthly basis and if he did, he would increase Chalmers' rent from \$2,800.00 monthly to \$3,000.00 monthly. The email, noted above, described that if the lease was not extended in accordance with the terms of the lease executed in September 2017, that the tenancy would terminate.

As to EVFS having discussion with Chalmers prior to continuing in the lease, EVFS told the Division that EVFS believed Chalmers was made aware that he needed to move into a new residence prior to March 31, 2018 but, when, by March 29, 2018, he failed to find a new residence and provide EVFS a lease to sign on his behalf, and EVFS was days away

from having Chalmers' lease terminated and him being evicted without an alternative place to live, EVFS paid the money to extend the lease with Vail. EVFS said that by doing so, EVFS helped avoid the cost of moving, storage fees and a potential hotel stay for Chalmers until he found a new place. Chalmers remained in the Tonto Drive residence for part of April 2018.

Based on the records reviewed, the Tonto Drive lease was originally drafted as a one-year lease comprised of two consecutive six-month terms. Chalmers vacated Tonto Drive before the end of the lease and EVFS recovered the prepaid rent, minus an earnest money payment.

Allegation 27 is not substantiated.

Allegation 28: East Valley Fiduciary Services, Inc., failed to keep records for the required three-year time frame.

In his complaint, Chalmers said when he requested his files in January 2019, EVFS' attorney, Scharber, informed Doyle that all physical records have been destroyed. Therefore, Chalmers said EVFS failed to keep all records for a period of three years, creating a hardship on Chalmers to re-establishing his life and making it extremely difficult to fully formulate this complaint document and present a civil case against EVFS.

In its response to the complaint, EVFS said that Chalmers does not say what "required" 3-year time frame he is talking about, but, in any event, EVFS preserved a digital copy of the records. EVFS said with the exception of certain documents such as wills or deeds, the originals of most records do not need preserving.

The preservation of records is set out in ACJA §7-201(H)(6)(k)(5):

k. Engaged in unprofessional conduct, including

(5) Failed to retain client or customer records for a period of three years unless law or rule allows for a different retention period

Chalmers' overall issue with EVFS' record keeping is reflected in Allegation 7 wherein he alleged that EVFS failed to timely return records to him after the conservatorship ended and he believed that the records that EVFS returned to him were incomplete. EVFS disputes that the records the fiduciary returned to Chalmers was incomplete.

The allegation Chalmers presents here is that EVFS failed to keep records for the requisite three-year time frame, as required by code. In this allegation, Chalmers does not specify which records EVFS failed to retain but he seems to be renewing the allegation that EVFS failed to provide him with complete records, again which EVFS has denied.

The temporary conservatorship was in effect for a relatively short time from August 21, 2017, to September 18, 2018. Though, per Allegation 7, the Division found that EVFS did not timely return financial and other records to Chalmers after the temporary conservatorship ended, by all accounts, EVFS' counsel did provide Chalmers' counsel a flash drive containing his files/records in open Court on July 19, 2019. In addition, EVFS provided the Division with a copy of the records EVFS provided to Chalmers on July 19, 2019. The information EVFS provided to the Division demonstrated that EVFS did maintain files and records during the pendency of the conservatorship. The Division cannot conclude that EVFS failed to retain records that would otherwise rise to the level of a violation.

Allegation 28 is not substantiated.

Allegation 29: East Valley Fiduciary Services, Inc., failed to involve the ward in debt payoff plan or attempts to resolve debt as ordered.

In his complaint, Chalmers said the Court ordered EVFS in May [2018] to work with him to resolve credit card debt and accounts in collection. He said EVFS did not work with him as ordered and failed to work with any of the credit card companies or accounts in collection to attempt to resolve the debt other than a "simple call from an EVFS administrative assistant." Chalmers said each time the conservatorship was extended after May [2018], EVFS was given the same instructions and EVFS ignored all the Court orders and close out the conservatorship without addressing the debt or communication with Chalmers what EVFS had done or not done.

Chalmers said EVFS never sent a single payment for the Capital One credit card despite several requests from him to have payments made. EVFS blamed Chalmers for interfering with Capital One when he told Capital One very early in the conservatorship that there should be enough money to pay the minimum payment. Chalmers said EVFS failed to recognize the limitations of their expertise and failed to seek outside assistance from experts in debt management.

Chalmers renewed his allegation that EVFS failed to establish a budget that would let EVFS know the estate was insolvent. He said EVFS could have contacted the hardship department of every bank to seek lower payments and most likely zero interest. Chalmers said EVFS' failure to take such action earlier with Capital One and other banks resulted in charge off of the accounts and the ultimate lawsuit by Capital One on September 17, 2018, the day prior to the end of the conservatorship.

In its response to the complaint, EVFS said Chalmers gave his opinion on how EVFS should have acted but neither the Family Court nor the Probate Court determined that EVFS "ignored court orders."

Though Chalmers' primary allegation was that EVFS failed to include him in the debt reduction plan or attempts to resolve debt as ordered by the Court, he went beyond and further alleged that EVFS failed to make a single payment on a Capital One credit card and did not contact the hardship department of every bank to seek lower payments and zero interest.

Chalmers did not provide a copy of the Court's order or May [2018] Minute Entry that he referenced in his allegation.

It appears that Chalmers was referencing the Court's Minute Entry, dated May 17, 2018, wherein the Court specifically identified the issue of accounts in collection. Pertinently:

.. IT IS FURTHER ORDERED that East Valley Fiduciary would have to deal with issues related to the Rule 69 Agreement and Decree of Dissolution in the following areas:

3. Dealing with accounts that are in collection belonging to Mr. Chalmers in the manner set forth on the record

Contrary to Chalmers' assertion that the May 2018 Minute Entry ordered EVFS to work with him to resolve credit card debt and accounts in collection, the May 17, 2018, Minute Entry did not order EVFS to work with Chalmers on resolving credit card debt or accounts in collection. EVFS was ordered "Dealing with the accounts that are in collection belonging to Mr. Chalmers..." There were no other Minute Entries or Court orders in May 2018 that addressed accounts in collection or debt.

With regard to Chalmers' allegation that EVFS failed to include him in the debt reduction plan as ordered by the Court, Chalmers seems to be referring to the Stipulated Amended Order Appointing Limited Conservator of an Adult, in PB2017-001373, consolidated with FC2016-053887, that Chalmers filed with the Court on September 6, 2018, by and through counsel. The Stipulated Order was executed by Doyle, Scharber, and Theut on August 27, 2018, and by Commissioner Passamonte on September 5, 2018.

The Stipulated Order stated, pertinently:

AND IT IS, THEREFORE, FURTHER ORDERED:

2. Directing that Letters of Temporary Limited Conservatorship be issued to EAST VALLEY FIDUCIARY SERVICES, INC., upon the acceptance of appointment with the following limitations and restrictions:
 - c. The Temporary Limited Conservator is authorized and directed to take any and all actions necessary to address and remediate WILLIAM CHALMERS credit history

and rating by resolving accounts in collections in a manner that is beneficial to WILLIAM CHALMERS and his credit score. The parties are directed to assist each other in resolving WILLIAM CHALMERS' credit issues and concerns. The Temporary Limited Conservator is not authorized to compromise any matters in collections without WILLIAM CHALMERS' agreement or by the further order of this Court. [emphasis in original]

The September 6, 2018, order authorized and directed EVFS to take any and all actions necessary to address and remediate Chalmers' credit history and rating by resolving accounts in collection that would benefit Chalmers and his credit score. The Court directed that the parties assist each other in resolving Chalmers' credit issues and concerns. The Court did not order specifically that EVFS work directly with Chalmers but for the parties to assist each other in resolving credit issues and concerns. In addition, this Court order was only in effect for 12 days from September 6, 2018, through September 18, 2018, after which the temporary limited conservatorship ended.

From September 6, 2018, through September 18, 2018, EVFS billing records did not show billing for time assisting Chalmers or counsel on credit issues or on any identified concerns. Regarding inquiry or payments, billing showed that EVFS called Intel to obtain a copy of a health savings account statement which EVFS was not able to obtain; call to Oakwood Family Dental; and EVFS issued payments to Southwest Gas Corporation; Cox Communications; Right Space Storage; and attorneys, Theut, Doyle, McKindles, and Scharber.

There were billings for payments to La Manna and Raftery, but those checks were not issued on September 17, 2018, and EVFS later issued payment to these two professionals in October 2018, addressed in Allegation 1. EVFS also billed to work with AXA and TD Ameritrade to complete a \$130,000.00 offset on the final day of the conservatorship.

None of EVFS' billings from September 6, 2018, through September 18, 2018, described a demonstrable effort by EVFS that the fiduciary's office took "any and all actions necessary to address and remediate WILLIAM CHALMERS' credit history and rating by resolving accounts in collections in a manner that is beneficial to WILLIAM CHALMERS and his credit score.," as ordered by the Court on September 6, 2018. There were no billings showing that EVFS worked to assist parties to resolve credit issues and concerns during that narrow time period described herein.

Chalmers also accused EVFS of failing to make a single payment to his Capital One credit card debt. The Final Inventory & Accounting filed with the Court on December 6, 2018, Bills & Payables More Than 30 Days Older, showed that Chalmers' Capital One credit card was owed [REDACTED]. Regarding payments on credit cards, the accounting's Schedule 4 – Disbursements showed that EVFS made payments to numerous credit cards

beginning in October 2017 including USAA Saving Bank, Arizona Federal, Citi Card, and COSTCO Anywhere, but the accounting did not show disbursements to Capital One.

In her complaint, Wulff included that one day prior to the termination of the conservatorship, Capital One Bank filed a lawsuit for nonpayment in CV2018-055911. She said EVFS failed to provide any of the notices regarding this or statements from Capital One.

Billing records demonstrate that on April 26, 2018, Stone billed for time to speak with Capital One regarding the outstanding debt. He informed Capital One of the current situation with the divorce and he resolved to contact them once assets have been distributed to further negotiate debt.

On May 9, 2018, Stone billed for time to call Capital One regarding its notice to negotiate outstanding debt. The Capital One representative said that Chalmers had contacted the representative and notified him that there were assets to pay off the debt. On the same date, Stone emailed counsel regarding the conversation with Capital One.

On May 16, 2018, Stone billed for time involving receiving a second settlement offer from Capital One and he forward this to counsel to discuss with Doyle and Theut.

Email records between EVF/counsel and Doyle reflect communication involving Chalmers' debt and the Capital One credit card.

On May 4, 2018, Scharber emailed Doyle and Theut stating, in part, that EVFS had enough liquidity to make a 75% pro rata payment to all the professionals remaining in the case, but EVFS was hesitant to do so unless while there were outstanding Rule 33 issues. Scharber asked how much Doyle and Theut would be comfortable distributing now.

Doyle replied to Scharber and Theut on May 11, 2018. Doyle said, in part, that he was not comfortable with anyone being paid anything because Chalmers had a lot of debt that have been made substantially more critical as the result of non-payment. Doyle said that as far as they knew "\$45,000.00 is now in collections and demand is being made for payment in full. Capital One has threatened to sue Bill in a telephone conversation. The purpose of a conservatorship should not be to put the ward into bankruptcy."

On May 12, 2018, Doyle emailed Scharber stating, in part, that Chalmers did not want his debt written off because doing so would damage his credit rating. What should have happened, and what Chalmers pleaded with EVFS to do was to keep the debt from going into collections in the first place my making the minimum monthly payments or negotiating a different minimum monthly payment. Doyle said Chalmers "should have plenty of money to pay the \$40,000.00 except for the fact that he owes attorneys etc. \$280,000." Doyle said, "Unlike almost every case EVFS, and for that matter Brian and I handle, Bill

has a life to live as a completely normal, rational and functional person. His credit rating when all of this started was probably 700. His current credit rating of about 500 is damaging his opportunities. Damaging the ward's credit rating typically may not be something of concern, but in this case it is."

On May 14, 2018, Doyle sent an email to Scharber stating, "Do not have them/EVFS get started on anything. And again, not the point. The idea is/was to keep the accounts current, not pay them off. There is no reason to liquidate anything at this time. Bill will likely be left trying to clean this up, but there is no reason to make the situation worse. The only bills that absolutely need to be paid are the current bills, utilities, Cox, etc. Bill has been managing w/the [sic] what he has left of the bond money, and he is thankful that EVFS reimbursed him for his insurance. Bill will need a summary of the bills EVFS is paying that he may not be aware of."

On May 16, 2018, Stone sent an email to Scharber noting that EVFS received a settlement offer from Capital One and said it was a substantial improvement on their previous offer. Stone said the \$500.00 per month payment plan "might be the best option for him. Probably worth running by Gary [Doyle] and Brian [Theut]. Scharber replied that he would pass this one to Doyle immediately.

On May 30, 2018, Stone followed up with Scharber regarding the Capital One offer and payment of \$500.00 monthly. On May 30, 2018, Scharber emailed Theut with the attachment settlement offer from Capital One noting that the offer expired today and if no action is taken on it, it would likely go to collections. Scharber said EVFS has reached out to Doyle about this for feedback "a couple of times, but they've gotten no answer on how he'd prefer to proceed. I'm inclined to just have them take accept [sic] the \$500/month option. Thoughts?" On the same date, Theut replied that he was in favor of the \$500.00 per month given the potential liquidity issues. On May 30, 2018, Scharber emailed Stone and Bogle pointing out Theut's reply voting for the \$500.00 option. Scharber said Doyle's preferences "would require EVFS to front more cash into the operating account, which isn't ideal but might be smoother if more liquidity will be available soon to complete you guys."

EVFS provided copies of two settlement offers from Capital One. The first settlement offer was dated April 11, 2018, wherein Capital One offered a settlement for the lump sum of \$28,949.13. The offer was to expire on April 30, 2018. Capital One noted that settling the account would prevent it from being reviewed for possible legal action by a law firm in Arizona, though no decision had been made to take legal actions against Chalmers. The second settlement offer from Capital One was dated May 9, 2018, where Capital One stated that to help with the account balance, Capital One offered the following payment options to fit the budget:

- A lump sum settlement of \$19,154.00. The offer would expire May 30, 2018.

- Break up the balance into smaller monthly payments of \$500.00 until the account is paid in full

Capital One, by and through counsel, filed with the Court a complaint against Chalmers and J Doe Spouse on September 17, 2018, in CV2018-055911. In brief, the complaint stated that the Defendant (Chalmers and spouse) owes Plaintiff the sum of \$31,324.00 and has failed to pay the said amount and is indebted to Plaintiff in the amount of \$31,924.00. On November 21, 2018, Chalmers, pro per, filed his Answer accordingly, but he did not mention EVFS. The matter was ultimately dismissed on February 21, 2019, pursuant to the Stipulation for Dismissal Without Prejudice and good cause appearing.

Chalmers' core accusation is that EVFS failed to comply with a May 2018 Court order that allegedly directed EVFS to work with him involving a debt reduction plan. The Division did not find a May 2018 Court order or Minute Entry that directed EVFS to work with Chalmers on debt resolution. The Stipulated Amended Order of September 6, 2018, directed EVFS to "take any and all actions necessary to address and remediate" Chalmers' credit history and rating "by resolving accounts in collections" that was beneficial to Chalmers and his credit score. The Court ordered the parties to assist each other in resolving the credit issues and concerns. However, that Court order was only in effect for 12 days from September 6, 2018, through September 18, 2018.

Chalmers is correct when he said EVFS did not make a payment to the Capital One credit card. This would adversely affect Chalmers' credit rating. The facts suggest that the estate had liquidity issues. However, EVFS did not make a single payment on the Capital One credit card and seemed to wait until April 2018, to begin negotiating on Chalmers' credit card debt with Capital One.

As to the reason EVFS did not make any payment on the Capital One credit card, EVFS told the Division that EVFS understood that the card had been charged off by Capital One and was in the company's collection and was later sent to an outside collector. EVFS said hence there were no monthly payments due, and no interest was accruing. EVFS said it understood that EVFS simply need to try and negotiate an overall settlement of the outstanding balance. EVFS said it took some time for Capital One to confirm that EVFS was the conservator for Chalmers and for Capital One to advise EVFS of the account manager EVFS would deal with in negotiating the debt. On March 23, 2018, EVFS received a letter from Wayne Farley of Capital One stating that he was the account manager for the credit card. The letter stated that because the credit card was in the "Recoveries Department," it meant the account had been "charged off," so that it would "no longer accrue interest or fees. EVFS said it then began efforts to negotiate the debt, but EVFS had to make sure both that liquid funds were available and that Chalmers would approve a proposed settlement. EVFS also learned during a May 9, 2018, call with Capital One regarding the outstanding debt that Chalmers was also speaking directly to Capital One and he told Capital One that there were sufficient assets to pay the debit. EVFS said it was

improper for Chalmers to be speaking directly with a creditor and saying things that were not true and were inconsistent with what EVFS was telling the creditor. EVFS said, in fact, Chalmers did not have sufficient liquid funds to pay off the \$31,000.00 Capital One debt, and the only way to get more funds would be to sell qualified assets, which Chalmers and his counsel did not want to do.

EVFS said that on May 14, 2018, when Scharber told Doyle in an email that EVFS would need to liquidate more assets in order to pay off Chalmers' debts, Doyle specifically told Scharber not to do that. On May 16, 2018, EVFS received a letter from Capital One's account manager proposing to settle the debt by either breaking up the full balance into \$500.00 monthly payments until the full balance was paid off or paying a lump sum settlement of \$19,154.00. That offer would expire on May 30, 2018. EVFS said it forwarded the offer to Scharber suggesting that the \$500.00 monthly payment option may be the best option and asked Scharber to present this to Doyle. EVFS said Doyle did not respond to Scharber regarding the offer. EVFS said given the contentious nature of dealings with Chalmers, EVFS was unwilling to agree to a settlement without approval from Chalmers or his counsel so EVFS took no action on the settlement offer. Having received no response to the settlement offer, Capital One engaged a law firm to collect the debt, and thereafter sued Chalmers.

Allegation 29 is not substantiated.

Allegation 30: East Valley Fiduciary Services, Inc., failed to inform the Gilbert Court of the ward's stay in Community Bridges.

Chalmers said that on August 22, 2017, he spoke with Stone via telephone and requested that Stone call the Gilbert Court and inform the Court that he could not make the August 24, 2017, Court date due to being in Community Bridges. Chalmers said that Stone never called the Gilbert Court and as a result, there was a \$20,000.00 bond issued and Chalmers was told there was a warrant out for his arrest. Chalmers said with the help of his criminal attorney, Mark Andersen, retained by the estate, they were able to address the confusion and have the bond refunded back to Chalmers.

Chalmers said EVFS still takes credit for dealing with Chalmers' various criminal issues that were "all minor" but Chalmers said he was the one who took ownership of his actions and resolved the matters "without the help of EVFS whatsoever." Chalmers said Stone's inexperience cost the estate \$20,000.00 and kept Chalmers from being present at his second probate Court hearing. Chalmers said, in addition, this issue cost additional legal fees to remember which all could have been avoided if Stone had done what he agreed to and simply informed the Gilbert Court that Chalmers was at Community Bridges.

In the response to the complaint, EVFS said that it did not agree it was EVFS' responsibility to inform the Gilbert Court that Chalmers was in Community Bridges, but, in any event, the matter was resolved without financial implications.

EVFS was appointed as Temporary Conservator for Chalmers on August 21, 2017, per Letters of Appointment of Temporary Conservator and Acceptance of Temporary Appointment. EVFS was not appointed as Temporary Guardian with Inpatient Mental Health Powers until August 29, 2017, per Letters of Temporary Guardian.

Gilbert Municipal Court records⁴³ demonstrate that criminal charges were filed against Chalmers on August 14, 2017. On August 15, 2017, the Court issued summons to appear at the two address the Court had on file for Chalmers. He was scheduled to appear in Court on August 24 , 2017, at 1:30 p.m. for his arraignment but he failed to appear. The Court issued a bench warrant for his arrest on August 25, 2017. The bench warrant was later quashed. A bond of \$29,000.00 was set.

EVFS billing records show that on August 21, 2017, Stone billed for time involving receiving a call from Chalmers stating that he was at Community Bridges. Chalmers asked that EVFS remove the items from his hotel and store them and he started that his truck was in the parking lot of the hotel. On the same date, Griffing billed for time involving direction from Stone to check the weekend's arrest records for Chalmers. Griffing printed out all pending charges from the Gilbert Police Department and forwarded the information to Stone.

On August 23, 2017, Stone billed for time involving receiving multiple calls from Chalmers stating that he might be released from Community Bridges and that he may want Stone to bring him medication. Stone noted that he told Chalmers he could not do that and urged Chalmers to contact his attorney regarding being released.

On August 24, 2017, Stone billed for time regarding a call from Chalmers stating that he would be leaving Community Bridges and he requested a place to stay. On the same day, Malos billed for time to accompany Stone to meet Chalmers after he was released from Community Bridges and checked him into a hotel. Stone also contacted Theut to discuss the meeting with Chalmers.

On August 30, 2017, Stone, in part, billed for time to call counsel to discuss outstanding issues with Chalmers including warrants and that Stone would go to Gilbert Municipal Court to "try to sort out the issue with the warrant." On the same day, Stone traveled to Gilbert Municipal Court, met with the Clerk of the Court to discuss options regarding the warrant. Stone said they would either file a motion with the judge explaining the situation or post bond. Stone billed to speak with Bogle and Doyle and Stone resolved to post bond when funds from a real estate transaction were released.

⁴³ Court Cause Number 2017-CT-0014006.

Doyle's records show that on August 21, 2017, Doyle billed for time regarding an email from Theut who had spoken with Chalmers and that he had been arrested and was at Community Bridges.

On August 29, 2017, Doyle billed for time, in part, to call the Gilbert Court.

Theut's billing showed that on August 21, 2017, he received a call from Renata informing that Chalmers had been arrested. On the same day Theut conferenced with Bogle Stone and conferenced with staff at Community Bridges.

Chalmers' arraignment date was August 24, 2017, at 1:30 p.m. He was released from Community Bridges on the same date though it is not clear when he released. On August 24, 2017, EVFS was serving as temporary conservator for Chalmers and not as temporary guardian although Stone and Malos travelled to Community Bridges to get Chalmers and then checked him into a hotel.

Allegation 30 is not substantiated.

Allegation 31: East Valley Fiduciary Services, Inc., billed the estate over \$1,500.00 per hour to pay for professional fees involving the settlement conference.

Similar to Chalmers' allegation, Livingston alleged that EVFS sent Moore to the settlement conference though Moore knew "nothing about the case." Livingston alleged that EVFS paid over \$1,500 an hour to pay professionals for the settlement conference."

The February 20, 2018, settlement conference involved the Rule 69 Agreement. EVFS sent Moore to attend the conference and Stone later attended the settlement conference because he had an earlier commitment involving attending Court for an EVFS client. Moore billed the estate 5.10 hours, including travel, to attend the settlement conference. Moore billed at a rate of \$125.00 per hour. Stone billed the estate 3.0 hours, which included travel and participation in the settlement conference. Stone billed at the rate of \$125.00 per hour.

Other professionals included attorneys Theut, Doyle, and McKindles.

Theut billed the estate 5.0 hours for the settlement conference and also billed for preparation and travel to/from the conference. Theut billed at the rate of \$400.00 per hour.

Doyle billed the estate 4.5 hours for his time at the settlement conference and also billed one hour for travel to/from the conference. Doyle billed at the hourly rate of \$325.00.

McKindles billed the estate 6.8 hours for time involving preparation for and attendance at the settlement conference, and other tasks. McKindles billed at an hourly rate of \$300.00

Individually, none of the respective professionals' hourly rates were \$1,500.00 per hour. If combining all of the respective professionals' hourly rates (Moore, Stone, Theut, Doyle, and McKindles), the estate was billed \$1,275 per hour for the work of the professionals.

In her complaint, Livingston said that Wulff had calculated that the estate was billed over \$1,500.00 per hour for the professionals to attend. Livingston did not specifically allege that any of the professionals involved in the settlement conference were charging inappropriate or unreasonable hourly rates or disputed the duration of the divorce settlement conference. The Division does not have regulatory authority over what hourly rates attorneys may charge for legal services nor what hourly rate licensed fiduciaries may charge.

Allegation 31 is not substantiated.

Allegation 32: East Valley Fiduciary Services, Inc., may have paid one of Renata Chalmers' bills to Pinnacle West Management using estate money.

Livingston alleged that EVFS, using estate money, paid \$1,304.39 to Pinnacle West Management but the bill was for Renata.

EVFS' Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 4 – Disbursements, shows that on August 22, 2018, EVFS issued Check No. [REDACTED] to Pinnacle West Medical Management, for the amount of [REDACTED] "Re civil action." The narrative also informed the Court that this was "Paid since it went to small claims."

EVFS records demonstrate that Pinnacle West Medical Management initiated a Small Claims Complaint and Summons⁴⁴ to Chalmers on August 13, 2018. The complaint stated that Chalmers was a member with Blue Cross Blue Shield. Claims were submitted by Pinnacle West Medical Management to his insurance and paid to him for services rendered for durable medical equipment. Checks were issued as reimbursement for the medical supplies for Chalmers' daughter, a dependent on Chalmers' insurance, and the claims were processed and paid to Chalmers, but no payment has been made to provider Summit Medial West. The amount due was \$1,274.88. The Small Claims Complaint and Summons was sent to Chalmers at EVFS' business address.

Email records show that Stone/EVFS timely communicated with Pinnacle West Medical Management on August 21, 2018, to address the outstanding balance. EVFS made the payment which included the balance, Court fee and Certified mail fee. The matter was dismissed against Chalmers on September 6, 2018

⁴⁴ Case Number CC2018161774SC, McDowell Mountain Justice Court.

The payment to Pinnacle West Medical Management involved Chalmers' daughter who was listed as a dependent on Chalmers' insurance. The payment was not for Renata, as alleged by Livingston.

Allegation 32 is not substantiated.

Allegation 33: East Valley Fiduciary Services, Inc., generated excessive fees because EVFS does not use autopay.

In her complaint, Wulff said EVFS failed to use autopay "for what little bills they did pay" and that EVFS charged excessive fees because of EVFS' failure to use autopay. She also said EVFS provided Chalmers "little money...just a little at a time billing him every time they distributed these funds to Mr. Chalmers."

Arizona licensed fiduciaries are required by ACJA §7-202(J)(5) and A.R.S. §14-1105 to prudently manage costs, preserve the assets of the estate and protect against incurring any costs that exceed the probably benefits to the protected person. As temporary conservator for Chalmers, EVFS had the authority and responsibility for managing estate monies. There is no regulatory standard or requirement that EVFS set up an autopay arrangement for paying bills. Fiduciaries are barred from using cash to pay bills and typically pay estate bills by check.

Wulff alleges that EVFS charged excessive fees because the fiduciary failed to use autopay but outside of her general assertion, she does not identify which of EVFS' fees are excessive. Wulff added that EVFS only gave Chalmers a little bit of money at a time and billed for each time they distributed funds to Chalmers is, itself, not a violation of code, rule or statute.

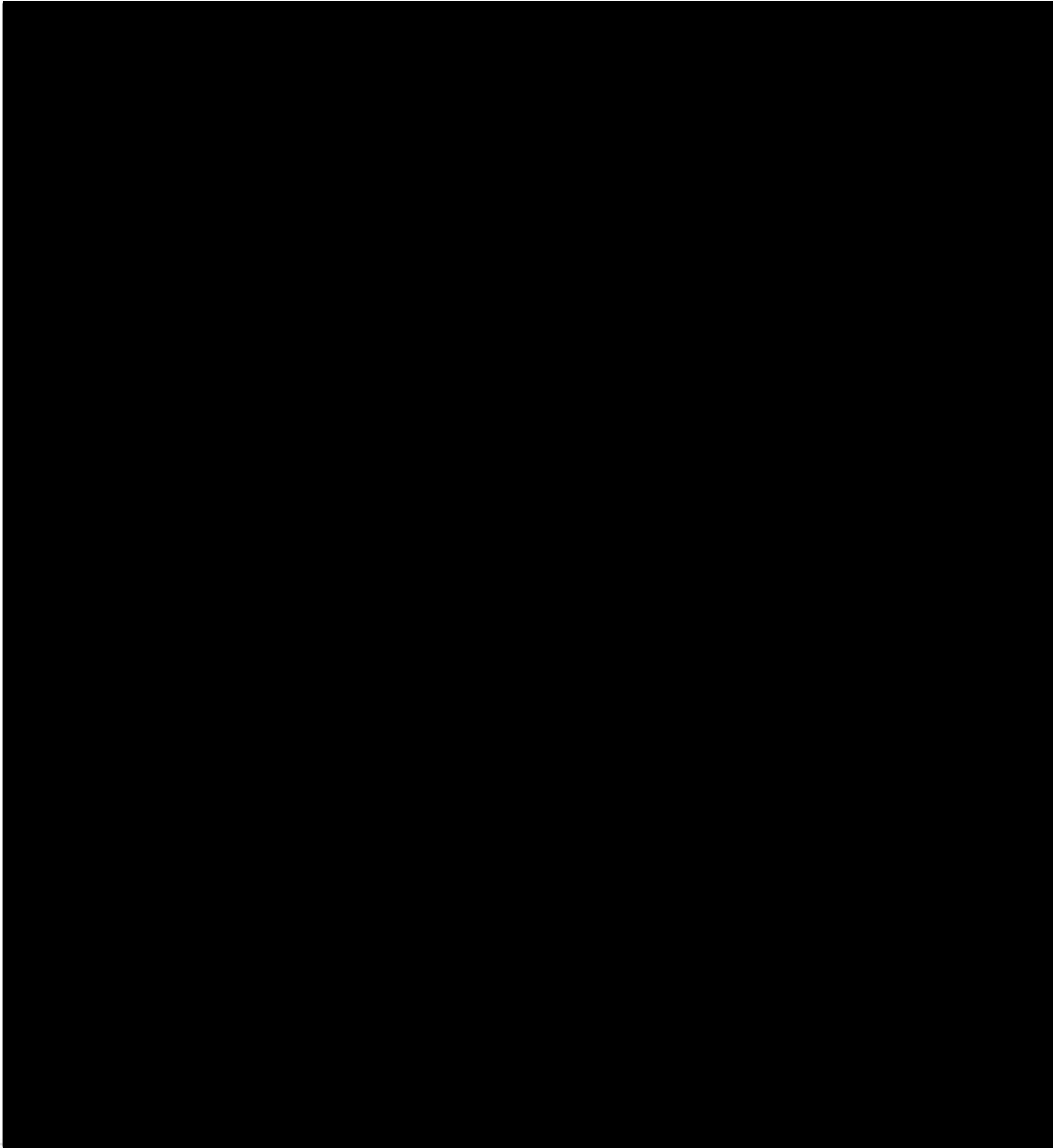
Allegation 33 is not substantiated.

Allegation 34: East Valley Fiduciary Services, Inc., failed to pay any of the protected person's medical bills.

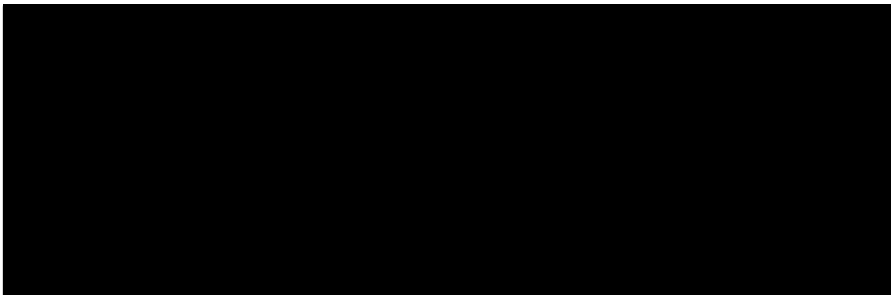
Wulff alleged that EVFS failed to pay any of Chalmers' medical bills and those accounts went into collections. One bill, Gilbert Hospital, was nearly \$4,000.00 and Chalmers had met his deductible. Wulff said EVFS did nothing to address the fact that the deductible had been met and then did nothing to pay the bills but paid themselves and lawyers.

Wulff did not specify the medical bills she said were not paid and instead said EVFS failed to pay "any" of Chalmers' medical bills.

The Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 4 – Disbursements, Line 12 – Medical Costs, showed that EVFS did pay various medical bills for Chalmers, itemized in categories including Dental, Doctor, Hospital, Medical Insurance, Prescriptions, Psychiatric Evaluation, and Vision.



Pertinent to medical bills, the Bills & Payables More Than 30 Days Old, EVFS noted “Received at a later date” and identified the following medical related bills:



As noted in Allegation 32, EVFS paid Pinnacle West Medical Management. Contrary to Wulff's assertion that EVFS failed to pay any of Chalmers' medical bills, the final accounting demonstrates that EVFS paid various medical related bills.

Allegation 34 is not substantiated.

Allegation 35: East Valley Fiduciary Services, Inc., failed to disclose expired patent information at the settlement conference.

In her complaint, Wulff said prior to the settlement conference, EVFS had possession of a letter from the patent office that Chalmers patent had expired yet EVFS and Renata never disclosed this in the settlement conference. Wulff believed that EVFS and Renata had a responsibility to disclose this information. Wulff said Renata provided a computer with no source code for the patent as outlined in the Rule 69 Agreement. Wulff alleged that EVFS and Renata "significantly impacted" Chalmers' financial future for the "failure to disclose this information about the patent prior to the settlement conference. The patent is now worthless." She said Chalmers had planned to move forward with funding and using this as his future source of income, but that vision and future opportunity was not available to Chalmers.

Part of Wulff's allegation was that EVFS failed to provide cloned hard drives to Chalmers.

Livingston's complaint also mentioned a texting and driving patent that Chalmers held. She said Chalmers told her that EVFS and Renata failed to disclose information that the patent had expired, and they proceeded into the divorce settlement conference without disclosing this information. Livingston also stated that EVFS had cloned hard drives that the fiduciary had failed to provide.

In EVFS' response to Wulff's and Livingston's complaints, EVFS said Wulff stated that there was a letter that should have been seen but was not disclosed prior to the settlement conference was not viable nor was any claim relating to the alleged loss of source code or that the computer Renata provided under the settlement agreement was missing software or otherwise defective. EVFS said those claims were addressed by the Court of Appeals decision,⁴⁵ included in the response as Exhibit "2." EVFS said both Wulff and Livingston make allegations about a supposed "texting and driving" patent that Chalmers once owned and the source code related to that patent, that were supposedly lost due to EVFS' failures related to the Rule 69 Agreement, including EVFS' alleged failure to give Chalmers a letter about the patent that EVFS had in its possession before the Rule 69 Agreement.

EVFS said the supposed existence of the patent and the alleged failure to provide Chalmers the letter "are complete and demonstrable fabrications by Chalmers." EVFS said they know this because the United States Patent and Trademark Office ("USPTO") makes

⁴⁵ CA-CV 18-0287 FC.

patent applications and related documents publicly available online. EVFS said the Division could take judicial notice that Chalmers never held the “text and driving” patent mentioned in the two complaints. While Chalmers applied for such a patent, on May 26, 2015, the USPTO issued a letter rejecting all his patent claims. EVFS attached a copy of the letter as Exhibit “16.” EVFS said the Division could also view the letter online at <https://portal.usptogov/pair/PublicPair>, type in Chalmers’ patent application number, 14/047/757, navigating to the “Image file Wrapper” icon, and clicking on the May 26, 2015, letter.

EVFS said on May 26, 2015, the USPTO rejection letter gave Chalmers three months to respond, but he never did. On February 10, 2016, the USPTO then sent another letter to Chalmers’ patent counsel, denying his counsel’s request to withdraw, and further stated that Chalmers’ “application became abandoned for failure to respond to the nonfinal office action mailed May 226, 2015.” EVFS said it is this second letter, February 10, 2016, that the two complainants say EVFS had in its possession but failed to disclose to Chalmers prior to the Rule 69 settlement conference. But what Chalmers apparently did not tell Wulff or Livingston about the letter is that the only reason EVFS had a copy was because Chalmers himself gave EVFS a copy. EVFS attached an email from Chalmers to Bogle and others, dated February 2, 2018, attached to the response as Exhibit “17,” EVFS said Chalmers made up the entire story about the supposed patent he held, and about EVFS’s supposed failure to disclose the letter from the USPTO until after the Rule 69 settlement conference.

In the response to Chalmers’ complaint involving the cloned hard drives, EVFS also noted the issue involving a source code stating that there was no source code for the patent because there never was a patent because Chalmers failed to respond to the USPTOS’ letter initially rejecting all his patent claims.

The Division notes that the Court of Appeals in CA-CV18-0287 FC reviewed the procedural background and issues including Chalmers’ accusation that Renata deleted source code from an Apple Workstation prior to returning the computer to EVFS and that the computer contained work product/patent Chalmers was developing. The Court of Appeals determined “For the foregoing reasons we affirm the consent decree and incorporated Agreement, and award reasonable attorney fees to Wife and EVFS.”

Chalmers filed with the Arizona Supreme Court a Petition for Review. On January 21, 2020, the Arizona Supreme Court, comprised of a panel including Chief Justice Brutinel, Justice Bolick, Justice Lopez, and Justice Montgomery, denied the Petition for Review involving Arizona Supreme Court No. CV-19-0206-PF, Court of Appeals, Division One No. 1-CA-CV 18-0287 FC, and Maricopa County Superior Court No. FC2016-05338.

The Division reviewed information available on the USPTO website regarding the subject patent. It appears that Chalmers applied for a patent⁴⁶ related to a vehicle operator/drive device synchronization application and software application stored on and executed from the device, on October 7, 2013. The title of the invention was "Vehicle Operator/Driver and Wireless Device Synchronization and Uses Thereof."

The USPTO sent a letter to Chalmers' attorney, with a copy to Chalmers at his address of records, dated February 19, 2016, denying the Request to Withdraw as attorney or agent of record, filed June 2, 20015.

On December 3, 2015, the USPTO sent a Notice of Abandonment noting that Chalmers failed to file a proper reply to the USPTO letter mailed on May 26, 2015.

With its response to the complaint, EVFS attached as Exhibits 19 and 17, the notification from the USPTO dated May 26, 2015, and Chalmers' February 2, 2018, email to Bogle, Doyle, Theut, McKindles, Stone and Scharber, regarding a letter from USTP. Chalmers noted that he found the patent office notes in junk files. The Division has redacted Chalmers' email address.

Mike Bogle

From: William Chalmers [REDACTED]
Sent: Friday, February 2, 2018 10:16 AM
To: Mike Bogle; gary doyle; brian theut; john mckindles; Andrew Stone; ryan scharber
Subject: Letter from Patent office
Attachments: Patent office notice found in junk files 2-2-18.pdf



It appears that Chalmers was working on a patent evidenced by his application to a patent to the USPTO on October 7, 2013. Chalmers was not granted the patent by the USPTO because of Chalmers' failure to respond to the USPTO and the USPTO considered his patent application abandoned.

The Division has no role or regulatory authority to determine whether or not Renata deleted any source code from any computer prior to her returning the computer(s) to EVFS in 2018. After EVFS received the computer(s) from Renata, EVFS had the hard drives imaged. The issue as to whether EVFS should have returned the cloned hard drives to Chalmers was previously address in Allegation 7.

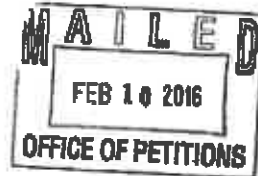
⁴⁶ Application Number 14/047758, Practitioner's Docket No. C2491-0105, United States Patent and Trademark Office.

Wulff's core allegation is that EVFS breached its fiduciary duty to the estate by failing to bring up the "expired patent" at the February 20, 2018, settlement conference and for not bringing up a letter that EVFS had in its possession. The letter appears to be the February 10, 2016, correspondence from USPTO. As to an "expired patent," USPTO records show that the patent was never granted to Chalmers so it could not have expired. Though Chalmers had been working on a patent and applied for a patent, the patent application was deemed as abandoned Chalmers had failed to respond, evidenced by USPTO records.

The February 10, 2016, letter from USPTO denied the attorney's request to withdraw and provided notice that the patent application became abandoned due to lack of response. The Division has highlighted the portion involving the abandonment of the patent application. See below.



BUCHALTER NEMER
[REDACTED]



In re Application of
William Chalmers
Application No. [REDACTED]
Filed: October 07, 2013
Attorney Docket No. C2401-0105

DECISION ON PETITION
TO WITHDRAW
FROM RECORD

This is a decision on the Request to Withdraw as attorney or agent of record under 37 C.F.R. § 1.36(b), filed June 02, 2015.

The request is **NOT APPROVED**.

A review of the file record indicates that Kari L. Barnes and the attorneys/agents associated with Customer No. 62993 do not have power of attorney in this patent application, but may have been employed or otherwise engaged in the proceedings in this patent application. Accordingly, the request to withdraw under 37 C.F.R. § 1.36(b) is not applicable.

The Office will no longer approve requests from practitioners to withdraw from application where the requesting practitioners is acting, or has acted, in a representative capacity pursuant to 37 CFR 1.34. In these situations, the practitioner is responsible for the correspondence the practitioner files in the application while acting in a representative capacity. As such, there is no need for the practitioner to obtain the Office's permission to withdraw from representation. However, practitioners acting in a representative capacity, like practitioners, who have power of attorney in the application, remain responsible for noncompliance with 37 CFR 1.56 with respect to the documents they file.

All future communications from the Office will continue to be directed to the address listed above unless otherwise notified by the applicant.

This application became abandoned for failure to respond to the nonfinal Office action mailed May 26, 2015.

It is unclear what obligation, standard, code, rule, or statute that Wulff believed was violated by EVFS. Chalmers was present at the settlement conference and, seemingly, could have raised any issue he had involving an abandoned patent application if he did not do so at the settlement conference. In addition, regarding Chalmers, attorneys GAL Theut, Court-appointed Counsel Doyle, and McKindles were present at the settlement conference. Each of those attorneys were copied on Chalmers' February 2, 2018, email involving the "Patent office notice found in junk files 2-2-16 .pdf" that Chalmers had found.

It may be that Wulff, Livingston, and Chalmers believed that bringing up the issue of an abandoned patent application per USPTO's February 10, 2016, letter supported the claim

that Chalmers was working on a patent and/or otherwise gave credence to Chalmers' later assertion that Renata allegedly deleted source code from the computer(s) she returned to EVFS, which he claimed after he and others executed the Rule 69 Agreement. The issue of Renata returning the computer(s) was included in the Rule 69 Agreement which stated that she would forfeit \$50,000.0 in equalization payments if she failed to produce the computer(s). The Rule 69 Agreement did not specify which computer(s) were to be returned by Renata.

That EVFS alone did not mention the abandoned patent application involving the texting and driving patent and/or disclose the February 10, 2016, letter that Chalmers appears to have previously provided to EVFS, Theut, Doyle, McKindles, and Scharber, at the divorce settlement conference, does not establish that EVFS was obligated to so nor does it constitute a violation of code, rule or statute or derogation of fiduciary duty.

Allegation 35 is not substantiated.

Allegation 36: East Valley Fiduciary Services, Inc., failed to pay the entire Banfield Pet Hospital Contract.

In his complaint, Chalmers said he was initially very grateful for the assistance EVFS provided to him when they moved him, but more importantly when they found his dog. He said, however, EVFS found a way to create havoc in his life by not paying for his dog's pet care contract at Banfield Pet Hospital. Chalmers said he contacted Bogle to explain there was a pet contract in place and that it needed to be paid, along with other bills. Chalmers said Bogle agreed to make the payment and made one payment but failed to make other payments. After EVFS made the one payment, Chalmers was able to get the required shots for a puppy from Banfield Pet Hospital but the spay procedure was incomplete and the dog needed another procedure. Chalmers said when he took his dog to be evaluated by Banfield Pet Hospital they informed him that no payments had been made and they would not allow Chalmers to schedule an appointment. Chalmers said he immediately left several urgent voice messages with Bogle who again promised to pay the pet contract but by then the dog had done out of heat.

Chalmers said his dog then went into her next heat cycle and he called Banfield Pet Hospital only to learn that Bogle and not paid the pet contract and they again would not set an appointment for the dog to be seen. Chalmers repeated the same process, but this time Bogle refused to pay the bill and Chalmers and his dog were forced to pay for her medical treatment out of pocket. Chalmers said the issue was finally resolved when on the next heat cycle Chalmers took the dog to another veterinarian for an evaluation and a letter was written outlining that the dog was in heat and the previous spay was incomplete. Chalmers took the letter to Banfield Pet Hospital, and they performed corrective surgery at no charge but only because Chalmers physically showed up at the facility. Once surgery was complete, Banfield Pet Hospital put the remaining balances of \$320.00 into collection and

it is now listed as a debt in Chalmers' bankruptcy proceedings. The emotional toll this took on Chalmers cannot be measured in a dollar value. He said the dog suffered through infected nipples and required constant care during heat. Chalmers said pursuant to the final Court order, EVFS was required to address all accounts in collection. This account along with many others in collection were never addressed by EVFS.

In the response to the complaint, EVFS stated only that they were able to find Chalmers' dog and that despite his allegation, the Court approved the final accounting.

The Final Inventory & Accounting filed with the Court on December 6, 2018, Schedule 4 – Disbursements, show that EVFS issued Check No. [REDACTED] to Banfield Pet Hospital on November 21, 2017, for the amount of [REDACTED]. Banfield Pet Hospital was not included as a creditor on the final accounting.

EVFS' records showed that on March 8, 2018, EVFS staff billed for time involving a call from Chalmers and discussing the dog's need to see a veterinarian. Chalmers "demanded Banfield Pet bill be paid in full within 24 hrs [sic]; so he can take dog in texted MB for directive, call to attorney Theut was made by MB; Theut will discuss with client; received directive to locate notes from meeting with Chalmers; found document; advised MB."

Theut's billing record demonstrated that on March 13, 2018, Theut billed for time for reviewing an email from Bogle "with attached Banfield Payment." did not reflect any billing regarding a call from Bogle or EVFS involving payment of the Banfield Pet Hospital Bill.

Chalmers said that Bogle/EVFS did not make the second payment to Banfield Pet Hospital and Chalmers was "forced to pay for her treatment out of pocket." He also said the issue was finally resolved after he took his dog to another veterinarian for an evaluation who provided a letter which Chalmers took to Banfield Pet Hospital and the hospital performed "corrective surgery at no cost" though Banfield Pet Hospital put the remaining balance of \$320.00 into collection.

EVFS told the Division that it only made the one payment to Banfield Pet Hospital, on March 8, 2018, as reflected in the Final Inventory & Accounting. EVFS believed that it did not make other payments for two reasons. First, in March 2018, there was little liquidity in the conservatorship unless money was withdrawn from qualified assets, and Chalmers and his counsel did not generally want funds that required withdrawing on qualified assets. EVFS did make withdrawals from qualified assets, but those funds were primarily used for Chalmers' day-to-day expenses. EVFS said even then Chalmers complained to the probate Court and sued EVFS in Superior Court, "arguing that EVFS should not have drawn on the qualified assets it did draw on."

EVFS said, second, in early 2018, Chalmers received \$20,000.00 from an exonerated criminal bond. This money was given to him by his criminal attorney and EVFS was not

notified. When EVFS found out, EVFS and Theut brought this to the attention of the Court. The Court ordered⁴⁷ Chalmers to either turn over the \$20,000.00 to EVFS or do a formal accounting of the spending of those funds. EVFS said Chalmers did neither. EVFS “reasonably believed that in March, 2018, Mr. Chalmers would have had sufficient funds from either the money transferred from the conservatorship to him monthly or from the \$20,000.00 he received on the exonerated bond to pay things like a Banfield Pet Hospital debt.”

As previously stated, Chalmers repeatedly said his estate was insolvent and/or had liquidity issues. In this allegation, Chalmers said he was forced to pay the bill “out of pocket” rather than EVFS paying the pet hospital bill using estate funds. This may be a point without distinction because in both scenarios the payer is still the estate. The issue to resolve is whether EVFS violated any duty, code, rule, or statute by not paying the outstanding balance on this account. As temporary conservator, EVFS had the authority to manage estate funds and determine which estate debt, claim, or expense should be paid. This task is particularly challenging when an estate is insolvent or has liquidity issues. The Division cannot conclude that EVFS’ conduct, in determining what estate bills should be paid and when to pay those bills, constituted a breach of fiduciary duty or that otherwise demonstrated a violation of code, rule, or statute.

Allegation 36 is not substantiated.

ADDITIONAL ALLEGATIONS

Allegation 37: East Valley Fiduciary Services, Inc. filed a conservator’s accounting that was inaccurate and/or misleading and/or that contained misstatements and/or misrepresentations of material facts, in violation of ACJA §7-202(J)(1)(c)(3).

The additional allegations herein were generated by the Division and were not allegations from the complainants. The Division found two examples demonstrating that EVFS’ final accounting contained information that did not factually represent the actual circumstances. The two examples include payments made to Raftery and La Manna, and a payment to GAL Theut.

a) Payments to Raftery and La Manna

EVFS, by and through counsel, filed with the Court the Final Inventory & Accounting on December 6, 2018. The final accounting included information involving payments to Raftery and La Manna. The Division does not contend that the two referenced professionals should not have been paid. Rather, it is the manner in which EVFS reported the payments to Raftery and La Manna to the Court that is problematic because what EVFS documented in the account does not accurately represent what occurred and, therefore, appears to be misleading.

⁴⁷⁴⁷ Pursuant to Minute Entry dated January 19, 2018 in PB2017-001373.

In the Final Inventory & Accounting, EVFS informed the Court that the checks to Raftery and La Manna, respectively, were issued on September 17, 2018, just prior to the end of the conservatorship, and that the two checks had not yet cleared.

[REDACTED]

Bogle told the Division that EVFS did not issue the two checks on September 17, 2018, as reported in the Final Inventory & Accounting and instead issued the two checks on October 18, 2018, one month after the conservatorship ended. Bogle said EVFS reported the checks as issued but uncleared for accounting purposes because Raftery and La Manna were owed the money for services rendered on behalf of the estate.

The issue of uncleared checks was identified in the Court Accountant's Report and Recommendation ("CARR"), Initial Review, dated March 6, 2019. Although the CARR notes various issues with the conservator's account, pertinent to the uncleared checks, the CARR noted the following:

- 4) A Supplemental schedule was provided with this account that shows "uncleared checks written prior to the end of conservatorship." These checks total \$135,034.87 and were written the day before and the last day of the conservatorship. These amounts were not included in the Transaction Log or Schedule 2, Line 11 balances.

Recommendation: An amended account and Transaction Log should be filed that accounts for all transactions made during the account period and show an accurate amount of funds in the bank accounts at the end of the account period. If the amounts on Schedule 2 do not agree to the ending balance of the checking accounts, a reconciliation of the checking account should be provided with the account.

On March 18, 2018, EVFS, by and through counsel, filed with the Court a Response to Court Accountant's Report and Recommendation. Regarding the uncleared checks, EVFS stated, pertinently:

All transactions except checks 1142 and 1019 were made in compliance with a May 17, 2018 Minute Entry directing EVFS "to holdback liquid assets" for the payment of professional fees, attached hereto as Exhibit "E" and incorporated herein by reference. Check numbers 1015, 1016, 1017, 1018, 1020 and 1021 were payments of court-approved professional fees. The transfer from account #2834 to Renata Chalmers was her portion of the couple's tax refund, as required by the Divorce Decree.

The Court Account replied to EVFS on April 16, 2019 issuing a CARR. Pertinent to the uncleared checks issue, the CARR stated, pertinently:

- 1) The Response to the Court Accountant's Report and Recommendation, filed on March 18, 2019, regarding this item of concern did not satisfy Court accountant's recommendation.

This recommendation was in specific reference to the \$135,043.87 in "uncleared checks written prior to the end of conservatorship." The Petitioner points to the Court's order on May 17, 2018 that "East Valley Fiduciary will need to holdback liquid assets of Mr. Chalmers," but this Order of the Court is immaterial to the Court Accountant's recommendation. As these checks, regardless of whether they were cleared or not, were written during the accounting period, they should have been reflected in the Transaction Log, as a disbursement on Schedule 1, and ultimately in the Net Assets on Schedule. As the money was already "spent," a failure to report it in these three respective areas creates an inflated ending cash balance.

Recommendation: An amended account and Transaction Log should be filed that accounts for all transactions made during the account period, including any transfers that were initiated and checks that were written and/or dated during the account period. Proof of these transactions should be included with the response such as copies of the cleared checks showing the date written and receipts of the transfers showing the date required.

Ultimately the Court Accountant's July 17, 2019, CARR did not recommend approval of the accounting. Although the CARRs tried to address various accounting problems, in this Allegation, the Division contends that EVFS' representations in the Final Inventory & Accounting regarding the payments to Raftery and La Manna are misleading because EVFS did not issue the respective checks on September 17, 2018 as detailed in the accounting but issued the two checks on October 18, 2018, after the conservatorship ended.

b) Payment to GAL Theut

In the Final Inventory & Accounting, EVFS informed the Court that EVFS issued a check to Theut pursuant to a Court order involving Rule 33 fees. However, at the time EVFS provided that information to the Court, on December 6, 2018, Theut had not filed a Rule 33 Application seeking approval for those fees and the Court had not ordered approval of those fees.

EVFS documented that EVFS issued Check No. [REDACTED] in the amount of [REDACTED] to Theut on September 18, 2018, "Per court order, Rule 33 fees." The check was identified as an uncleared check. See below:

[REDACTED]

[REDACTED]

The following information is copied from the Arizona Bank & Trust statement dated September 30, 2018, for account ending ***[REDACTED], reflecting Check No. [REDACTED]:

T [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

Theut did not file with the Court a Rule 33 Application for Attorney's Fees and Costs for the Period May 22, 2018, through September 17, 2018, seeking approval for attorney's fees and costs in the amount of \$9,773.36, until January 17, 2019. Below are pertinent excerpts from the Rule 33 Application Theut filed with the Court.

1	THE LAW OFFICES OF THEUT, THEUT & THEUT, P.C. ATTORNEYS AND COUNSELORS AT LAW 8180 NORTH SIXTEENTH STREET WILLOWACK SQUARE, SUITE 8-236 PHOENIX, ARIZONA 85018-3890 (602) 263-8008 E-MAIL: THEUT@THEUTLAW.COM	CHRIS DE ROSE, CLERK RECEIVED DOCUMENT DEPOSITORY 19 JAN 17 PM 5:28
2		FILED BY B. RETH, DBP
3	Brian J. Theut ATTORNEY No. 014277	
4	Guardian Ad Litem ATTORNEY FOR William Chalmers	
5	IN THE SUPERIOR COURT OF THE STATE OF ARIZONA	
6	IN AND FOR THE COUNTY OF MARICOPA	
7	In the Matter of the Conservatorship for:	NO. PB 2017-001373
8	WILLIAM CHALMERS,	RULE 33 APPLICATION REGARDING ATTORNEY'S FEES AND COSTS FOR THE PERIOD MAY 22, 2018 THROUGH SEPTEMBER 17, 2018
9		
10	An Adult.	(Assigned to the Honorable Carolyn Passamonte)
11		

THEUT, P.C.
FLOORS AT LAW
17TH STREET
SUITE 8-236
ESC018-3380
003
tnt.com

3 12. Based upon the foregoing, a proper showing has been made to justify this Court
4 approving \$ 9,773.36 for the time period from May 22, 2018 to September 17, 2018 as and for
5 Brian J. Theut's fees and costs.

6 13. That Counsel requests the Court enter a Judgment in favor of Theut, Theut and Theut PC
7 against William Chalmers and the Estate of William Chalmers in the amount of \$9,773.36 and
8 to charge interest at the statutory rate until paid.

9 DATED this 17th day of January, 2019.

10
11 
12 Brian J. Theut

In the Final Inventory & Accounting EVFS informed the Court that EVFS issued payment to Theut in the amount of [REDACTED] "per court order, Rule 33 fees." There was no Court order approving Theut's fees and costs of [REDACTED] and, ultimately, the Court denied Theut's Rule 33 Application for those fees. The Court also denied other Rule 33 Application for legal fees and costs and fiduciary fees and costs.

The Court's Minute Entry, dated January 15, 2021, pertinently:

On December 6, 2018, EVFS filed "Submission of and petition for approval of conservator's final account". On December 13, 2018, Mr. Sharber filed Rule 33 applications seeking approval of \$30,746.50 in his own fees and \$24,105.14 in fees for EVFS. On December 17, 2018, Mr. McKindles filed a Rule 33 application seeking \$16,193.50. On January 17, 2019, Mr. Theut filed a Rule 33 application seeking \$9,773.36 in fees. Those are the only remaining fee petitions at issue today, and the total requested amount amongst all of the applicants is \$80,818.50.

If everything pending before this Court is approved, Mr. Chalmers will have paid \$328,069.42 to these applicants. Broken down individually, the total fees would be:

- \$55,943.50 to Mr. McKindles,
- \$68,022.07 to Mr. Sharber,
- \$103,785.31 to EVFS, and
- \$100,318.54 to Mr. Theut

The Court Denies the Remaining Rule 33 Petitions.

The Court denies the pending Rule 33 petitions from Mr. Theut, Mr. McKindles and Mr. Sharber because the requesting parties did not file the required notices and have already received substantial compensation for their work in this case. The Court considered **AZ ST PROB Rule 33, AZ ST CIA § 3-303**, and has conducted the required "close scrutiny of fee requests" pursuant to **In re Guardianship of Sleeth**, 226 Ariz. 171, 177, 244 P.3d 1169, 1175 (Ct. App. 2010) in making this decision. By denying the pending fees, the Court reduces the total compensation paid by Mr. Chalmers to the professionals here by 24.63% (\$80,818.50 is approximately 24.63% of \$328,069.42). Individually, it reduces Mr. McKindles fee by 28.94% (\$16,193.50 is approximately 28.94% of \$55,943.50), reduces Mr. Sharber's fee by 45.2% (\$30,746.50 is approximately 45.2% of \$68,022.07), reduces EVFS' fees by approximately 23.22% (\$24,105.14 is approximately 23.22% of \$103,786.31, and reduces Mr. Theut's fees by approximately 9.74% (\$9,773.36 is approximately 9.74% of \$100,318.54).

Theut reimbursed Chalmers the [REDACTED] that EVFS issued to Theut on or about September 17, 2018, the day before the temporary conservatorship ended.

ACJA §7-202(J)(1)(c)(2) and (3):

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate...consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;

(3) Not knowingly file any document with the court or present testimony to the court that is misleading, inaccurate, or false, or that contains misstatements, misrepresentations, or omissions of material facts;

In the Final Inventory & Accounting, EVFS represented to the Court that the \$9,773.36 payment to Theut on September 17, 2017, was "per court order, Rule 33 fees." Theut did not file with the Court his Rule 33 Application for the \$9,773.36 fees until January 17, 2019, and there was no Court order approving those fees as represented in the Final Inventory & Accounting.

Allegation 37 is substantiated (involving EVFS and Bogle).

Allegation 38: East Valley Fiduciary Services, Inc. failed to timely file the final conservator's accounting in accordance with the Court's order.

On September 10, 2018, the Court issued a Minute Entry ordering that the temporary limited conservatorship would terminate on September 18, 2018, and further ordering that EVFS file a formal accounting within 60 days of the date of the entry of this Order.

IT IS FURTHER ORDERED that within 60 days of the date of the entry of this Order, East Valley Fiduciary shall file a formal accounting for the entire period of the appointment since August 17, 2017 until termination of the temporary limited

conservatorship. East Valley Fiduciary Services will be discharged only upon approval of the accounting. [emphasis in original]

The Minute Entry was electronically filed on September 11, 2018.

EVFS was required to submit to the Court a final accounting within 60 days of the Court's entry of the order which would be on or about November 11, 2018. EVFS did not file the final formal accounting by the Court's deadline. EVFS, by and through counsel, filed with the Court the Final Inventory & Accounting on December 6, 2018. There is no record that EVFS sought an extension of time to file the final accounting.

ACJA §7-202(J)(1)(a) and (2):

1. Duty to the Court.

a. The fiduciary shall perform all duties and discharge all obligations in accordance with current Arizona law, federal law, administrative rules, court orders, court rules, administrative orders, and the Arizona Code of Judicial Administration.

(2) Provide or ensure that reports, notices, financial accounts, and other documents are timely, complete, accurate...consistent with the requirements specified in Arizona law, court rule, and the applicable sections of the Arizona Code of Judicial Administration;

ARPP Rule 30. Guardianships/Conservatorships-Specific Procedures, in effect at the time:

B. CONSERVATOR'S ACCOUNTS

5. If the conservator is unable to file an ACCOUNT accounting within the time set forth in this rule, the conservator shall, before the deadline, file a motion that requests additional time to file the ACCOUNT accounting. The motion shall, at a minimum, state why additional time is required and how much additional time is required to file the ACCOUNT accounting.

6. For purposes of this rule, if the conservator's appointment initially was temporary, "the date the conservator's letters were first issued" shall mean the date the conservator's temporary letters were issued; otherwise, "the date the conservator's letters were first issued" shall mean the date the conservator's permanent letters were issued.

On November 13, 2018, Chalmers, by and through counsel, filed with the Court, (1) Petition for Order to Show Cause Re Compliance with Stipulated Amended Order Appointing Temporary Limited Conservator of an Adult and (2) Motion For Order Regarding Termination of Temporary Conservatorship and Transfer of Assets and

Information to Ward. Chalmers raised a number of concerns. Pertinent to the final accounting, Chalmers accused EVFS of failing to file the final formal accounting by November 5, 2018.

EVFS responded to the said Petition and defended its actions regarding various issues that Chalmers had identified in his Petition, but EVFS did not mention the final accounting matter.

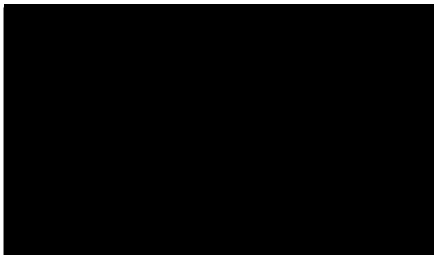
The Court issued a Minute Entry on November 26, 2018, pertinent to the final accounting, the Court ordered:

IT IS ORDERED that East Valley Fiduciary Services, submit to Court-appointed Counsel, Michael Doyle and William Chalmers the final accounting by **close of business on December 10, 2018.** [emphasis in original]

EVFS complied with the Court's order and filed the final accounting on December 6, 2018, but EVFS failed to comply with the Court's Minute Entry of September 10, 2018, that ordered EVFS to file the final formal accounting within 60 days of the entry of that order.

Allegation 38 is substantiated (involving EVFS and Bogle).

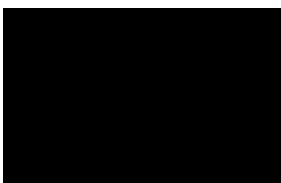
SUBMITTED BY:



PASQUALE FONTANA, Investigator
Certification and Licensing Division

October 20, 2022
Date

REVIEWED BY:



AARON NASH, Division Director
Certification and Licensing Division

10/21/2022
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 20-0011/20-0012/21-0012, the Probable Cause Evaluator:

- requests division staff to investigate further.

- determines probable cause does not exist that certificate holders East Valley Fiduciary Services, Inc.; Michael Bogle; or Andrew Stone committed the alleged acts of misconduct as to Allegation(s):
9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36

- determines probable cause exists the certificate holders committed the alleged acts of misconduct as to Allegation(s):
1 (East Valley Fiduciary Services, Inc. and Michael Bogle), 2 (East Valley Fiduciary Services, Inc. and Michael Bogle), 3 (East Valley Fiduciary Services, Inc.; Michael Bogle; and Andrew Stone), 4 (East Valley Fiduciary Services, Inc. and Michael Bogle), 5 (East Valley Fiduciary Services, Inc. and Michael Bogle), 6 (East Valley Fiduciary Services, Inc. and Michael Bogle), 7 (East Valley Fiduciary Services, Inc. and Michael Bogle), 8 (East Valley Fiduciary Services, Inc. and Michael Bogle), 22 (partial, and as to East Valley Fiduciary Services, Inc. and Michael Bogle), 23 (partial, and as to East Valley Fiduciary Services, Inc. and Michael Bogle), 37 (East Valley Fiduciary Services, Inc. and Michael Bogle), and 38 (East Valley Fiduciary Services, Inc. and Michael Bogle)


Marcus Reinkensmeyer 11-1-2022
Probable Cause Evaluator Date

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

**LICENSE
HOLDER
INFORMATION**

License Holder:	Michael Bogle
License Number:	██████████
License Holder:	Andrew Stone
License Number:	██████████
Business Name:	East Valley Fiduciary Services, Inc.
License Number:	██████████
Type of License:	Individual (Michael Bogle) Individual (Andrew Stone) Business Entity (East Valley Fiduciary Services, Inc.)

RECOMMENDATION TO THE FIDUCIARY BOARD (“BOARD”):

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding that **Michael Bogle, Andrew Stone, and East Valley Fiduciary Services, Inc.** have not committed the alleged acts of misconduct as detailed in allegations 9 through 21 and 24 through 36 of the Investigation Summary and Probable Cause Analysis and Determination Report in complaint numbers **20-0011/20-0012/21-0012**.

It is further recommended the Board dismiss allegations 9 through 21 and 24 through 36.

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding **Andrew Stone** has committed the alleged acts of misconduct as detailed in allegation 3 of the Investigation Summary and Probable Cause Analysis and Determination Report in complaint numbers **20-0011/20-0012/21-0012**.

It is further recommended the Board enter a finding that grounds for informal disciplinary action exist under Arizona Code of Judicial Administration (“ACJA”) § 7-201(H)(6)(a) for acts of misconduct as further described in the Investigation Summary and Probable Cause Analysis and Determination Report.

Mitigating Factors:

1. Absence of a prior disciplinary record.

Aggravating Factors:

1. None.

It is further recommended the Board issue a Letter of Concern to **Andrew Stone**, license number 20826, under ACJA § 7-201(H)(7)(b) and (H)(24)(a)(6)(a).

It is recommended the Board accept the finding of the Probable Cause Evaluator and enter a finding **Michael Bogle and East Valley Fiduciary Services, Inc.** have committed the alleged acts of misconduct as detailed in allegations 1 through 8, 22 and 23 in the limited manner noted, and 37 and 38 of the Investigation Summary and Probable Cause Analysis and Determination Report in complaint numbers 20-0011/20-0012/21-0012.

It is further recommended the Board enter a finding that grounds for formal disciplinary action exist under Arizona Code of Judicial Administration ("ACJA") § 7-201(H)(6)(a) for acts of misconduct as further described in the Investigation Summary and Probable Cause Analysis and Determination Report.

Mitigating Factors:

1. None.

Aggravating Factors:

1. A prior disciplinary record.
2. Multiple offenses.
3. Substantial experience in the profession or occupation.

It is further recommended the Board issue a Censure against **Michael Bogle**, license number 20628, under ACJA § 7-201(H)(6)(a), (H)(9), and (H)(24)(a)(6)(b) and direct under ACJA § 7-201(H)(24)(a)(6)(f) that **Michael Bogle** complete a minimum of 5 hours total of continuing education that includes substantive content on court accountings, record keeping, and financial management, providing proof of completion to the Division within 90 days after the Board files the Notice of Formal Charges and Right to Hearing. The 5 hours of continuing education being in addition to the requirements of ACJA § 7-202(L)(2).

It is further recommended the Board issue a Censure against **East Valley Fiduciary Services, Inc.**, license number 20592, under ACJA § 7-201(H)(6)(a), (H)(9), and (H)(24)(a)(6)(b).

SUBMITTED BY:



11/1/2022

Aaron Nash, Division Director Date
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 numbers 20-0011/20-0012/21-0012 and Michael Bogle, license number [REDACTED] and East Valley Fiduciary Services, Inc., license number [REDACTED], (complaint numbers 20-0011 and 20-0012), 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:

Consent Agreement with terms involving Censure with Probation that includes audit.



Deborah Primock, Chair
Board of Fiduciary

5/19/25
Date