

Arizona Supreme Court  
Administrative Office of the Courts



**Fiduciary Licensing**

*Compliance Audit*

**MARLENE APPEL**

*April 2012*

Certification and Licensing Division  
Compliance Unit

April 4, 2012

Marlene Appel  
3411 N. 5<sup>th</sup> Ave. Ste 300  
Phoenix, AZ 85013

**RE: Fiduciary Compliance Audit**

Dear Ms. Appel:

Enclosed is your final compliance audit report.

Thank you for your cooperation and assistance during the compliance audit process. To the extent the fiduciary audit process will assist the court to ensure the safety, health and welfare of individuals and estates entrusted by the court to your management, we have benefited from our audit of your court appointments. I hope you and your clients will equally benefit.

If you have any questions, please contact Anne Hunter, Compliance Unit Manager, at (602) 452-3415.

Sincerely,

Nancy Swetnam, Director  
Certification and Licensing Division

Enclosures

cc. Honorable Rose Mroz, Probate Presiding Judge, Superior Court in Maricopa County  
Michael K. Jeanes, Clerk of the Court, Superior Court in Maricopa County

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### *Disclaimer*

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

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

# **EXECUTIVE SUMMARY**

## **Executive Summary**

**Marlene Appel, #20103**

### **Compliance Audit Report**

The Arizona Supreme Court, Fiduciary Certification Program conducted a compliance audit of Marlene Appel, 20103, pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of January 9, 2012 through February 14, 2012 the Compliance Unit audited the fiduciary activities of Marlene Appel, license #20103, and her uncertified employees.<sup>1</sup> The following is a summary of the audit findings.

#### ***Finding # 1 – Accuracy***

*Ms. Appel's fee statements did not comply with probate rules.*

*Ms. Appel agrees with the finding.*

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#### ***Finding # 2 – Inventory***

*Ms. Appel's inventory and appraisal was not complete.*

*Ms. Appel agrees with the finding.*

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<sup>1</sup> Pursuant to the Arizona Code of Judicial Administration §7-201 and §7 -202, licensed fiduciaries are required to provide active and direct supervision of other licensed fiduciaries, trainees and support staff who are employed by the fiduciary.

# **FINAL REPORT**

# Marlene Appel

## Compliance Audit Report Draft

***Objective***

The compliance audit of Marlene Appel was conducted by staff from the Compliance Unit of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court, pursuant to the Fiduciary Program's responsibilities as set forth in A.R.S. § 14-5651, Arizona Supreme Court Administrative Order No. 2003-31, the Arizona Code of Judicial Administration (“ACJA”) § 7-201: General Requirements and § 7-202: Fiduciaries, and the Arizona Rules of Probate Procedure (“ARPP”).<sup>1</sup>

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

***Methodology***

Preliminary survey questions were provided to Marlene Appel (“Appel”) and auditors reviewed the responses to prepare for the compliance audit and to assist in the development of case file samples. In addition, information was requested from the Superior Court in Maricopa County to verify court appointment information.

In order to test for compliance, auditors used a set of fiduciary compliance attributes taken from Arizona statutes, Arizona Supreme Court rules and ACJA § 7-201 and §7-202. Compliance with these requirements was tested using staff interviews, observations, and review of client case files.

A stratified sampling approach was used to select client case files for review. The files were selected by type of appointment, length of appointment, type of required client protection and initiation or termination of appointment during the review time frame. The selected sample of court appointed client case files was designed to provide conclusions about the accuracy, validity and timeliness of transactions, compliance with the fiduciary attributes, and the adequacy of internal controls.

Prior to beginning the onsite fieldwork, the auditors reviewed client court files from the Superior Court in Maricopa County and on February 9, 2012 conducted an internal controls interview with Appel’s staff.

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<sup>1</sup> Arizona Codes of Judicial Administration, General Requirements & Fiduciaries, January 1, 2007

# Marlene Appel

## Compliance Audit Report Draft

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***Scope***

During the period of February 9, 2012 through February 13, 2012 audit staff conducted the onsite compliance portion of the audit of Appel. The onsite compliance portion of the audit consisted primarily of fiduciary client case file review. The audit also included a review of fiduciary activities of the principal fiduciary and un-licensed staff. An exit interview was conducted February 13, 2012.

Appel was the court appointed fiduciary on 2 personal representative cases and 2 special administrator cases as of January 31, 2012. Appel has approximately \$1,927,500 in court-appointed client assets under management.

The compliance audit team reviewed a sample of four (4) client case files of court appointments and terminations, focusing on the internal controls, processes, timeliness, accuracy, and statutory and ACJA requirements of client case administration.

***Summary***

Appel's staff extended professional courtesies and cooperation to the audit team during the course of the audit.

The compliance audit found non-compliance in two (2) areas. The non-compliance was found in the areas of compliance with probate rules, and inventory. These findings are discussed as follows:

**Marlene Appel**  
**Compliance Audit Report Draft**

<p><b><i>Finding # 1</i></b></p> <p><b><u>Compliance</u></b></p> <p><u>Related Attributes:</u></p> <p><i>Arizona Rules of Probate Procedure, Rule 33(A)</i></p> <p><b><i>Requirement</i></b></p>	<p>Ms. Appel’s fee statements did not comply with Arizona Rules of Probate Procedure.</p> <ul style="list-style-type: none"> <li>• Auditors were unable to determine whether services were billed for paralegal or fiduciary services because the name and position of the person performing the service was not included on the fee statement– Client # 1</li> </ul> <p>Pursuant to the Arizona Rules of Probate Procedure, Rule 33(A), a fiduciary’s statement of services must include the name and position of the person who performed the services.</p>
<p><b><i>Auditee's Response</i></b></p>	<p><i>“I agree that the auditors were not able to distinguish between the paralegal and fiduciary services in my fee statements because the name and position of the person performing the service was not shown.”</i></p> <p><i>“A number of years ago, Timeslips offered a bare-bones version of its billing software called Timeslips for Solos at a hefty discount from the price of its standard software package. One of the trade-offs was a restriction to two timekeepers, which I allocated to attorney (MA) and paralegal (PS). Because I could not add any more timekeepers and my paralegal’s hourly rate was the same as my hourly rate as a fiduciary, all work done by me as a fiduciary and all work done by my paralegal was listed under the PS category.”</i></p> <p><i>“When this was brought up during the audit, I checked my current Timeslips program because it occurred to me for the first time that the various upgrades to my software may have eliminated the restriction. They did and I can now add additional timekeepers. Attached to my prior response was the list of Timekeepers which specifically designates the person performing the services: CN for conservator, POA for power of attorney agent, PR for personal representative, PS for paralegal services, SA for special administrator and TR for trustee. The narrative portion of my fee statements names me as the fiduciary for compliance purposes.”</i></p> <p><i>“Since the adoption of Rule 33 in 2009, not one judicial officer has ever found my bills to be incomplete, inaccurate, confusing or</i></p>

**Marlene Appel**  
**Compliance Audit Report Draft**

	<p><i>not in compliance. In all the years I have been using the 2-timekeeper system and with almost two thousand bills sent out in that time, not one judge, commissioner, probate court accountant, client, party, opposing attorney, private fiduciary, corporate fiduciary or other interested person ever questioned or objected to my bills on the basis that the name or position of the person performing the paralegal or fiduciary tasks was not shown.”</i></p> <p><i>“In any event, the expanded list of Timekeepers along with the identity of the person in the narrative portion of the fee statements resolves the problem.”</i></p>
<p><b><i>Finding # 2</i></b></p> <p><b><u><i>Inventory</i></u></b></p> <p><i>Related Attributes:</i></p> <p><i>Arizona Revised Statutes § 14-3706(A)</i></p> <p><b><i>Requirement</i></b></p>	<p>Ms. Appel’s inventory and appraisalment was not complete.</p> <ul style="list-style-type: none"> <li>• Assets were not valued as of the date of death – Client # 1</li> </ul> <p>A personal representative must value assets as of the date of death on the inventory and appraisalment.</p>
<p><b><i>Auditee's Response</i></b></p>	<p><i>“I agree that not all of the assets shown on the inventory for Client # 1 were valued as of date of death. Some of the values were as of later dates (and so noted) on either the original inventory or the supplemental inventories. The date of death values would be the same as those shown on the inventories or very close to the same values (which the beneficiaries and their attorneys in this case already know), so I do not know what corrective action needs to be taken in this case at this time. Future inventories will reflect date of death values for all assets.”</i></p>

# **APPENDIX**

## **RESPONSE TO FINAL REPORT**

Marlene Appel, PLLC

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Certified Fiduciary (20103)

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April 4, 2012

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Compliance Manager  
Certification and Licensing Division  
Arizona Supreme Court  
1501 West Washington #104  
Phoenix, AZ 85007-3231  
[ahunter@courts.az.gov](mailto:ahunter@courts.az.gov)

RE: Fiduciary Compliance Audit  
Licensed Fiduciary 20103

Dear Ms. Hunter,

This letter is in response to your April 4 email regarding the revised draft report of the compliance audit.

Finding #1: Name and Position of Paralegal or Fiduciary

I agree that the auditors were not able to distinguish between the paralegal and fiduciary services in my fee statements because the name and position of the person performing the service was not shown.

A number of years ago, Timeslips offered a bare-bones version of its billing software called Timeslips for Solos at a hefty discount from the price of its standard software package. One of the trade-offs was a restriction to two timekeepers, which I allocated to attorney (MA) and paralegal (PS). Because I could not add any more timekeepers and my paralegal's hourly rate was the same as my hourly rate as a fiduciary, all work done by me as a fiduciary and all work done by my paralegal was listed under the PS category.

When this was brought up during the audit, I checked my current Timeslips program because it occurred to me for the first time that the various upgrades to my software may have eliminated the restriction. They did and I can now add additional timekeepers. Attached to my prior response was the list of Timekeepers which specifically designates the person performing the services: CN for conservator, POA for power of attorney agent, PR for personal representative, PS for paralegal services, SA for special administrator and TR for trustee. The narrative portion of my fee statements names me as the fiduciary for compliance purposes.

Ms. Anne Hunter  
April 4, 2012  
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Since the adoption of Rule 33 in 2009, not one judicial officer has ever found my bills to be incomplete, inaccurate, confusing or not in compliance. In all the years I have been using the 2-timekeeper system and with almost two thousand bills sent out in that time, not one judge, commissioner, probate court accountant, client, party, opposing attorney, private fiduciary, corporate fiduciary or other interested person ever questioned or objected to my bills on the basis that the name or position of the person performing the paralegal or fiduciary tasks was not shown.

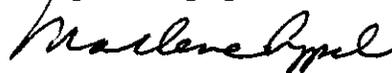
In any event, the expanded list of Timekeepers along with the identity of the person in the narrative portion of the fee statements resolves the problem.

Finding #2: Inventory

I agree that not all of the assets shown on the inventory for Client #1 were valued as of date of death. Some of the values were as of later dates (and so noted) on either the original inventory or the supplemental inventories. The date of death values would be the same as those shown on the inventories or very close to the same values (which the beneficiaries and their attorneys in this case already know), so I do not know what corrective action needs to be taken in this case at this time. Future inventories will reflect date of death values for all assets.

I believe this letter responds to the revised draft report. If there is anything further you need from me, please let me know.

Very truly yours,



Marlene Appel

Selection Criteria

Time Classification      Open

Nickname 1	Nickname 2	Class
CN Conservator Initials Title Email Address Additional email addresses Hours (Minimum)	Conservator CN Level 1    <del>40:00 per Week</del>	Open
Marlene Marlene Appel Initials Title Email Address Additional email addresses Hours (Minimum)	MA MA Level 1    <del>40:00 per Week</del>	Open
POA POA Agent Initials Title Email Address Additional email addresses Hours (Minimum)	POA Agent PA Level 1    <del>40:00 per Week</del>	Open
PR Personal Representative Initials Title Email Address Additional email addresses Hours (Minimum)	Personal Repres PR Level 1    <del>40:00 per Week</del>	Open
PS Paralegal Initials Title Email Address Additional email addresses Hours (Minimum)	Paralegal PS Level 1    <del>40:00 per Week</del>	Open
SA Special Administrator Initials Title Email Address Additional email addresses Hours (Minimum)	Special Adminis SA Level 1    <del>40:00 per Week</del>	Open
TR Trustee Initials Title Email Address Additional email addresses Hours (Minimum)	Trustee T Level 1    <del>40:00 per Week</del>	Open