

Arizona Supreme Court
Administrative Office of the Courts



Fiduciary Certification

Compliance Audit

Childers&Berg, LLC



Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

Rebecca White Berch
Chief Justice

David K. Byers
Administrative Director
of the Courts

July 7, 2011

Donald Childers
11134 W. Wisconsin Ave.
Young Town, AZ 85363

RE: Fiduciary Compliance Audit

Dear Mr. Childers:

Enclosed is the final compliance audit report for Childers & Berg, LLC private fiduciary.

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

If you have any questions, please contact Lori Braddock (602) 452-3277.

Sincerely,

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

Nancy Swetnam, Director
Certification and Licensing Division

Enclosures

c. Honorable 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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Childers & Berg, LLC

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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

Childers & Berg, LLC

Compliance Audit Report

The Arizona Supreme Court, Fiduciary Licensure Program conducted a compliance audit of Childers & Berg, LLC, (“C&BF”), pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of November 3, 2010 through November 19, 2010 the Compliance Unit audited the fiduciary activities of Childers & Berg, LLC. The following is a summary of the audit findings.

Finding # 1 – Documentation

By Arizona statute a fiduciary must keep suitable records of their administration and exhibit them upon request. “C&BF” was missing documentation of their administration of client accounts.

“C&BF” agrees with the finding.

Finding # 2 – Late Filings

“C&BF” did not file an Inventory and Appraisal as required by Arizona statute.

“C&BF” agrees with the finding.

FINAL REPORT

Childers & Berg Fiduciary Compliance Audit Report

Objective

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

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

In preparation for the compliance audit, preliminary survey questions were requested and responded to by Childers and Berg Fiduciary ("C&BF"). The responses were reviewed and compiled to assist in the development of case file samples. In addition, information was requested from the Superior Court in Maricopa County to verify court appointment information.

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

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

Beginning November 3, 2010 and prior to beginning the onsite fieldwork, the auditors reviewed the selected client court files from the Superior Court in Maricopa County and conducted an internal controls interview with C&BF staff.

¹ Arizona Codes of Judicial Administration, General Requirements & Fiduciaries, January 1, 2007

Childers & Berg Fiduciary Compliance Audit Report

	<p>During the period of November 3, 2010 through November 19, 2010 staff from the Compliance Unit of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court, conducted the onsite compliance portion of the audit of the C&BF office. The onsite compliance audit consists primarily of fiduciary client case file review. The audit also included the fiduciary activities of the two principal fiduciaries, licensed and un-licensed staff. An Exit Interview was conducted November 24, 2010.</p> <p>C&BF was the court appointed fiduciary on 4 guardian, 12 conservator, 22 combination guardian/conservator, and 17 personal representative cases as of October 26, 2010. Also as of October 26, 2010 C&BF had approximately \$22,908,459.17 in court-appointed client assets under management.</p> <p><i>Scope</i></p> <p>The compliance audit team reviewed a selected stratified sample of eight (8) client case files of court appointments and terminations, focusing on the internal controls, processes, timeliness, accuracy, statutory and ACJA requirements of client case administration.</p> <p><i>Summary</i></p> <p>C&BF staff extended professional courtesies and cooperation to the audit team during the course of the audit.</p> <p>The compliance audit found non-compliance in two (2) areas. The non-compliance was found in the areas of documentation and late filings. These findings are discussed as follows:</p>
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Childers & Berg Fiduciary Compliance Audit Report

<p><i>Finding # 1</i></p> <p><u>Documentation</u></p> <p>ARS § 14-5418(B)</p> <p><i>Requirement</i></p>	<p>By Arizona statute a fiduciary must keep suitable records of their administration and exhibit them upon request.</p> <ul style="list-style-type: none"> •The first and second Annual Accountings are not in the file – Client # 1 •A conformed copy of the Inventory and Appraisal is not in the file – Clients # 1 and #6 •No proof of restricted accounts were found in the file – Client # 1 •No proof of recorded letters in county of appointment or other counties were found in the file – Client # 1 •An email requesting payment was used rather than an invoice for a payment of \$1,100 on 10/28 – Client #4 •First Annual Report of Guardian was not found in file – Client # 6 •Time frame was not provided on the Annual Report of Guardian – Client # 6 <p>C&BF must develop a systematic process for documenting the administration of a client’s estate and/or care to include all assets, transactions, activities and decision-making for each court appointed client.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Generally, C&B agrees with your findings. We make specific notations for each bulleted item in Attachment A.”</i></p>
<p><i>Corrective Action</i></p>	<p><i>“On January 3, 2011 we revised C&B policy #CON02 (Attachment B) and implemented a systematic checklist (Attachment C) to reasonably ensure that we have documented the administration of a client’s estate and/or care as required by statute, regulation, and rules applicable to fiduciaries licensed in Arizona. This procedural change includes the use of an electronic calendaring system and spreadsheets listing mandated tasks and follow-up required by Estate Administrators. We have listed corrective action taken with regard to each bulleted item in your report.”</i></p>

Childers & Berg Fiduciary Compliance Audit Report

<p><i>Finding # 2</i></p> <p><u>Late Filings</u></p> <p><i>ARS § 14-5418(A)</i></p> <p><i>Arizona Code of Judicial Administration § 7-202(J)(2)(e)</i></p> <p><i>Arizona Rules of Probate Procedure Rule 30(A)</i></p> <p><i>Requirement</i></p>	<p>A licensed fiduciary must ensure any document filed with the superior court is timely.</p> <ul style="list-style-type: none">•The Inventory and Appraisement was not filed timely – Clients # 4 and 6 <p>C&BF must submit the inventory and appraisement on or before the statutorily required due date or court ordered due date for each client.</p>
<p><i>Auditee's Response</i></p>	<p><i>“Agree.”</i></p>
<p><i>Corrective Action</i></p>	<p><i>“The corrective action outlined above should reasonably ensure compliance with all mandated filings.”</i></p> <p><i>“We appreciate the professionalism you and Ms. Braddock demonstrated throughout the process.”</i></p>

APPENDIX

RESPONSE TO FINAL REPORT

childers&berg, LLC

Private Fiduciary Associates

Donal D. Childers
Fiduciary License #20058

Jane S. Berg, CMC
Fiduciary License #20368
Certified Care Manager

January 18, 2011

Arizona Supreme Court
Certification and Licensing Division
Attn: Katherine A. Boots
1501 W. Washington Street
Phoenix, AZ 85007-3231

Dear Ms. Boots,

Childers & Berg, LLC (C&B) received your draft report of the fiduciary compliance audit dated January 7, 2011. As requested, we have prepared this response which indicates whether we agree or disagree with each finding and corrective actions we have taken.

Finding # 1 - Documentation

Response - Generally, C&B agrees with your findings. We make specific notations for each bulleted item in Attachment A.

Corrective Action - On January 3, 2011 we revised C&B policy #CON02 (Attachment B) and implemented a systematic checklist (Attachment C) to reasonably ensure that we have documented the administration of a client's estate and/or care as required by statute, regulation, and rules applicable to fiduciaries licensed in Arizona. This procedural change includes the use of an electronic calendaring system and spreadsheets listing mandated tasks and follow-up required by Estate Administrators. We have listed corrective action taken with regard to each bulleted item in your report.

Finding # 2 - Late Filings

Response - Agree.

Corrective Action - The corrective action outlined above should reasonably ensure compliance with all mandated filings.

We appreciate the professionalism you and Ms. Braddock demonstrated throughout the process.

Sincerely,



Donal D. Childers
For The Firm

Fiduciary License #20470

Phone: (623) 972-3819 • Fax: (623) 977-0352 • E-mail: DChilders@childersandberg.com
11134 West Wisconsin Avenue Youngtown, Arizona 85363

Attachment A

No.	Finding 1 - Bulleted Items	Response	Corrective Action
1	The first and second Annual Accountings are not in the file – Client # 1.	Agree in part. The "first" Annual Accounting was in fact a "First and Final" Accounting, consequently there would not have been a second accounting.	We now have a conformed copy of the "Petition for Order Approving the First and Final Accounting", with the Accounting attached as Exhibit 2 – for Client # 1.
2	A conformed copy of the Inventory and Appraisal is not in the file – Clients # 1 & # 6.	Agree.	We now have conformed copy of the "Inventory & Appraisal", for Clients # 1 & # 6, in our file.
3	No proof of restricted accounts were found in the file – Client #1.	Agree. However, the order appointing C&B, dated 5/26/09, reflected that Conservatorship assets "exceeding the cumulative value of \$50,000.00, . . ." be restricted and proof of restriction be filed within 30 days of asset location. All assets were in the Trust. Therefore, we believed no such proof was required.	No specific corrective action taken.
4	No proof of recorded letters in county of appointment or other counties were found in the file – Client # 1.	Agree. However, Client # 1 was a conservatorship that was later determined to be without assets except an interest in a Trust. C&B was later appointed Trustee, but no Letters of Appointment were issued and consequently could not be recorded.	No specific corrective action taken.
5	An e-mail requesting payment was used rather than an invoice for payment of \$1,100 on 10/28 – Client # 4.	Agree. However, this was a pre-payment for estimated legal fees to finalize work in the Conservatorship prior to C&B's petition to terminate.	No specific corrective action taken.
6	First Annual Report of Guardian was not found in file – Client # 6.	Agree.	We have requested a conformed copy of the First Annual Report of Guardian.
7	Time-frame was not provided on the Annual Report of Guardian – Client # 6.	Agree.	We have implemented corrective training to help ensure that all required elements, including the period covered by the report, are properly included in our Report of Guardian.
No.	Finding 2 - Bulleted Items	Response	Corrective Action
1	The Inventory & Appraisal was not filed timely – Clients # 4 & # 6.	Agree	No specific corrective action taken.

Attachment B

Childers & Berg, LLC
Policy #CON02 Estate Administrators

- Summary:** All clients of Childers & Berg, LLC will be assigned to an Estate Administrator as a way to reduce the span of control for management, help insure timely and accurate court reports, financial management and planning and provide for management of a growing case load.
- Purpose:** Provide for efficient management of client financial issues, assign accountability for reports, and provide single point of familiarity with each case for financial analysis and ALTCS planning if appropriate.
- Procedure:** Each new Court appointment will be assigned to an Estate Administrator (EA). The EA will be responsible for all aspects of financial management for their case load under the supervision of a Licensed Fiduciary.

The EA will ensure that the Mandate & Follow-up Tracking spreadsheets are completed and updated for each client or estate prior to the weekly individual status meetings. EAs will ensure that appropriate calendar reminders are set accordingly.

The EA will insure that funds and/or assets of the Protected Person are not co-mingled with other C&B clients, Protected Persons or with C&B business funds.

Some of the duties/responsibilities of the EA are:

1. Arrange for a bond by faxing Order to the bonding company.
2. Sort financial documents from the client's home to locate assets.
3. Visit banks in the local area to present Letters and marshal accounts.
4. Safeguard all financial and personal assets, insure all funds are properly deposited and/or invested.
5. Contact all depositories and provide copy of Letters.
6. Prepare Inventory and Appraisal.
7. Manage preparation, execution and filing of the Inventory and Proofs of Restricted Account as well as other initial Court reports.
8. Record Letters for real property.
9. Coordinate inventory and valuation of Household Goods and Personal Property.

10. Set up QB accounts for all assets IAW Inventory and Appraisal (Note: EAs will not set up a QB Customer account or “company”).
11. Establish a Conservator’s Checking Account if appropriate and ensure checks are ordered.
12. Ensure a change of address form is submitted to the Post Office.
13. Ensure payment of the client’s bills.
14. Arrange for direct deposit of client’s Social Security or other pension benefits, annuity payments or other sources of income
15. Monitor non-restricted funds/assets to ensure availability of funds to meet expenses and/or ALTCS eligibility.
16. Manage annual Court reporting:
 - a. Prepare Inventory and Appraisal.
 - b. Prepare Accounting, including financial reports, notes, bond recommendation and analysis of fiduciary fees.
 - c. Coordinate Guardian Report if required.
 - d. Coordinate preparation of Explanation of Extraordinary Expenses report.
 - e. Manage the income and assets of the Protected Person with the goal of meeting the long-term needs of the Protected Person.
17. Prepare ALTCS application and follow through with termination of Conservatorship.

