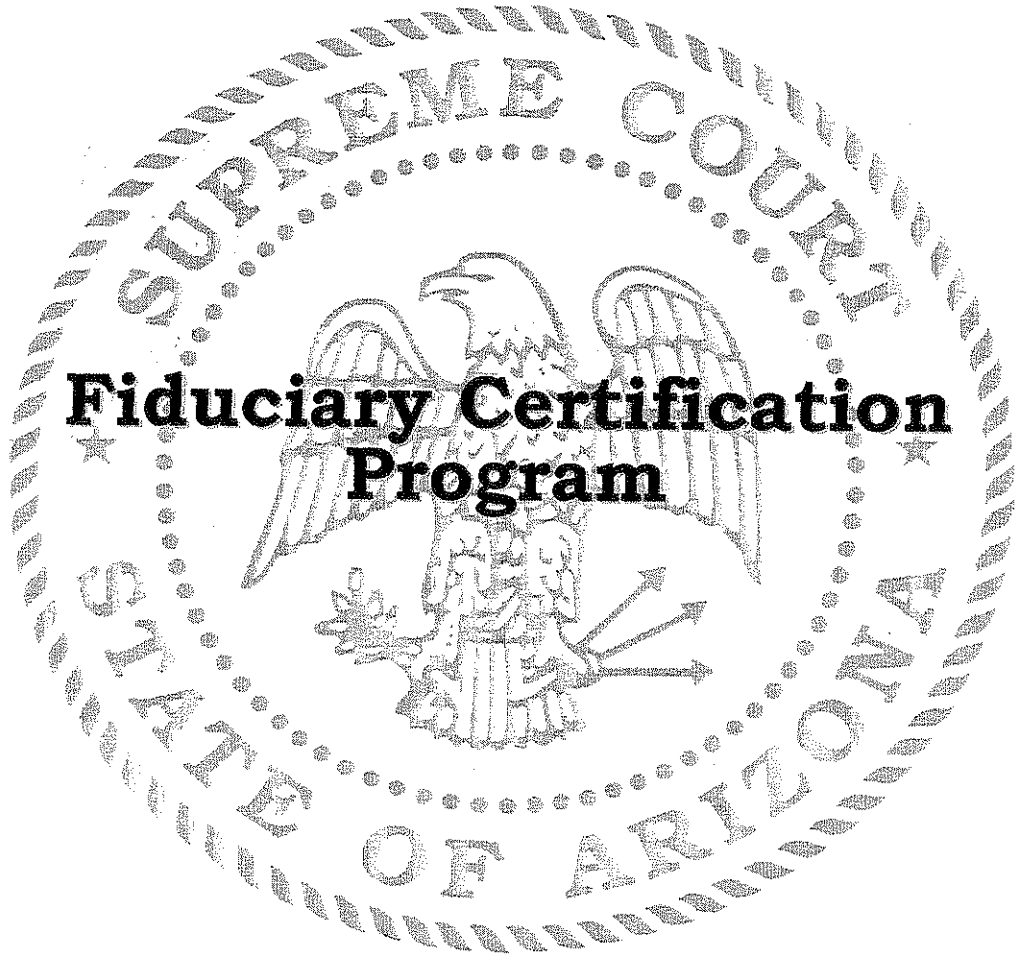
Arizona Supreme Court
Administrative Office of the Courts



Fiduciary Certification Program

Compliance Audit

Graham County Public Fiduciary

March 2004

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Arizona Supreme Court

Charles E. Jones
Chief Justice

Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

David K. Byers
Administrative Director
of the Courts

September 28, 2004

Donna Dauenhauer
Public Fiduciary
820 West Main Street
Safford, AZ 85546

Re: Graham County Public Fiduciary Audit Report

Dear Ms. Dauenhauer:

Enclosed is the final compliance audit report for the Graham County Public Fiduciary Office. Thank you for your prompt responses to the draft audit and your corrective action plan.

Thank you also for your cooperation and assistance during the compliance audit process. The hard work exhibited by you 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 the Graham County Public Fiduciary Office. I hope the Graham County Public Fiduciary and your clients will equally benefit.

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

Sincerely,

Nancy Swetnam

Nancy Swetnam, Director
Certification and Licensing Division

Enclosures

copy: Honorable R. Douglas Holt, Presiding Judge, Superior Court in Graham County
Jim Palmer, Chairman, Graham County Board of Supervisors
Dave Byers, Director, Administrative Office of the Courts
Mike Baumstark, Deputy Director, Administrative Office of the Courts

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Disclaimer

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

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

SECTION ONE

EXECUTIVE SUMMARY

Executive Summary

Graham County Public Fiduciary

Compliance Audit Report

The Arizona Supreme Court, Fiduciary Certification Program conducted a compliance audit of Graham County Public Fiduciary pursuant to Arizona Revised Statutes § 14-5651 and Arizona Supreme Court Administrative Order 2003-31. During the period of March 1, 2004 through March 8, 2004 the Fiduciary Program audited the fiduciary activities of the Graham County Public Fiduciary Office (GCPF) and its certified employees. The following is a summary of the audit findings.

Finding #1 – Inventories

The GCPF did not have inventories and appraisements filed with the court for the clients whose case files were reviewed for compliance.

The GCPF agreed with the finding and has agreed to complete inventories and appraisements on new clients.

Finding #2 – Accountings

Required client annual accountings either were not submitted to the court or were missing from the fiduciary client files.

This finding was dismissed upon GCPF submitting the accountings; however, the auditors were unable to verify the assets or the accuracy of the submitted annual accountings since the accountings were submitted after the conclusion of the audit fieldwork.

Corrective action is not required.

Finding #3 – Accounting Accuracy

Because initial inventories were not prepared by GCPF all subsequent annual accountings were not accurate for lack of a beginning balance. Court submissions whether required or not must be accurate.

The GCPF did not agree but has agreed to ensure annual accountings' beginning balances will match the ending balances of previous annual accountings, unless it is a first annual accounting where the beginning balance will match the inventory balance.

Finding #4 – Guardianship Reports

Statutorily required guardianship reports were not prepared and submitted to the court.

The GCPF agreed with the finding and has committed to prepare and submit guardianship reports to the court along with the annual accountings.

Finding #5 – Standard of Care

Lack of follow-up from a prior fiduciary's administration of a client resulted in loss of funds to a client's estate.

The GCPF agreed with the finding and will now review the work of previous conservators to assure there are no outstanding issues or funds/property needing to be secured.

Finding #6 – Documentation

The GCPF did not keep or exhibit suitable records of the administration of client estates.

The GCPF agreed with the finding and will maintain suitable documentation in client files in order to determine the rationale for actions taken and to otherwise record business transactions. In addition, GCPF will institute a case management record system.

Finding #7 – Conflict of Interest
Third Party Infringement

The GCPF engaged in the appearance of a conflict of interest and permitted third party infringement by contracting with family members of a client.

The GCPF did not entirely agree with the finding. However, the GCPF has agreed to formally hire individuals utilizing a written contract or the County Personnel System.

Finding #8 – Settlement & Distribution

A decedent's estate from 1997 has not been settled and distributed expeditiously as required by statute.

The GCPF agreed with the finding. GCPF has agreed to either refer the case to the County Attorney's Office for disposition or hire a probate attorney.

Finding #9 – Knowing the Statutes & Fiduciary Code

Each finding of the audit was an example of not knowing the Arizona Code of Judicial Administration ("ACJA") §§ 7-201: General Requirements and 7-202: Fiduciaries.

The GCPF did not agree with the finding stating it was a non-specific finding that supports previous findings already addressed. GCPF has agreed staff will continue to take available training and make greater efforts to comply with applicable standards and regulations.

Finding #10 – Compliance

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

The GCPF did not agree with the finding stating it is duplicative of Finding #9. GCPF has agreed staff will continue to take available training and make greater efforts to comply with applicable standards and regulations.

SECTION TWO

FINAL REPORT

Graham County Public Fiduciary
Compliance Audit Report

Objective

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

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

Methodology

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

In preparation for the compliance audit, preliminary survey questions were requested and responded to by the Graham County Public Fiduciary. The responses were reviewed and compiled to assist in the development of case file sampling. In addition, information was requested from the Superior Court in Graham County to verify court appointment information.

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.

From February 23rd through February 25th, 2004 and prior to beginning the onsite fieldwork, the auditor reviewed the selected client court files at the Superior Court in Graham County and conducted internal controls interviews with the Graham County Public Fiduciary Office staff.

During the period of March 1, 2004 through March 8, 2004 the

Graham County Public Fiduciary
Compliance Audit Report

Fiduciary Program of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court, conducted the onsite fieldwork portion of the audit of the Graham County Public Fiduciary Office. The onsite compliance audit consists primarily of fiduciary client case file review. The audit included the fiduciary activities of the principal and certified staff.

Scope

The review period of the fiduciary activities of the Graham County Public Fiduciary was January 1, 2001 through December 31, 2003. The Graham County Public Fiduciary was the court appointed fiduciary on seventy-three (73) conservator and combination guardian/conservator and personal representative court appointed client cases.

The compliance audit team reviewed a sample of six (6) of the 73 cases of court appointments and terminations, focusing on the internal controls, processes, timeliness and accuracy of client case administration during the review period.

Summary

The Graham County Public Fiduciary's Office has upgraded the accounting process for client funds moving from handwritten accounts to utilizing accounting computer software. There was evidence of the application for benefits for each client, the beginning of client visitation notes and notes of other client related contacts, of agency reports (i.e. social security rep payee reports) being completed and filed timely, of clients signing for their weekly incidental or food checks and of the fiduciaries including their fiduciary certification numbers on court filings as required.

The compliance audit found non-compliance in the areas of inventory and appraisements, accountings, guardianship reports, documentation and ACJA § 7-201: General Requirements and § 7-202: Fiduciaries. These Findings are discussed on the following pages.

Graham County Public Fiduciary
Compliance Audit Report

Finding # 1 ➢ ***Inventories*** *Related Attributes:* *ARS § 14-3706(A) & (B)* *ARS § 14-5418(A) & (B)*	All six of the client case files reviewed did not have inventories and appraisements filed with the court. Because there were no inventories filed with the court, copies of the inventories were not provided to the protected persons in the cases of conservatorships and combination guardian/conservatorships as required by statute. As the court appointed personal representative, the fiduciary was to provide a copy of the inventory to heirs/devisees and also to interested persons upon request.
Requirements	Within ninety days of appointment a fiduciary must prepare and file with the court an inventory of the estate of the protected person or the decedent's estate. The inventory must list with reasonable detail and indicate the fair market value of each item listed on the inventory of the estate as of the date of appointment or date of death. A fiduciary appointed as personal representative in an informal administration may file the inventory with the court and send a copy only to interested persons; or, if the fiduciary elects not to file the inventory with the court must provide a copy of the inventory to each of the heirs or devisees and to any other interested party who requests it. In a formal administration the personal representative must file with the court. A fiduciary appointed as conservator must provide a copy of the inventory to the protected person if they can be located, are at least 14, have sufficient mental capacity or to any parent or guardian with whom the client resides.
Auditee's Response	"We concur with the Finding."
Corrective Action	"Inventories and appraisements will be completed on each client as their Annual Accounting is due to be updated. Inventories and appraisements on new clients will be conducted within 90 days of their appointment. Inventories will be developed with sufficient detail, including digitized pictures as necessary and will indicate fair market value of each item. Upon completion, copies of the inventory will be kept on file and provided to the client, and to any other heir or

	interested party upon request, if the Fiduciary has been designated as a Personal Representative."

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Finding # 2 ➢ ***Accountings*** *Related Attributes:* *ARS § 14-5419(A) & (C)* *Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard(2)(e) &(4)(i).*	This Finding is dismissed. This finding was there was no evidence in the client files of the court filing of client annual accountings on or before each anniversary date. The fiduciary located and provided documentation proving client annual accountings were submitted to the court. *Note: Since the documentation was presented after the conclusion of the audit fieldwork, the auditors did not have the opportunity to review the documentation for accuracy or verification of assets and associated transactions.*
Requirements	A fiduciary appointed as conservator must account to the court annually on the anniversary date of the appointment. A fiduciary must prepare timely accountings and court documents. A fiduciary appointed as conservator must petition, notice and have a court hearing before an adjudication allowing an intermediate or final accounting.
Auditee's Response	"We do not concur with the Finding. The referenced annual accountings had been completed and filed with the Court."
Program Auditor Response to Auditee	This finding will be changed if the following client annual accountings (conformed copies) which were submitted to the court are sent to the Fiduciary Program: • Client # 02 – The last three annual accountings and dates filed • Client # 03 – All three accountings and dates filed • Client # 05 – All three accountings and dates filed For future reference, auditors will only know information which is presented to them. Therefore, if additional information is available elsewhere, the information should either be referenced in the client files or inform the auditors of the additional information and its location.

Corrective Action	The Annual Accountings in question were submitted to the auditors for confirmation of submission. Corrective action is not required.

Finding #3 ➢ ***Accounting Accuracy***	Because all six of the client files reviewed did not have an inventory and appraisement, all annual accountings were not accurate court submissions. The inventory and appraisement performed within the first ninety days of appointment serves as the foundation and the beginning estate asset and income balance for annual accountings. Without the inventory and appraisement to generate the initial estate balance all subsequent accounting balances will not be accurate.
Related Attributes: *Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (2)(e) and(4)(i)*	Appointment as a personal representative (Client # 06) does not require the submission of annual accountings to the court. The client estate is to be settled and distributed as soon as possible with a closing statement submitted to the court and a copy of the statement to distributees. See ARS § 14-3933. However, the accountings filed for the decedent's estate were incorrect for the above stated reason. See Finding # 8. The # 05 client final accounting had a bank statement listed which did not match the accounting period.
Requirements	The fiduciary must ensure any document filed with the superior court is complete, accurate and understandable.
Auditee's Response	"We do not concur with the Findings. Paragraph one of the Finding is repetitive, in that we were previously cited under Finding #1 for inventory deficiencies, and we have indicated that as part of our corrective action, the inventories would be included in the annual accountings. Paragraph two of the Finding indicates that annual accountings are not required for clients in which we function as Personal Representatives, however we believe they are required in accordance with ARS 14-5605(E). The citation is also unclear from the standpoint that if the accountings are unnecessary then we don't need them, so why further comment that they are incorrect for the same reason cited in paragraph one and Finding #1. Paragraph three indicates that there is a bank statement in a final accounting for Client #5 that does not match the accounting period, however upon further review it has been determined that there are no bank statements in the final accounting."

Program Auditor Response to Auditee	Each finding stands on its own. Inventories and appraisements have very separate requirements from annual accountings. The inventory and appraisement establishes the initial balance for the first annual accounting and subsequent accountings rely upon the accuracy of the inventory and first accounting. The Office was appointed as personal representative for client # 06, not as administrator with "letters of administration". ARS § 14-5605 is unique to public fiduciaries and is only appropriate for estates whose value does not exceed $20,000. Client # 06's estate exceeded $20,000 plus the appointment was as a personal representative; therefore, ARS § 14-5605 is not applicable. The accountings submitted to the court on behalf of client #06, whether needed or not, must be accurate. *By statute, ACJA and rule all submissions to the court must be accurate.* For client #05, the one accounting the auditors reviewed, covered the time period 03-01-03 through 02-10-04, and referenced on Schedule 2 (Receipts) a Bank of America account, # 910-000-2319-0786, entry which was dated 03-19-02 through 12-31-03. The date on the interest earned does not match the accounting period.
Corrective Action	"Beginning balances for AAR's will match the ending balance for the previous AAR, unless it is a first AAR where the beginning balance will match the inventory balance."

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Finding #4 ➢ ***Guardianship Reports*** *Related Attributes:* *ARS § 14-5315*	The client files for the two guardianship appointments (clients # 03 & # 04) show no statutorily required guardianship reports were submitted to the court. The statutes are very specific about the requirement to submit annual guardianship reports, about the information the reports must contain and about who is to be copied on the reports.
Requirements	A fiduciary acting as a guardian must submit a written report to the court on each anniversary date of qualification as a guardian. These reports must contain the nine required data elements required in statute, ARS § 14-5315 (C) and specific individuals must be copied as specified in ARS § 14-5315 (B).
Auditee's Response	"We concur with the Finding."
Corrective Action	"Guardianship reports will be prepared and submitted to the court along with the annual accountings."

Finding #6

➢ ***Documentation***

Related Attributes:

ARS § 14-5418(B)

Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, (1)(e) & (3)(a)

A fiduciary appointed as a conservator must keep, according to state statutes, "suitable" records of the administration of the client's estate and be able to exhibit those records upon request. Suitable records include conformed copies of client court documents and documentation which tracks the disposition, storage, disbursement and appreciation of items in a client's estate. Examples of missing documentation are:

- Client # 01 file inventory of assets did not have values or detailed descriptions associated with each listing. The auditor was unable to determine from the file the status of any liens or financial status of the estate. No evidence was in the file of research on potential medical settlements.
- Client # 02 file detail on retroactive SSI payments was missing. There were no reports on client visitations in the files.
- Client # 03 file indicates receiving 3 SSI checks in January, 2003 but no explanation. There was a state tax refund posted but no explanation of the year for the refund, nor tax returns in the client file.
- Client # 04 file indicates the liquidation of a life insurance policy but there is no documentation of the decision-making for liquidating this asset.
- Clients' # 03 & # 04 files contained no documentation on the ward's place of residence nor the options and alternatives which may or may not have been available.
- Client # 05 final accounting listed interest earned but provided no documentation of the underlying asset. Neither a bill of sale nor a title to the car was found. The file did not contain proof of restricted account as required by the court. No receipt signed by client upon conservator discharge was found.

Requirements

The Graham County Public Fiduciary Office will develop a systematic process for documenting the administration of each client's estate and/or care to include all assets, transactions and activities for each court appointed client.

A fiduciary shall recognize their decisions are open to the scrutiny of other interested parties and, consequently, to criticism and challenge. Regardless, the fiduciary alone is ultimately responsible for decisions made on behalf of the ward or protected person.

Finding #7

- **Conflict of Interest**
- **Third Party Infringement**

Related Attributes:

Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard (2)(b) &(2)(c)

The Graham County Fiduciary Office is engaging in the appearance of a conflict of interest and permitting third party infringement by contracting with family members of a client (# 04 & # 05).

- The Graham County Public Fiduciary was appointed the successor conservator for client # 05. The primary family member, the mother of the client had been ordered by the court to repay funds to the client's estate she had taken while appointed as the original conservator.

- Graham County Public Fiduciary Office did not recover the funds the mother was ordered by the court to repay to the client.

- The mother of client # 05 was unemployed and requested funds for expenses from the Graham County Public Fiduciary Office. The Office, according to the case records, inquired when the mother was going to get a job.

- Graham County Fiduciary Office subsequently contracted with the mother to provide services to other clients of the Office. The grandfather of the client # 05 was also contracted to provide services to other clients of the Office. As the mother's employer the Office had the ability to garnish a portion of her wages to repay the client's estate.

- There was no supporting documentation indicating the mother and grandfather are supervised but for their handwritten billing submissions. It appears the mother prepares and signs all billings.

- Court records from the mother's period of appointment as the original conservator of client # 05's estate, indicate the mother had a conviction for felony theft.

- Graham County Fiduciary Office purchased a car from the mother for the client (# 05) for $400.00. The mother had been given the car at no cost. The title to the car remains in the mother's name. The grandfather was paid for significant repairs on the car.

	• Staff indicated the mother is continually given "things" by the clients she is contracted to provide services for. These clients have been adjudicated in need of protection or incapacitated and, therefore, unable to make those decisions.
Requirements	Graham County Fiduciary Office must avoid self-dealing and the appearance of a conflict of interest. Self-dealing or conflict of interest 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 protected person. In situations where no other services are available, the fiduciary must disclose the potential conflict in a petition to the superior court, seeking approval prior to the provision of services. The Graham County Fiduciary Office must vigorously protect the rights of the ward or protected person against infringement by third parties.
Auditee's Response	"We do not entirely concur with the Finding. Bullets #1-6 are related to Finding #5, i.e., not following up on issues with regard to a prior conservator, and those issues are therefore duplicative." "Simply hiring someone that is related to an existing client is not a conflict of interest or third party infringement, if they are not assigned to accomplish work for the client they are related to." "We do concur that the purchase of the car described in Bullet #7 was something that probably should not have been allowed, but we object to the use of the terms "Conflict of Interest", "Third Party Infringement" and "Self-Dealing", since none of those terms apply to actions taken by our office staff. I recommend use of the term "Prudent Man" standard cited in Finding #5. We simply allowed the son to buy a car from the Mother for less than market value, as the car was worth more than $1,000. Also, it doesn't matter where the Mother got the car from, as it was still hers to give and it had a certain market value, plus the grandfather was reimbursed for mechanic expenses he put up the money for, he wasn't paid for doing mechanic work." "With regard to Bullet #8, staff indicated that the referenced individual was known to be given things from people in the community, not from

	fiduciary clients. Also, we never had a contract with this individual, although she was allowed to accomplish work for clients she was not related to."
Program Auditor Response to Auditee	The issue is not related to Finding # 5 or following up on issues. The issue is of the *appearance of a conflict of interest and third party infringement.* There does not need to be an *actual* conflict of interest only the *appearance* of a conflict for there to be a problem. Every action taken by the contractor (mother) is a reflection of and a responsibility of the Office. To avoid actual or the appearance of a conflict of interest and third-party infringement full-disclosure, openness and supervision of the individuals the Office employs is necessary. *Informing the court and all interested parties when there is a potential conflict of interest is required.* These actions will limit the Office's and the County's liability should a problem occur. The corrective action to develop a contract format for the Office to use with people hired to work for clients or hiring through the County's Personnel system to accomplish the work is accepted.
Corrective Action	"Based on your recommendations, the referenced individual will no longer be eligible for hire by the Fiduciary's Office to accomplish work for clients. In the future we will either develop a contract format to use with people that are hired to do work for clients, or we will hire someone through the County's Personnel System to accomplish the work. We have a pending budget request with the Board of Supervisors to employ an additional staff person to accomplish outside the office case management services."

Finding #8 ➢ ***Settlement & Distribution*** *Related Attributes:* *ARS § 14-3704* *Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard 5.*	In one of the client case files reviewed (client # 06) the client died in December, 1997 and, to date, the estate has not had a settlement and distribution. A will directed a trust to be established and over six years later the trust has not been established.
Requirements	A fiduciary must proceed expeditiously with the settlement and distribution of a decedent's estate and except as otherwise ordered do so without adjudication. A fiduciary acting as PR must settle and distribute the estate efficiently, timely and in the best interest of the estate.
Auditee's Response	"We concur with the Finding. We have made a lot of progress in expediting final accountings over the last several years, however the case cited is a relatively large estate, complicated by a will that recommends the establishment of a trust, in addition to the fact that the heir to the estate is also a fiduciary client."
Corrective Action	"We will refer this case to the County Attorney's Office for disposition, anticipating that they will either resolve the case or provide a recommendation to hire a Probate Attorney or select a bank to set up the Trust. We will then follow up with completion of the final accounting."

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Finding #9 ➢ ***Knowing Statutes & Code*** *Related Attributes:* *Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard(4)(a) & (5)(a)*	Upon appointment the fiduciary must become informed of the statutory requirements for managing a protected person's or decedent's estate. Each Finding is an example of not meeting the Arizona Code of Judicial Administration § 7-201: General Requirements and § 7-202: Fiduciaries.
Requirements	Both certified fiduciaries in the Graham County Public Fiduciary Office will take appropriate steps to learn the statutory requirements and the fiduciary code of conduct for managing a protected person's or decedent's estate.
Auditee's Response	"We do not concur with the Finding. While there is always room for improvement, both staff in the Fiduciary's Office are certified public fiduciaries and have taken the initial training and annual updates offered by the Supreme Court, which includes statutory and regulatory information. Also, this is a non-specific finding that appears to be inserted to support previous findings that have already been addressed."
Program Auditor Response to Auditee	Each finding stands on its own. It is implicit in the findings of the audit the certified fiduciaries do not fully know the statutes and the Arizona Code of Judicial Administration or the other findings would not have occurred. The Fiduciary Program will no longer be providing training. Knowing the statutes and fiduciary code is the certified fiduciary's responsibility. Obtaining the necessary training is the responsibility of the certified fiduciary.
Corrective Action	"Staff will continue to take available training and make greater efforts to comply with applicable standards, statutes and regulations.

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Finding #10 ➢ ***Compliance*** *Related Attributes:* *Arizona Code of Judicial Administration § 7-202, Appendix A, Code of Conduct, Standard 7*	"A fiduciary must perform all of their duties and discharge all of their obligations in accordance with current Arizona law and the administrative rules, administrative orders, Arizona Code of Judicial Administration § 7-201: General Requirements and this code (§ 7-202) section adopted by the supreme court governing the certification of fiduciaries." Each Finding (#'s 1 through 8) is illustrative of not meeting the *Code of Conduct, Standard 7.*
Requirements	The Graham County Public Fiduciary Office must ensure the office and the certified fiduciaries perform all of their duties and discharge all of their obligations to meet the requirements of *Standard 7.*
Auditee's Response	"We do not concur with the Finding, since it is duplicative to Finding #9. Also, there were three comment sections identified in the opening letter, two of which were additionally cited as Findings #7 & 8. It is suggested that two of the comment sections in the opening letter be dropped in favor of Findings #7 & 8, and that Findings 9 & 10 be a comment section in the opening letter, since they are relatively non-specific."
Program Auditor Response to Auditee	Each finding stands on its own. This finding was based on the absence of compliance with the three statutorily required major basic tasks of a fiduciary – (1) inventory and appraisement; (2) annual accountings; and (3) guardianship reporting. By not fulfilling the fundamental requirements of a fiduciary and stating the certified fiduciaries will "make greater efforts to comply with applicable standards, statutes and regulations", it is apparent the fiduciaries do not understand compliance is required—not optional.
Corrective Action	"Staff will continue to take available training and make greater efforts to comply with applicable standards, statutes and regulations."

SECTION THREE

RESPONSE TO DRAFT

GRAHAM COUNTY PUBLIC FIDUCIARY

DATE: APRIL 27, 2004

TO: J. R. RITTENHOUSE, FIDUCIARY PROGRAM MANAGER
KITTY BOOTS, FIDUCIARY PROGRAM REVIEW SPECIALIST

FROM: DONNA DAUENHAUER, PUBLIC FIDUCIARY

SUBJECT: DRAFT FIDUCIARY COMPLIANCE AUDIT REPORT

Please accept the following responses to the draft Fiduciary Compliance Audit Report:

Finding #1 - Inventories

Graham County Response: We concur with the Finding.

Corrective Action: Inventories and appraisements will be completed on each client as their Annual Accounting is due to be updated. Inventories and appraisements on new clients will be conducted within 90 days of their appointment. Inventories will be developed with sufficient detail, including digitized pictures as necessary and will indicate fair market value of each item. Upon completion, copies of the inventory will be kept on file and provided to the client, and to any other heir or interested party upon request, if the Fiduciary has been designated as a Personal Representative.

Finding #2 - Accountings

Graham County Response: We do not concur with the Finding. The referenced annual accountings had been completed and filed with the Court. When the Review Specialist, Kitty Boots went to the Courthouse to review the files, she attempted to locate the files without staff assistance. The Clerk of the Court's Office has a split filing system that does not keep all filings in the main file, until all documents are put on microfiche. Attached is proof of the referenced filings. In terms of records on file in the Fiduciary Office, only the last interim accounting is on file due to a lack of space, the rest are placed in storage.

Corrective Action: None needed.

Finding #3 - Accounting Accuracy

Graham County Response: We do not concur with the Finding. Paragraph one of the Finding is repetitive, in that we were previously cited under Finding #1 for inventory

deficiencies, and we have indicated that as part of our corrective action, the inventories would be included in the annual accountings.

Paragraph two of the Finding indicates that annual accountings are not required for clients in which we function as Personal Representatives, however we believe they are required in accordance with ARS 14-5605(E). The citation is also unclear from the standpoint that if the accountings are unnecessary then we don't need them, so why further comment that they are incorrect for the same reason cited in paragraph one and Finding #1?

Paragraph three indicates that there is a bank statement in a final accounting for Client #05 that does not match the accounting period, however upon further review it has been determined that there are no bank statements in the final accounting.

Corrective Action: Same as Finding # 1 for Paragraph one.

Finding #4 - Guardianship Reports

Graham County Response: We concur with the Finding.

Corrective Action: Guardianship reports will be completed and submitted as directed, at the same time that the annual accountings are due to be updated.

Finding #5 - Prudent Man

Graham County Response: We concur with the Finding.

Corrective Action: In the future we will apply the Prudent Man standard and review the work of previous Conservators, to assure that there are no outstanding issues or funds/property that need to be secured, once the Fiduciary's Office has been appointed by the Court to assume responsibility for the client.

Finding #6 - Documentation

Graham County Response: We concur with the Finding, however there was a property tax application (indicating residence) kept in a separate file for Client #03 and there is a receipt on file with regard to Client #05 receiving the conservator discharge notice.

Corrective Action: Suitable documentation as indicated in the citation will be retained in the client files, in order to determine the rationale for actions taken and to otherwise record business transactions. A case management record will also be instituted for each client that will record a history of the actions taken with regard to the client. The Case Management Record will be instituted for each client within 90 days.

Finding #7 - Conflict of Interest

Graham County Response: We do not entirely concur with the Finding. Bullets #1-6 are related to Finding #5, i.e., not following up on issues with regard to a prior conservator, and those issues are therefore duplicative.

Simply hiring someone that is related to an existing client is not a conflict of interest or third party infringement, if they are not assigned to accomplish work for the client they are related to.

We do concur that the purchase of the car described in Bullet #7 was something that probably should not have been allowed, but we object to the use of the terms "Conflict of Interest", "Third Party Infringement" and "Self-Dealing" , since none of those terms apply to actions taken by our office staff. I recommend use of the term "Prudent Man" standard cited in Finding #5. We simply allowed the son to buy a car from the Mother for less than market value, as the car was worth more than $1,000. Also, it doesn't matter where the Mother got the car from, as it was still hers to give and it had a certain market value, plus the grandfather was reimbursed for mechanic expenses he put up the money for, he wasn't paid for doing mechanic work.

With regard to Bullet #8, staff indicated that the referenced individual was known to be given things from people in the community, not from fiduciary clients. Also, we never had a contract with this individual, although she was allowed to accomplish work for clients she was not related to.

Corrective Action: Based on your recommendations, the referenced individual will no longer be eligible for hire by the Fiduciary's Office to accomplish work for clients. In the future we will either develop a contract format to use with people that are hired to do work for clients, or we will hire someone through the County's Personnel System to accomplish the work. We have a pending budget request with the Board of Supervisors to employ an additional staff person to accomplish outside the office case management services.

Finding #8 - Settlement & Distribution

Graham County Response: We concur with the Finding. We have made a lot of progress in expediting final accountings over the last several years, however the case cited is a relatively large estate, complicated by a will that recommends the establishment of a trust, in addition to the fact that the heir to the estate is also a fiduciary client.

Corrective Action: We will refer this case to the County Attorney's Office for disposition, anticipating that they will either resolve the case or provide a

recommendation to hire a Probate Attorney or select a bank to set up the Trust. We will then follow up with completion of the final accounting.

Finding #9 - Knowing Statutes and Codes

Graham County Response: We do not concur with the Finding. While there is always room for improvement, both staff in the Fiduciary's Office are certified public fiduciaries and have taken the initial training and annual updates offered by the Supreme Court, which includes statutory and regulatory information. Also, this is a non-specific finding that appears to be inserted to support previous findings that have already been addressed.

Corrective Action: Staff will continue to take available training and make greater efforts to comply with applicable standards, statutes and regulations.

Finding #10 Compliance

Graham County Response: We do not concur with the Finding, since it is duplicative to Finding #9. Also, there were three comment sections identified in the opening letter, two of which were additionally cited as Findings #7 & 8. It is suggested that two of the comment sections in the opening letter be dropped in favor of Findings # 7 & 8, and that Findings #9 & 10 be a comment section in the opening letter, since they are relatively non-specific.

Corrective Action: See #9.

SECTION FOUR

COMMENT LETTER

Charles E. Jones
Chief Justice

Supreme Court

STATE OF ARIZONA
ADMINISTRATIVE OFFICE OF THE COURTS

David K. Byers
Administrative Director
of the Courts

April 1, 2004

Donna Dauenhauer
Graham County Public Fiduciary
820 West Main St.
Safford, AZ 85546

RE: Letter of Comments

Dear Ms. Dauenhauer

The Fiduciary Program of the Certification and Licensing Division of the Administrative Office of the Courts, Arizona Supreme Court conducted an audit of the Graham County Public Fiduciary Office for compliance with Arizona statutes, the Arizona Code of Judicial Administration §7-201 and §7-202 with fieldwork ending March 5, 2004. The Draft Audit Report was issued on April 1, 2004. That report should be read in conjunction with the comments in this letter. The issues described below are not compliance issues but are of sufficient significance to warrant these comments and recommendations for you. Additionally, the comments are being sent to you only.

Comment - The Graham County Public Fiduciary is not visiting or regularly visiting all of their court appointed wards. The National Guardianship Association's Standards of Practice, June 2000, Standard 12, Guidelines state the fiduciary or their designee shall visit the ward monthly. This Standard is intended to ensure the ward is adequately and accurately supported and protected allowing for regular fiduciary contact with all service providers.

Recommendation - The Graham County Public Fiduciary Office institute a system which ensures all of their court appointed wards are visited and case managed regularly.

Comment - The Graham County Public Fiduciary is acting as a trustee for a client (Client # 06) which the Graham County Public Fiduciary has been court appointed as personal representative.

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- ARS §14-5602(A) states the public fiduciary is to be appointed for those persons or decedents' estates for whom there is no person or corporation qualified and willing to act in that capacity—or the fiduciary of last resort.
- The court appointed the public fiduciary as personal representative, not trustee.
- A trust is a private document, a contract between parties with no court appointment or oversight. Graham County Public Fiduciary Office is a public office subject to "open records" requirements.
- The public fiduciary is not required to be bonded; therefore, acting as a trustee as an individual (not the public fiduciary office) would not be covered by Graham County.
- Trusts are covered under the banking laws. Banking institutions are private businesses.

Recommendation - The Graham County Public Fiduciary petition the court for directions, settle the estate and hire a probate attorney to establish and administer (or recommend a banking institution) the trust.

Comment - The Graham County Public Fiduciary Office does not have an employment contract for the independent contractors who are providing designated services for the Office's court appointed clients. There are significant potential liabilities to Graham County of not having structured, specific terms of employment contracts. Some examples of those liabilities are:

- Employment taxes
- Liability insurance
- Competitive wages
- Accountability

Recommendation - Graham County Public Fiduciary Office and the Graham County Personnel/Human Resources Departments in conjunction with County Risk Management develop and use a services contract for individuals and/or vendors providing any type of services directly to Graham County Public Fiduciary Office's court appointed clients.

Sincerely,

J. R. Rittenhouse, #20045
Fiduciary Program Manager
Certification and Licensing Division
Arizona Supreme Court

Kitty Boots
Fiduciary Program Review Specialist
Certification and Licensing Division
Arizona Supreme Court