



Professional Fiduciaries Bureau
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Website: www.fiduciary.ca.gov



Professional Fiduciaries Bureau Advisory Committee Meeting

**Tuesday, August 28, 2012
10:00 a.m. – 3:00 p.m.**

Meeting Location:

**Department of Consumer Affairs HQ
1625 N. Market Blvd., 1st Floor, Hearing Room
Sacramento, CA 95834**

Webcast

Committee Members: Donna Estacio, Barbara de Vries, Aileen Federizo, Marguerite Lorenz

AGENDA

1. Call to Order – Gil DeLuna, Acting Bureau Chief
2. Roll Call - Gil DeLuna
3. Introductions:
 - New Advisory Committee Members
 - New Staff Counsel for the Professional Fiduciaries Bureau
 - DCA Executive Staff
 - Staff Members
 - Members of the Audience
4. Information from the Director's Office
5. Swearing-in Ceremony– New Advisory Committee Members
6. Election of New Chair and Vice-Chair
7. Approval of Minutes from the October 13, 2011

8. Bureau Updates – Gil DeLuna, Acting Chief
 - Status of the Bureau
 - FY 2011/2012 Statistics
 - BOE/FTB – AB 1424
 - Citation Process
9. Budget Report – Tommy Nhan, DCA Budget Office
10. BreEZe Project – Shayne Van Outryve, DCA Project Management Office
11. Discussion on Professional Fiduciary Charges to Clients
12. Strategic Plan Update / Discussion
13. Future Meeting Dates and Agenda items
14. Public Comment on Items Not on the Agenda (See “**Note**” below)
15. Adjournment

Note: The Professional Fiduciaries Bureau Advisory Committee may not discuss or take action on any matter raised that is not included in this agenda. The Committee may however decide to place the matter on the agenda of a future meeting.

Notice: The meeting is accessible to the physically disabled. A person who needs disability-related accommodations or modifications in order to participate in the meeting shall make a request no later than five working days before the meeting to the Bureau by contacting Gil DeLuna at (916) 574-7754, gil.deluna@dca.ca.gov or sending a written request to that person at the Professional Fiduciaries Bureau, 1625 North Market Blvd., Ste. N-324, Sacramento, California 95834. Requests for further information should be directed to Mr. DeLuna at the same address and telephone number.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #1 – Call to Order – Gil DeLuna



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #2 – Roll Call – Gil DeLuna

Donna Estacio – Senate Rules Committee – Public Member

Barbara de Vries – Governor Appointee – CLPF

Aileen Federizo – Governor Appointee – CLPF

Marguerite Lorenz – Governor Appointee – CLPF

Vacant – Probate Court Investigator

Vacant – Public Member

Vacant – Nonprofit organization advocating on behalf of the elderly.

Department of Consumer Affairs Professional Fiduciaries Bureau

Advisory Committee Members

Member	Appointment Type	Appointed By	Appointment Date	Appointment Expires
Vacant	Probate Court Investigator	Governor		
Barbara de Vries	CLPF	Governor	05/2012	1/1/2016
Aileen Federizo	CLPF	Governor	05/2012	1/1/2016
Donna Estacio	Public Member	Senate Rules Committee	03/2011	1/1/2015
Vacant	Public Member	Speaker of the Assembly		
Marguerite Lorenz	CLPF	Governor	05/2012	1/1/2016
Vacant	Nonprofit organization advocating on behalf of the elderly	Governor		

As of July 6, 2012

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MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #3 - Introductions

Advisory Committee Members:

Donna Estacio – Senate Rules Committee – Public Member

Barbara de Vries – Governor Appointee – CLPF

Aileen Federizo – Governor Appointee – CLPF

Marguerite Lorenz – Governor Appointee – CLPF

New DCA Attorney Assigned to the Bureau:

Angelique Scott, Attorney

Bureau Staff Present:

Gil DeLuna
Angela Bigelow

Attachment (Biographies)

Barbara deVries, 71, of San Francisco, has been appointed to the Professional Fiduciaries Advisory Committee. DeVries has owned Life Management Associates since 1991. She was coordinator of geriatric mental health services at the Alameda County Mental Health Services from 1984 to 1989 and a social worker there from 1974 to 1984. This position does not require Senate confirmation and the compensation is \$100 per diem. DeVries is a Democrat.

Donna M. Estacio, a Democrat from Pasadena, has been appointed as a public member of the Professional Fiduciaries Advisory Committee. Estacio is a managing director of State and Community Affairs for American Airlines. Her term on the Committee ends January 1, 2015. The Committee examines functions and policies of the Professional Fiduciaries Bureau; makes recommendations with respect to policies, practices and regulations to promote the interest of consumers or the welfare of the public; considers and makes appropriate recommendations to the bureau in matters relating to professional fiduciaries in the state; and provides assistance as requested by the bureau.

Aileen Federizo, 44, of Encino, has been appointed to the Professional Fiduciaries Advisory Committee. Federizo is the founder of ElderWell Professional Conservatorship, Fiduciary and Care Management Services. She has been a case manager at Greg Oveross and Associates since 2010 and chief operating officer at MyBarong since 1999. Federizo was a human relations manager at the Law Offices of Caren R. Nielsen from 2009 to 2011. She was an outreach coordinator at the Alzheimer's Association of Los Angeles from 1994 to 1997, ombudsman at WISE Senior Services from 1992 to 1994 and activities coordinator at OPICA Adult Day Care Center from 1989 to 1992. This position does not require Senate confirmation and the compensation is \$100 per diem. Federizo is a Democrat.

Marguerite Lorenz, 48, of Fallbrook, has been appointed to the Professional Fiduciaries Advisory Committee. Lorenz has been president of the Estate Planning Group Network since 2009 and principal at Lorenz Fiduciary Services Inc. since 2003. She is the co-author of "Ethics for Trustees - A Guide for All Who Serve as Trustee" and is a contributing writer to the Temecula Chronicle, Vintage Magazine and the North County Lawyer Magazine. Lorenz was a manager at Quire Financial Services from 1996 to 2003. This position does not require Senate confirmation and the compensation is \$100 per diem. Lorenz is a Republican.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #4 – Information from DCA Executive Office

DCA Executive Office Appointments:

Denise Brown, Director

Awet Kadane, Chief Deputy Director

Reichel Everhart, Deputy Director, Board Relations

Sonia Huestis, Deputy Director, Bureau Relations

Amy Cox-O' Farrell, Deputy Director, Office of Information Services

Doreathea Johnson, Deputy Director, Legal Affairs Division

Sandra Mayorga, Deputy Director, Office of Administrative Services

Tracy Rhine, Deputy Director, Legislative and Policy Review Division

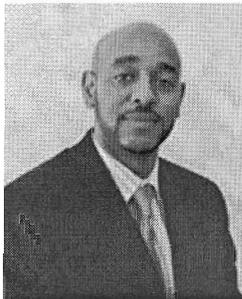
Tomasa Dueñas, Assistant Deputy Director, Legislative and Policy Review

Attachment (Biographies)

DCA Leadership



Denise Brown, Director - Denise was appointed by Governor Brown on January 9, 2012. As Director, she oversees the nearly 40 regulatory entities and other divisions within the Department. She has more than 30 years of service with DCA and, during that time, has held numerous positions within the Department and its various boards.



Awet Kidane, Chief Deputy Director - Awet was appointed in January, 2012. As Chief Deputy Director, Awet oversees the internal operations of the Department. Before being appointed to DCA, he served in various positions in the state Legislature, where he was a chief of staff, a senior advisor, and a consultant.



Reichel Everhart, Deputy Director, Board Relations - Reichel was appointed in January 2012 after having spent a year as Senior Advisor to the Director. She is the Department's primary liaison with its constituent Boards, Bureaus, Committees, Programs, and Commission.



Sonia Huestis, Deputy Director, Bureau Relations - Sonia was appointed June 21, 2012. Before coming to DCA, she had served in multiple positions within the California State Controller's office since 2000, including Section Chief for the Operations Support Unit, Staff Services

Manager II for the Unclaimed Property Systems Replacement Project, Staff Services Manager I in the Reporting Services Unit, and Staff Services Analyst.



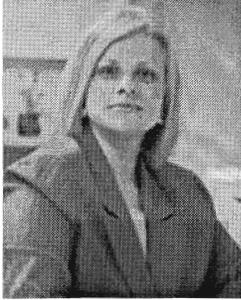
Amy Cox-O'Farrell, Deputy Director, Office of Information Services - Amy became the Department's Chief Information Officer in February, 2012. As such, she oversees all of DCA's IT and telecommunications services. She has been in state service for more than 30 years and has held numerous positions within DCA.



Doreathea Johnson, Deputy Director, Legal Affairs Division - Doreathea was appointed in 2000 and reappointed in 2004. She directs the activities of the Department's Legal Affairs Division and advises the Director, the Department's executive staff, and the staff and executive officers of DCA's regulatory entities.



Sandra Mayorga, Deputy Director, Office of Administrative Services - Sandra oversees the administrative functions within DCA, including Human Resources, Business Services, Accounting, Fiscal Operations, SOLID Training Solutions, and the Office of Professional Examination Services. In her 30 years of state service, she has worked for the Attorney General's Office, CalTrans, the Department of Insurance and the Department of Consumer Affairs.



Tracy Rhine, Deputy Director, Legislative and Policy Review Division -

Tracy was appointed in March, 2012, having previously served as the Assistant Executive Officer for the Board of Behavioral Sciences. Prior to coming to the Department, Tracy served as a consultant to the California State Assembly Committee on Business, Professions and Consumer Protection from 2005 to 2008 and as a consultant to the Speaker's Office of Member Services from 2002 to 2005. She was a graduate research assistant in the Governor's Office of Innovation in 2002 and a program coordinator at Changing Courses from 1988 to 2001.



Tomasa Dueñas, Assistant Deputy Director of Legislative and Policy

Review (LPR) - Tomasa has served as legislative director for Assemblymember V. Manuel Perez since 2011 and was legislative aide for Senator Jenny Oropeza from 2007 to 2010. Tomasa began her employment with the LPR on April 23rd.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #5 – Swear-In Ceremony, DCA Executive Office

Barbara de Vries – Governor Appointee – CLPF

Aileen Federizo – Governor Appointee – CLPF

Marguerite Lorenz – Governor Appointee – CLPF



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #6 – Election of Chair and Vice Chair

1 year Term

Chair:

Responsibilities: Work with Bureau staff on Agenda items
Facilitate the Advisory Board Meetings

Vice Chair:

Responsibility: Take the place of the Chair when he/she is not available



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #7 – Approval of Minutes, October 13, 2011

Minutes for October 13, 2011 (attachment)

Public Comment:

**Professional Fiduciaries Bureau
Advisory Committee Meeting
October 13, 2011**

**Department of Consumer Affairs
1625 N. Market Blvd., 1st Floor, Hearing Room
Sacramento, CA 95834**

Committee Members Present

Daniel Stubbs, CLPF- Chair
Sharon O'Neill, Supervising Probate Court Investigator-Vice Chair
Lisa Berg, CLPF
Donna Estacio, Public Member

Committee Members Absent

Clark Parker, Public Member

Guests Present

James C. Counts II, CPA
Stella Shvil, PFAC
Jerry Desmond, PFAC
Jackie Miller, PFAC
Sue Lambert, Member of the Public
Carole Herman, Foundation Aiding the Elderly
Hugh Slayden, Private Party

DCA Staff Present

Cynthia Alameda, DCA Budget Office
Debbie Balaam, DCA
Evin Van Outryve, DCA
John Brooks, DCA
Sean O'Conner, DCA
Tom Roy, DCA

Staff Present

Gil DeLuna, Acting Bureau Chief
Angela Bigelow, Program Analyst
Gary Duke, DCA Legal Counsel
Jenny Turner, Analyst
Dave Thornton, Investigator

I. Call to Order – Chair

The meeting was called to order by Chair Daniel Stubbs, at 10:02am.

II. Roll Call – Acting Bureau Chief

There were four members present and one member absent at time of Roll Call.

III. Introductions

Those in attendance introduced themselves.

IV. Yearly election of new Chair and Vice-Chair

Ms. Berg nominated Mr. Stubbs as Committee Chair; second, Ms. O'Neill. Motion carried. Ms. Berg nominated Ms. O'Neill as Committee Vice-Chair; second, Ms. Estacio. Motion carried.

V. Approval of Minutes from the September 27, 2010 and April 21, 2011 Meetings

Ms. O'Neill motioned the September 27, 2010 minutes be approved as written; second, Ms. Berg. Motion carried. Ms. Berg noted page 3, paragraph 5 of the April 21, 2011 minutes, the word "accessed" should be changed to "assessed". Ms. O'Neill motioned the April 21, 2011 minutes be approved as amended; second, Ms. Berg. Motion carried.

VI. Bureau Updates – Chief

i. Status of the Department and Office –

The Professional Fiduciaries Bureau (Bureau) has moved to Suite N-324 within Department of Consumer Affairs (DCA) Headquarters office. Mr. DeLuna met with the Appointment Secretary and they will be making new appointments to the Bureau's Advisory Committee soon. All of the Bureau's current members, except Donna Estacio, are set to expire at the end of their one year grace period on January 1, 2012.

ii. Status of SB 543 –

SB 543 was Chaptered October 3, 2011 which extends the Bureau until January 1, 2015. This bill also authorizes the Bureau to enter into a settlement agreement for probation with applicants instead of forwarding all cases to the AG's office for a statement of issues. A settlement agreement is still considered a disciplinary action and will appear on the Bureau's website. AB997 specifies non-profit corporation of charitable fund is not a professional fiduciary subject to the act. AB1288 public guardians and conservators private property held in trust. Current law authorizes county public guardians or conservators to take temporary possession or control of property of a person that they will be appointed conservator or guardian of. SB541 permits the boards and bureaus to provide an exception to the state contracting process with expert consultants. This includes expert opinion on enforcement issues, assistance as subject matter experts of exams development, evaluation of occupational analysis, evaluation of mental or physical health of a licensee to protect public.

The Bureau is going through re-design of the logo and brochures. One brochure to consumers and one to professional fiduciaries. Ms. Berg requested Enrolled Agents be removed from the brochure as being exempt from licensing.

Ms. Herman wants to know what the Bureau is doing to adjudicate complaints. Mr. DeLuna stated public comment on items not on the agenda will be taken at the end of the meeting.

Ms. Lambert states it is difficult to reach a fiduciary because there are no phone numbers listed on the Bureau's website. DCA Attorney Gary Duke stated the Bureau lists the address of record on the web site, however, the telephone number is not a requirement for most licensees who are licensed with the Department of Consumer Affairs. Per Mr. Duke it may take a change in the law to post phone numbers on the Bureau's web site. Ms. Berg states that PFAC does have phone numbers listed.

iii. Status of Regulations –

The Cite & Fine Regulations are not moving as quickly as expected. The Public Comment hearing was finished and Statement of Reasons is going through the department's approval process and will the go to OAL. A disciplinary guideline manual was created but will be amended to include stipulations. Advertising and record retention regulations are going through the approval process now.

iv. Complaint Process –

Typical complaints the Bureau receives are for mismanagement of money, warring family members, the fiduciary leaving family out of the loop, not returning calls, not paying bills on time and overcharging for services, and non jurisdictional. About 90% of complaints received are against court appointed fiduciaries. Complaints can be filed on-line, by mail, or by calling the Bureau and we will guide the consumer through the process. All complaints are reviewed and assigned to staff by the Bureau Chief. The complaint is assigned to staff in the complaint resolution center or to the Bureau's investigator. Sometimes after investigation the complaint is referred to DOI or AG. If the complaint is non-jurisdictional

the Bureau forwards the complaint to the proper agency. The complainant is always contacted first. Then the fiduciary is contacted and closed accordingly. Some complaints require a lot more investigation but we try to investigate and close as quickly as possible. Last FY the Bureau received 82 complaints and closed 93. More complaints were closed than received because they were pending from the prior FY.

v. FY 2010/2011 Statistics –

At the end of FY 2010/2011 there were 549 licensees. To date there are 575 licensees. The Bureau is issuing about 98-100 new licenses per year. The average processing time from receipt of application to exam approval is 25 days if the application is complete. If more information is required the average days to exam approval is 67 days. As far as enforcement the Bureau revoked 1 license, there is 1 pending accusation and 2 applications denied and there are some at the AG's office waiting for the AG to review to determine if an accusation should be sent. The Bureau is also working on identifying unlicensed activity.

Ms. Shvil asked if the outcome of a complaint resolution is sent in writing. Mr. DeLuna stated the fiduciary and complainant are notified by phone or email.

Mr. Counts asked what the percentage of licensees renew. Ms. Bigelow stated we do not keep statistics but there are approximately 3 or 4 that do not renew on time then some pay at a later date including a delinquent fee.

Ms. Herman would like to request the bureau respond in writing to complainants and asked if it is the policy of bureau not to inform the complainant in writing. Mr. DeLuna stated that the complainant receives on-going updates from the Bureau throughout the complaint process. Ms. Herman stated this is not happening, she has not received an update for over a year on a complaint she filed 3 years ago. Ms. Herman wanted to know if there is any plan to increase staff for investigations. Mr. Duke stated her specific complaint should be discussed outside of the meeting forum since complaints are not public record unless there is an action taken against a license. Also, the bureau has a retired annuitant handling the bulk of the investigations. The Bureau is self funded and there are only 575 licensees that are supporting the Bureau and the Bureau cannot support additional staff at this time.

Ms. Shvil asked that the response or decision of each complaint be put in writing, or would that take a change in law. Mr. DeLuna stated this is a policy issue and if there is action taken then the decision is put in writing. Mr. DeLuna stated he will look further into this issue.

VII. Discussion – Approval Process for Approved Education Providers

The Bureau has been receiving more calls on how to become an approved education provider. We do not have a formal process at this time to approve new providers. How does PFAC approve providers and instructors?

Ms. Miller stated PFAC has an education committee and reviews bios, resumes, and presentations then the committee approves or denies the provider. PFAC has been receiving calls wanting to be approved by PFAC and they refer them to the Bureau. Mr. Duke stated the Bureau is looking for help in establishing standards. Ms. Miller suggested a sub-committee be created to work on this issue.

Mr. Counts stated some organizations may have speakers that are qualified to speak. Maybe consider approving or licensing the presenter.

Ms. Berg stated the working group had established this list and that the changes would probably have to be made legislatively to this list.

Ms. Lambert stated when she contacted the list of pre-licensing approved they all denied being approved providers for the Bureau except CSUF. She stated Northern California does not have any approved providers. Mr. Stubbs stated this is why the CSUF course is on-line, so that students do not have to attend courses at a specific location. There are other universities working on getting courses on-line such as UC Riverside and UC Irvine. Mr. Counts suggested putting links on the Bureau's website to each of the approved provider's website.

VIII. Budget Report – Cynthia Alameda, Budget Office

Ms. Alameda put together a summary of historical expenditures and revenue and gave an overview of the handouts provided. Revenue seems to be on the rise which is good. Two years of AG costs were paid for in last FY. That is why the AG cost was so high.

Mr. Counts stated he was pleased that there are dollars in this projection for enforcement.

11:05 – 11:15 Break

IX. BreEZe Project – Debbie Balaam and Sean O'Connor

Ms. Balaam explained BreEZe will be replacing all legacy systems, some of which are more than 20 years old. BreEZe will be an off-the-shelf project modified to fit our departments' needs. Accenture is the prime vendor and will be using a system called Versa. It will also replace about 90 work-around databases used at this time by the Department. There will also be a document imaging system available for application and enforcement so that the Boards and Bureaus can view each application on the system and will not need a paper file. Mr. O'Connor stated some of the specific functionality that will benefit the staff and consumers will be that applications and renewals can be done on-line with a credit card. Workflow routing will be helpful because the employee will have a work queue that is ready to be reviewed, similar to an e-mail in-box, instead of a piece of paper landing on the employee's desk. Another benefit is that applicants will not be able to submit the application or renewal unless it is complete. This should cut down on deficiency notices needing to be sent to the applicants. Boards and Bureaus will be able to share information such as a complaint being filed against a licensee when the licensee holds another license within the department. Complainants/applicants will be able to track the status of their complaint/application on line. This system will update real time for applicant/complainant to view as soon as it is updated by the employee. Ms. Balaam explained costs and how the cost is broken down for the project 51.6 million. This project was set up on a 5-year payment plan and no payments will be made until the first board is deployed on the system. The 5-year payment plan will help to reduce risk to the boards and bureaus.

Mr. Counts asked if licensees will show a status of retired instead of delinquent if they would like. Mr. Duke stated this is not a policy or procedure, it is a statutory issue that depends on each Board and Bureau's laws. Mr. Counts requested the Bureau look at legislative authority to allow fiduciaries to show retired. Mr. Stubbs stated he believes this is a good idea. Mr. Counts asked will the system be able to upload information for continuing education providers. Mr. O'Connor stated documents can be uploaded and outside organizations can interface with this system if it is something that the Board or Bureau requests. Mr. Counts asked if he enters a name will it show all licenses the person holds within DCA or would the public have to go into each Board or Bureau. Mr. O'Connor stated this is a good question and will be asked of the vendor. Mr. Counts asked if the system will send an email to licensee to alert them they have a message in their account. Mr. O'Connor stated this is covered in the system. Mr. Counts

asked would the licensee also be able to check the status of a complaint filed against them. Mr. O'Connor stated yes.

Mr. DeLuna asked if BreEZe will have the ability to display the licensee's picture. Ms. Balaam stated the system will store the picture but she is unsure if it can be displayed and will look into this. Mr. Duke stated there may be legal and privacy issues with this.

12:00 – 12:15 Break

X. Sub-Committee Reports: finalize goals, responsibilities and objectives – Evin Van Outryve
Mr. Van Outryve reviewed the strategic plan that was approved in July 2010. A time-line was created with specific deadlines for each objective. Some objectives were removed or moved to a different section of the strategic Plan. Mr. Van Outryve will be at the next meeting to follow-up on this plan.

XI. Future Meeting Dates

Mr. DeLuna asked the members if they would be willing to do the meeting by teleconference. The committee members would prefer to come to Sacramento but start the meetings at 11:00am. The next meeting will be held January 26, 2012 at 11:00am in Sacramento.

XII. Public Comment on Items Not on the Agenda

Mr. Counts wanted to schedule sub-committee meetings. Mr. DeLuna stated there are travel restrictions and he will look into doing this via conference call.

XIII. Adjournment

The meeting was adjourned by Chair, Daniel Stubbs, at 2:00pm.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #8 – Bureau Updates, Acting Chief

Status of the Bureau

FY2011/2012 Statistics

AB 1424 BOE/ FTB (Attachment)

Citation Process - Power Point Presentation

Public Comment:

ALERT-POTENTIAL LICENSE DENIAL OR SUSPENSION FOR FAILURE TO PAY TAXES:

Effective July 1, 2012, the Professional Fiduciaries Bureau is required to deny an application for licensure and to suspend the license/certificate/registration of any applicant or licensee who has outstanding tax obligations due to the Franchise Tax Board (FTB) or the State Board of Equalization (BOE) and appears on either the FTB or BOE's certified lists of top 500 tax delinquencies over \$100,000. (AB 1424, Perea, Chapter 455, Statutes of 2011)

Once it has been determined that an applicant or a licensee is on a certified list, the applicant or licensee has 90 days from the issuance of a preliminary notice of suspension to either satisfy all outstanding tax obligations or enter into a payment installment program with the FTB or BOE. Any such person who fails to come into compliance will have his/her license denied or suspended until the Professional Fiduciaries Bureau receives a release from the FTB or BOE. The form for requesting a release will be included with the preliminary notice of suspension.

The law prohibits the Professional Fiduciaries Bureau from refunding any money paid for the issuance or renewal of a license where the license is denied or suspended as required by AB 1424.

The FTB and BOE are currently expanding the certified lists from 250 to 500, but you can check if you are currently on the FTB's certified list at: www.ftb.ca.gov/aboutFTB/Delinquent_Taxpayers.shtml or the BOE's certified list at: www.boe.ca.gov/cgi-bin/deliq.cgi. If you believe you are on either list in error, please call the FTB at (888) 426-8555 or the BOE at 916-445-5167.

DEPARTMENT OF CONSUMER AFFAIRS

PEFB

PROFESSIONAL FIDUCIARIES BUREAU

A professional fiduciary manages a client's personal affairs, including daily care, housing and medical needs, and finances, ranging from paying bills to handling investments and trusts.

As of January 1, 2009, anyone who handles these duties for non-family members must be licensed, with a few exceptions.

The Professional Fiduciaries Bureau is a State agency created in 2006 under the Department of Consumer Affairs to license and regulate professional fiduciaries in California.

Who needs a professional fiduciary?

Someone who wants to hire a professional fiduciary to administer a trust, or someone with a mental and/or physical impairment who needs care and who:

- Doesn't want to burden family and friends.
- Doesn't have family or friends who can assist.
- Wants to avoid conflict among family members.

How do I find a licensed professional fiduciary?

The Bureau does not provide referrals, but has information to help consumers make informed choices. Contact the Bureau online at www.fiduciary.ca.gov or call (916) 574-7340 for the following information about a licensed professional fiduciary:

- License status
- When the license was issued and when it expires
- Address of public record
- Any discipline imposed by the Bureau
- Value of client assets managed by the fiduciary
- Bankruptcy information
- Case removal information

Remember

It is a crime for professional fiduciaries to practice without a license.

Do you need a professional fiduciary?

DEPARTMENT OF CONSUMER AFFAIRS

PEFB

PROFESSIONAL FIDUCIARIES BUREAU

P.O. Box 989005
West Sacramento, CA 95798-0005
www.fiduciary.ca.gov

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS



Why is licensing of professional fiduciaries important?

Professional fiduciaries work with clients who may be vulnerable to abuse or financial exploitation due to their mental or physical impairments.

Licensing and oversight by the Professional Fiduciaries Bureau provides a layer of protection for these clients and their families. Licensing ensures that professional fiduciaries have met education and experience requirements and have passed a competency exam and a criminal background check.

What if a licensed professional fiduciary violates the law?

The Bureau can take action against licensees who violate the law. Actions can include fines, sanctions, and license suspensions or revocations, or even referral to law enforcement authorities for criminal prosecution.

How do I report something to the Professional Fiduciaries Bureau?

To report unlicensed activity or to file a complaint about a fiduciary, go online to www.fiduciary.ca.gov (click on “File a Complaint”) or call (800) 952-5210 to have a complaint form mailed to you.

Who is exempt from licensing?

- A conservator or guardian for one person.
- A trustee or agent under durable power of attorney for healthcare or finances for up to three people.

Some professionals who perform fiduciary duties working within their scope of practice are also exempt from licensing. They include:

- Attorneys
- Certified Public Accountants
- Enrolled agents for the Internal Revenue Service
- Broker-dealers and investment advisers
- Employees of the following:
 - » Trust companies
 - » Institutions insured by the Federal Deposit Insurance Corporation
 - » Corporations regulated by the Securities and Exchange Commission
 - » Public offices or public agencies

Where can I find out more about fiduciaries

To find out more about fiduciaries, contact the Bureau or one of these professional groups:

- Professional Fiduciary Association of California
www.pfac-pro.org
(866) 886-7322
- Center for Guardianship Certification
www.guardianshipcert.org
(717) 238-4689
- National Guardianship Association
www.guardianship.org
(877) 326-5992

How do I stay informed about Bureau activities?

Join the Bureau’s interested party mailing list. Go online to www.fiduciary.ca.gov and click on “Sign up to Receive Advisories” under “Quick Hits.”

Professional Fiduciaries Bureau
P.O. Box 989005
West Sacramento, CA 95798-0005

E-mail: fiduciary@dca.ca.gov

Phone: (916) 574-7340
Fax: (916) 574-8645

Professional Fiduciaries Bureau

Mission

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

Vision

To maintain and enhance the physical, emotional, and financial well-being of consumers by promoting the highest professional fiduciary standards.



DEPARTMENT OF CONSUMER AFFAIRS



PROFESSIONAL FIDUCIARIES BUREAU

As of January 1, 2009, fiduciaries appointed by the courts or hired by individuals or families in California must hold a valid license as a professional fiduciary unless specifically exempt under State law.

The Professional Fiduciaries Bureau is a State agency created in 2006 under the Department of Consumer Affairs to license and regulate professional fiduciaries in California.

Who must be licensed?

- A conservator or guardian for two or more people.
- A trustee or agent under durable power of attorney for healthcare or finances for more than three people.

Who is exempt from licensing?

Some professionals who perform fiduciary duties working within their scope of practice are exempt from licensing. They include:

- Attorneys
- Certified Public Accountants
- Enrolled agents for the Internal Revenue Service
- Broker-dealers and investment advisers
- Employees of the following:
 - » Trust companies
 - » Institutions insured by the Federal Deposit Insurance Corporation
 - » Corporations regulated by the Securities and Exchange Commission
 - » Public offices or public agencies

**Do you provide
fiduciary services
and need to be
licensed?**

DEPARTMENT OF CONSUMER AFFAIRS



PROFESSIONAL FIDUCIARIES BUREAU

P.O. Box 989005
West Sacramento, CA 95798-0005
www.fiduciary.ca.gov



What are the requirements to apply for a license?

You must:

- Meet the education and experience requirements.
- Complete 30 hours of pre-licensing education given by a provider approved by the Professional Fiduciaries Bureau.
- Submit a completed application, including information on conviction, bankruptcy, and breaches of fiduciary duties.
- Pay the \$400 application fee.
- Supply fingerprints to the Department of Justice for a criminal background check.
- Consent to a credit check for the application review process.

A license application packet and checklist are available online at www.fiduciary.ca.gov.

When do I take the exam?

After the Bureau determines you are eligible to take the exam, you register for the exam with the Center for Guardianship Certification. Go online to www.guardianshipcert.org, or call CGC at (717) 238-4689 for more information about the exam.

After you pass the exam, you must submit the license fee to the Bureau to receive your license.

Where do I find out more about a career as a fiduciary?

Contact the Bureau or one of these professional groups:

- Professional Fiduciary Association of California
www.pfac-pro.org
(866) 886-7322
- Center for Guardianship Certification
www.guardianshipcert.org
(717) 238-4689
- National Guardianship Association
www.guardianship.org
(877) 326-5992

How do I stay informed about Bureau activities?

Join the Bureau's interested party mailing list. Go online to www.fiduciary.ca.gov and click on "Sign up to Receive Advisories" under "Quick Hits."

How do I report something to the Bureau?

To report unlicensed activity or financial elder abuse or to file a complaint, contact the Bureau by mail, e-mail or phone.

Professional Fiduciaries Bureau
P.O. Box 989005
West Sacramento, CA 95798-0005

E-mail: fiduciary@dca.ca.gov

Phone: (916) 574-7340
Fax: (916) 574-8645

Professional Fiduciaries Bureau

Mission

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

Vision

To maintain and enhance the physical, emotional, and financial well-being of consumers by promoting the highest professional fiduciary standards.



BILL NUMBER: AB 1424 CHAPTERED
BILL TEXT

CHAPTER 455
FILED WITH SECRETARY OF STATE OCTOBER 4, 2011
APPROVED BY GOVERNOR OCTOBER 4, 2011
PASSED THE SENATE SEPTEMBER 7, 2011
PASSED THE ASSEMBLY SEPTEMBER 9, 2011
AMENDED IN SENATE SEPTEMBER 2, 2011
AMENDED IN SENATE AUGUST 31, 2011
AMENDED IN SENATE AUGUST 18, 2011
AMENDED IN SENATE AUGUST 15, 2011
AMENDED IN SENATE JULY 12, 2011
AMENDED IN SENATE JUNE 7, 2011
AMENDED IN SENATE JUNE 6, 2011
AMENDED IN ASSEMBLY MAY 4, 2011

INTRODUCED BY Assembly Member Perea

MARCH 22, 2011

An act to amend Sections 31 and 476 of, and to add Section 494.5 to, the Business and Professions Code, to add Section 12419.13 to the Government Code, to add Section 10295.4 to the Public Contract Code, to amend Sections 7063, 19195, and 19533 of, to add Sections 6835, 7057, 7057.5, 19377.5, 19571, and 19572 to, to add Article 9 (commencing with Section 6850) to Chapter 6 of Part 1 of Division 2 of, and to add Article 7 (commencing with Section 19291) to Chapter 5 of Part 10.2 of Division 2 of, the Revenue and Taxation Code, and to add Section 34623.1 to the Vehicle Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1424, Perea. Franchise Tax Board: delinquent tax debt.

The Personal Income Tax Law and the Corporation Tax Law impose taxes on, or measured by, income. Existing law requires the Franchise Tax Board to make available as a matter of public record each calendar year a list of the 250 largest tax delinquencies in excess of \$100,000, and requires the list to include specified information with respect to each delinquency. Existing law requires every board, as defined, and the Department of Insurance, upon request of the Franchise Tax Board, to furnish to the Franchise Tax Board certain information with respect to every licensee.

This bill would require the State Board of Equalization, quarterly, and the Franchise Tax Board, at least twice each calendar year, to make available a list of the 500 largest tax delinquencies described above. This bill would require the Franchise Tax Board to include additional information on the list with respect to each delinquency, including the type, status, and license number of any occupational or professional license held by the person or persons liable for payment of the tax and the names and titles of the principal officers of the person liable for payment of the tax if that person is a limited liability company or corporation. This bill would require a person whose delinquency appeared on either list and whose name has been removed, as provided, to comply with the terms of the arranged resolution, and would authorize the State Board of Equalization and the Franchise Tax Board, if the person fails to comply with the terms of the arranged resolution, to add the person's

name to the list without providing prior written notice, as provided.

This bill would require a state governmental licensing entity, other than the Department of Motor Vehicles, State Bar of California, and Alcoholic Beverage Control Board, as provided, that issues professional or occupational licenses, certificates, registrations, or permits, to suspend, revoke, and refuse to issue a license if the licensee's name is included on either list of the 500 largest tax delinquencies described above. This bill would not include the Contractors' State License Board in the definition of "state governmental licensing entity." This bill would also require those licensing entities to collect the social security number or federal taxpayer identification number of each individual applicant of that entity for the purpose of matching those applicants to the names on the lists of the 500 largest tax delinquencies, and would require each application for a new license or renewal of a license to indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay his or her state tax obligation and that his or her license may be suspended if the state tax obligation is not paid. This bill would also authorize the State Board of Equalization and the Franchise Tax Board to disclose to state governmental licensing entities identifying information, as defined, of persons on the list of the 500 largest tax delinquencies, as specified. This bill would authorize a motor carrier permit of a licensee whose name is on the certified list of tax delinquencies to be suspended, as provided. The bill would require the State Board of Equalization and the Franchise Tax Board to meet certain requirements and would make related changes.

The bill would provide that the release or other use of information received by a state governmental licensing entity pursuant to these provisions, except as authorized, is punishable as a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

This bill would also prohibit a state agency from entering into any contract for the acquisition of goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies described above.

Existing law authorizes the Franchise Tax Board to collect specified amounts for the Department of Industrial Relations and specified amounts imposed by a court pursuant to specified procedures.

This bill would authorize the State Board of Equalization and the Franchise Tax Board to enter into an agreement to collect any delinquent tax debt due to the Internal Revenue Service or any other state imposing an income tax, or a tax measured by income, or a sales or use tax, or a similar tax, pursuant to specified procedures, provided that the Internal Revenue Service or that state has entered into an agreement to collect delinquent tax debts due to the State Board of Equalization or the Franchise Tax Board, and the agreements do not cause the net displacement of civil service employees, as specified. This bill would require the Controller, upon execution of a reciprocal agreement between the State Board of Equalization, the Franchise Tax Board, and any other state imposing a sales and use tax, a tax similar to a sales and use tax, an income tax, or tax measured by income, to offset any delinquent tax debt due to that other state from a person or entity, against any refund under the Sales and Use Tax Law, the Personal Income Tax Law, or the Corporation Tax Law owed to that person or entity, as provided.

Existing law requires, in the event that the debtor has more than

one debt being collected by the Franchise Tax Board and the amount collected is insufficient to satisfy the total amount owed, the amount collected to be applied to specified priorities.

This bill would include specified tax delinquencies collected pursuant to this bill.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 31 of the Business and Professions Code is amended to read:

31. (a) As used in this section, "board" means any entity listed in Section 101, the entities referred to in Sections 1000 and 3600, the State Bar, the Department of Real Estate, and any other state agency that issues a license, certificate, or registration authorizing a person to engage in a business or profession.

(b) Each applicant for the issuance or renewal of a license, certificate, registration, or other means to engage in a business or profession regulated by a board who is not in compliance with a judgment or order for support shall be subject to Section 17520 of the Family Code.

(c) "Compliance with a judgment or order for support" has the meaning given in paragraph (4) of subdivision (a) of Section 17520 of the Family Code.

(d) Each licensee or applicant whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code shall be subject to Section 494.5.

(e) Each application for a new license or renewal of a license shall indicate on the application that the law allows the State Board of Equalization and the Franchise Tax Board to share taxpayer information with a board and requires the licensee to pay his or her state tax obligation and that his or her license may be suspended if the state tax obligation is not paid.

(f) For purposes of this section, "tax obligation" means the tax imposed under, or in accordance with, Part 1 (commencing with Section 6001), Part 1.5 (commencing with Section 7200), Part 1.6 (commencing with Section 7251), Part 1.7 (commencing with Section 7280), Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

SEC. 2. Section 476 of the Business and Professions Code is amended to read:

476. (a) Except as provided in subdivision (b), nothing in this division shall apply to the licensure or registration of persons pursuant to Chapter 4 (commencing with Section 6000) of Division 3, or pursuant to Division 9 (commencing with Section 23000) or pursuant to Chapter 5 (commencing with Section 19800) of Division 8.

(b) Section 494.5 shall apply to the licensure of persons authorized to practice law pursuant to Chapter 4 (commencing with Section 6000) of Division 3, and the licensure or registration of persons pursuant to Chapter 5 (commencing with Section 19800) of Division 8 or pursuant to Division 9 (commencing with Section 23000).

SEC. 3. Section 494.5 is added to the Business and Professions Code, to read:

494.5. (a) (1) Except as provided in paragraphs (2), (3), and (4), a state governmental licensing entity shall refuse to issue, reactivate, reinstate, or renew a license and shall suspend a license if a licensee's name is included on a certified list.

(2) The Department of Motor Vehicles shall suspend a license if a licensee's name is included on a certified list. Any reference in this section to the issuance, reactivation, reinstatement, renewal, or denial of a license shall not apply to the Department of Motor Vehicles.

(3) The State Bar of California may recommend to refuse to issue, reactivate, reinstate, or renew a license and may recommend to suspend a license if a licensee's name is included on a certified list. The word "may" shall be substituted for the word "shall" relating to the issuance of a temporary license, refusal to issue, reactivate, reinstate, renew, or suspend a license in this section for licenses under the jurisdiction of the California Supreme Court.

(4) The Alcoholic Beverage Control Board may refuse to issue, reactivate, reinstate, or renew a license, and may suspend a license, if a licensee's name is included on a certified list.

(b) For purposes of this section:

(1) "Certified list" means either the list provided by the State Board of Equalization or the list provided by the Franchise Tax Board of persons whose names appear on the lists of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code, as applicable.

(2) "License" includes a certificate, registration, or any other authorization to engage in a profession or occupation issued by a state governmental licensing entity. "License" includes a driver's license issued pursuant to Chapter 1 (commencing with Section 12500) of Division 6 of the Vehicle Code. "License" excludes a vehicle registration issued pursuant to Division 3 (commencing with Section 4000) of the Vehicle Code.

(3) "Licensee" means an individual authorized by a license to drive a motor vehicle or authorized by a license, certificate, registration, or other authorization to engage in a profession or occupation issued by a state governmental licensing entity.

(4) "State governmental licensing entity" means any entity listed in Section 101, 1000, or 19420, the office of the Attorney General, the Department of Insurance, the Department of Motor Vehicles, the State Bar of California, the Department of Real Estate, and any other state agency, board, or commission that issues a license, certificate, or registration authorizing an individual to engage in a profession or occupation, including any certificate, business or occupational license, or permit or license issued by the Department of Motor Vehicles or the Department of the California Highway Patrol. "State governmental licensing entity" shall not include the Contractors' State License Board.

(c) The State Board of Equalization and the Franchise Tax Board shall each submit its respective certified list to every state governmental licensing entity. The certified lists shall include the name, social security number or taxpayer identification number, and the last known address of the persons identified on the certified lists.

(d) Notwithstanding any other law, each state governmental licensing entity shall collect the social security number or the federal taxpayer identification number from all applicants for the purposes of matching the names of the certified lists provided by the State Board of Equalization and the Franchise Tax Board to applicants and licensees.

(e) (1) Each state governmental licensing entity shall determine

whether an applicant or licensee is on the most recent certified list provided by the State Board of Equalization and the Franchise Tax Board.

(2) If an applicant or licensee is on either of the certified lists, the state governmental licensing entity shall immediately provide a preliminary notice to the applicant or licensee of the entity's intent to suspend or withhold issuance or renewal of the license. The preliminary notice shall be delivered personally or by mail to the applicant's or licensee's last known mailing address on file with the state governmental licensing entity within 30 days of receipt of the certified list. Service by mail shall be completed in accordance with Section 1013 of the Code of Civil Procedure.

(A) The state governmental licensing entity shall issue a temporary license valid for a period of 90 days to any applicant whose name is on a certified list if the applicant is otherwise eligible for a license.

(B) The 90-day time period for a temporary license shall not be extended. Only one temporary license shall be issued during a regular license term and the term of the temporary license shall coincide with the first 90 days of the regular license term. A license for the full term or the remainder of the license term may be issued or renewed only upon compliance with this section.

(C) In the event that a license is suspended or an application for a license or the renewal of a license is denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the state governmental licensing entity.

(f) (1) A state governmental licensing entity shall refuse to issue or shall suspend a license pursuant to this section no sooner than 90 days and no later than 120 days of the mailing of the preliminary notice described in paragraph (2) of subdivision (e), unless the state governmental licensing entity has received a release pursuant to subdivision (h). The procedures in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial or suspension of, or refusal to renew, a license or the issuance of a temporary license pursuant to this section.

(2) Notwithstanding any other law, if a board, bureau, or commission listed in Section 101, other than the Contractors' State License Board, fails to take action in accordance with this section, the Department of Consumer Affairs shall issue a temporary license or suspend or refuse to issue, reactivate, reinstate, or renew a license, as appropriate.

(g) Notices shall be developed by each state governmental licensing entity. For an applicant or licensee on the State Board of Equalization's certified list, the notice shall include the address and telephone number of the State Board of Equalization, and shall emphasize the necessity of obtaining a release from the State Board of Equalization as a condition for the issuance, renewal, or continued valid status of a license or licenses. For an applicant or licensee on the Franchise Tax Board's certified list, the notice shall include the address and telephone number of the Franchise Tax Board, and shall emphasize the necessity of obtaining a release from the Franchise Tax Board as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) The notice shall inform the applicant that the state governmental licensing entity shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 90 calendar days if the applicant is otherwise eligible and that

upon expiration of that time period, the license will be denied unless the state governmental licensing entity has received a release from the State Board of Equalization or the Franchise Tax Board, whichever is applicable.

(2) The notice shall inform the licensee that any license suspended under this section will remain suspended until the state governmental licensing entity receives a release along with applications and fees, if applicable, to reinstate the license.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any moneys paid by the applicant or licensee shall not be refunded by the state governmental licensing entity. The state governmental licensing entity shall also develop a form that the applicant or licensee shall use to request a release by the State Board of Equalization or the Franchise Tax Board. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(h) If the applicant or licensee wishes to challenge the submission of his or her name on a certified list, the applicant or licensee shall make a timely written request for release to the State Board of Equalization or the Franchise Tax Board, whichever is applicable. The State Board of Equalization or the Franchise Tax Board shall immediately send a release to the appropriate state governmental licensing entity and the applicant or licensee, if any of the following conditions are met:

(1) The applicant or licensee has complied with the tax obligation, either by payment of the unpaid taxes or entry into an installment payment agreement, as described in Section 6832 or 19008 of the Revenue and Taxation Code, to satisfy the unpaid taxes.

(2) The applicant or licensee has submitted a request for release not later than 45 days after the applicant's or licensee's receipt of a preliminary notice described in paragraph (2) of subdivision (e), but the State Board of Equalization or the Franchise Tax Board, whichever is applicable, will be unable to complete the release review and send notice of its findings to the applicant or licensee and state governmental licensing entity within 45 days after the State Board of Equalization's or the Franchise Tax Board's receipt of the applicant's or licensee's request for release. Whenever a release is granted under this paragraph, and, notwithstanding that release, the applicable license or licenses have been suspended erroneously, the state governmental licensing entity shall reinstate the applicable licenses with retroactive effect back to the date of the erroneous suspension and that suspension shall not be reflected on any license record.

(3) The applicant or licensee is unable to pay the outstanding tax obligation due to a current financial hardship. "Financial hardship" means financial hardship as determined by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, where the applicant or licensee is unable to pay any part of the outstanding liability and the applicant or licensee is unable to qualify for an installment payment arrangement as provided for by Section 6832 or Section 19008 of the Revenue and Taxation Code. In order to establish the existence of a financial hardship, the applicant or licensee shall submit any information, including information related to reasonable business and personal expenses, requested by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, for purposes of making that determination.

(i) An applicant or licensee is required to act with diligence in responding to notices from the state governmental licensing entity

and the State Board of Equalization or the Franchise Tax Board with the recognition that the temporary license will lapse or the license suspension will go into effect after 90 days and that the State Board of Equalization or the Franchise Tax Board must have time to act within that period. An applicant's or licensee's delay in acting, without good cause, which directly results in the inability of the State Board of Equalization or the Franchise Tax Board, whichever is applicable, to complete a review of the applicant's or licensee's request for release shall not constitute the diligence required under this section which would justify the issuance of a release. An applicant or licensee shall have the burden of establishing that he or she diligently responded to notices from the state governmental licensing entity or the State Board of Equalization or the Franchise Tax Board and that any delay was not without good cause.

(j) The State Board of Equalization or the Franchise Tax Board shall create release forms for use pursuant to this section. When the applicant or licensee has complied with the tax obligation by payment of the unpaid taxes, or entry into an installment payment agreement, or establishing the existence of a current financial hardship as defined in paragraph (3) of subdivision (h), the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall mail a release form to the applicant or licensee and provide a release to the appropriate state governmental licensing entity. Any state governmental licensing entity that has received a release from the State Board of Equalization and the Franchise Tax Board pursuant to this subdivision shall process the release within five business days of its receipt. If the State Board of Equalization or the Franchise Tax Board determines subsequent to the issuance of a release that the licensee has not complied with their installment payment agreement, the State Board of Equalization or the Franchise Tax Board, whichever is applicable, shall notify the state governmental licensing entity and the licensee in a format prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee is not in compliance and the release shall be rescinded. The State Board of Equalization and the Franchise Tax Board may, when it is economically feasible for the state governmental licensing entity to develop an automated process for complying with this subdivision, notify the state governmental licensing entity in a manner prescribed by the State Board of Equalization or the Franchise Tax Board, whichever is applicable, that the licensee has not complied with the installment payment agreement. Upon receipt of this notice, the state governmental licensing entity shall immediately notify the licensee on a form prescribed by the state governmental licensing entity that the licensee's license will be suspended on a specific date, and this date shall be no longer than 30 days from the date the form is mailed. The licensee shall be further notified that the license will remain suspended until a new release is issued in accordance with this subdivision.

(k) The State Board of Equalization and the Franchise Tax Board may enter into interagency agreements with the state governmental licensing entities necessary to implement this section.

(l) Notwithstanding any other law, a state governmental licensing entity, with the approval of the appropriate department director or governing body, may impose a fee on a licensee whose license has been suspended pursuant to this section. The fee shall not exceed the amount necessary for the state governmental licensing entity to cover its costs in carrying out the provisions of this section. Fees imposed pursuant to this section shall be deposited in the fund in which other fees imposed by the state governmental licensing entity

are deposited and shall be available to that entity upon appropriation in the annual Budget Act.

(m) The process described in subdivision (h) shall constitute the sole administrative remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section.

(n) Any state governmental licensing entity receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or who has been granted a temporary license under this section shall respond that the license was denied or suspended or the temporary license was issued only because the licensee appeared on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). Any state governmental licensing entity that discloses on its Internet Web site or other publication that the licensee has had a license denied or suspended under this section or has been granted a temporary license under this section shall prominently disclose, in bold and adjacent to the information regarding the status of the license, that the only reason the license was denied, suspended, or temporarily issued is because the licensee failed to pay taxes.

(o) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(p) The State Board of Equalization, the Franchise Tax Board, and state governmental licensing entities, as appropriate, shall adopt regulations as necessary to implement this section.

(q) (1) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the State Board of Equalization or the Franchise Tax Board, pursuant to this section, except to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to this section. The release or other use of information received by a state governmental licensing entity pursuant to this section, except as authorized by this section, is punishable as a misdemeanor. This subdivision may not be interpreted to prevent the State Bar of California from filing a request with the Supreme Court of California to suspend a member of the bar pursuant to this section.

(2) A suspension of, or refusal to renew, a license or issuance of a temporary license pursuant to this section does not constitute denial or discipline of a licensee for purposes of any reporting requirements to the National Practitioner Data Bank and shall not be reported to the National Practitioner Data Bank or the Healthcare Integrity and Protection Data Bank.

(3) Upon release from the certified list, the suspension or revocation of the applicant's or licensee's license shall be purged from the state governmental licensing entity's Internet Web site or other publication within three business days. This paragraph shall not apply to the State Bar of California.

(r) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(s) All rights to review afforded by this section to an applicant shall also be afforded to a licensee.

(t) Unless otherwise provided in this section, the policies, practices, and procedures of a state governmental licensing entity with respect to license suspensions under this section shall be the same as those applicable with respect to suspensions pursuant to Section 17520 of the Family Code.

(u) No provision of this section shall be interpreted to allow a court to review and prevent the collection of taxes prior to the payment of those taxes in violation of the California Constitution.

(v) This section shall apply to any licensee whose name appears on a list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code on or after July 1, 2012.

SEC. 4. Section 12419.13 is added to the Government Code, to read:

12419.13. (a) (1) The Controller shall, upon execution of a reciprocal agreement between the State Board of Equalization or the Franchise Tax Board, and any other state imposing a sales and use tax, an income tax, or tax measured by income, offset any delinquent tax debt due to that other state from a person or entity, against any refund under the Sales and Use Tax Law, the Personal Income Tax Law, or the Corporation Tax Law owed to that person or entity.

(2) Standards and procedures for submission of requests for offsets shall be as prescribed by the Controller.

(3) Payment of the offset amount shall occur only after other offset requests for debts owed by a person or entity to this state or the federal government have been satisfied in accordance with the priority established under Section 12419.3.

(b) The reciprocal agreement identified in subdivision (a) shall prescribe the manner in which the administrative costs of the Controller, the State Board of Equalization, and the Franchise Tax Board shall be reimbursed.

SEC. 5. Section 10295.4 is added to the Public Contract Code, to read:

10295.4. (a) Notwithstanding any other law, a state agency shall not enter into any contract for the acquisition of goods or services with a contractor whose name appears on either list of the 500 largest tax delinquencies pursuant to Section 7063 or 19195 of the Revenue and Taxation Code. Any contract entered into in violation of this subdivision is void and unenforceable.

(b) This section shall apply to any contract executed on or after July 1, 2012.

SEC. 6. Section 6835 is added to the Revenue and Taxation Code, to read:

6835. (a) The board may enter into an agreement with the Internal Revenue Service or any other state imposing a sales and use tax, or a similar tax, for the purpose of collecting delinquent tax debts with respect to amounts assessed or imposed under this part, provided the agreements do not cause the net displacement of civil service employees. The agreement may provide, at the discretion of the board, the rate of payment and the manner in which compensation for services shall be paid.

(b) At the discretion of the board, the Internal Revenue Service or the other state collecting the tax debt pursuant to subdivision (a) may, as part of the collection process, refer the tax debt for

litigation by its legal representatives in the name of the board.

(c) For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

SEC. 7. Article 9 (commencing with Section 6850) is added to Chapter 6 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

Article 9. Collection of Tax Debts Due to the Internal Revenue Services or Other States

6850. (a) The board may enter into an agreement to collect any delinquent tax debt due to the Internal Revenue Service or any other state imposing a sales and use tax, or similar tax, if, pursuant to Section 6835, the Internal Revenue Service or such a state has entered into an agreement to collect delinquent tax debts due to the board.

(b) Upon written notice to the debtor from the board, any amount referred to the board under subdivision (a) shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the board in any manner authorized under the law for collection of a delinquent sales and use tax liability, including, but not limited to, the recording of a notice of state tax lien under Article 2 (commencing with Section 7170) of Chapter 14 of Division 7 of Title 1 of the Government Code, and the issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(c) This part shall apply to amounts referred under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(d) The activities required to implement and administer this section shall not interfere with the primary mission of the board to administer this part.

(e) In no event shall a collection under this section be construed as a payment of sales and use taxes imposed under this part, or in accordance with Part 1.5 (commencing with Section 7200), or Part 1.6 (commencing with Section 7251), of Division 2.

SEC. 8. Section 7057 is added to the Revenue and Taxation Code, to read:

7057. (a) The board may disclose to state governmental licensing entities identifying information of persons appearing on the list of the 500 largest tax delinquencies pursuant to Section 7063 for purposes of administering Section 494.5 of the Business and Professions Code. "Identifying information" means the name, social security number or taxpayer identification number, and the last known address of the persons appearing on the list of the 500 largest tax delinquencies.

(b) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the board pursuant to this section, except

to administer Section 494.5 of the Business and Professions Code or to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to Section 494.5 of the Business and Professions Code.

(c) For purposes of this section, state governmental licensing entity means a state governmental licensing entity as defined in Section 494.5 of the Business and Professions Code.

SEC. 9. Section 7057.5 is added to the Revenue and Taxation Code, to read:

7057.5. (a) The board may disclose to state agencies identifying information of persons appearing on the list of the 500 largest tax delinquencies pursuant to Section 7063 for purposes of administering Section 10295.4 of the Public Contract Code. "Identifying information" means the name, social security number or taxpayer identification number, and the last known address of the persons appearing on the list of the 500 largest tax delinquencies.

(b) A state agency, and any officer, employee, or agent, or former officer, employee, or agent of a state agency, shall not disclose or use any information obtained from the board, pursuant to this section, except to administer Section 10295.4 of the Public Contract Code.

SEC. 10. Section 7063 of the Revenue and Taxation Code is amended to read:

7063. (a) Notwithstanding any other provision of law, the board shall make available as a matter of public record each quarter a list of the 500 largest tax delinquencies in excess of one hundred thousand dollars (\$100,000) under this part. For purposes of compiling the list, a tax delinquency means an amount owed to the board which is all of the following:

(1) Based on a determination made under Article 2 (commencing with Section 6481) or Article 3 (commencing with Section 6511) of Chapter 5 deemed final pursuant to Article 5 (commencing with Section 6561) of Chapter 5, or that is "due and payable" under Article 4 (commencing with Section 6536) of Chapter 5, or self-assessed by the taxpayer.

(2) Recorded as a notice of state tax lien pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, in any county recorder's office in this state.

(3) For an amount of tax delinquent for more than 90 days.

(b) For purposes of the list, a tax delinquency does not include any of the following and may not be included on the list:

(1) A delinquency that is under litigation in a court of law.

(2) A delinquency for which payment arrangements have been agreed to by both the taxpayer and the board and the taxpayer is in compliance with the arrangement.

(3) A delinquency for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code.

(c) Each quarterly list shall, with respect to each delinquency, include all the following:

(1) The name of the person or persons liable for payment of the tax and that person's or persons' last known address.

(2) The amount of tax delinquency as shown on the notice or notices of state tax lien and any applicable interest or penalties, less any amounts paid.

(3) The earliest date that a notice of state tax lien was filed.

(4) The type of tax that is delinquent.

(d) Prior to making a tax delinquency a matter of public record as required by this section, the board shall provide a preliminary written notice to the person or persons liable for the tax by certified mail, return receipt requested. If within 30 days after

issuance of the notice, the person or persons do not remit the amount due or make arrangements with the board for payment of the amount due, the tax delinquency shall be included on the list.

(e) The quarterly list described in subdivision (a) shall include the following:

(1) The telephone number and address of the board office to contact if a person believes placement of his or her name on the list is in error.

(2) The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

(f) As promptly as feasible, but no later than 5 business days from the occurrence of any of the following, the board shall remove that taxpayer's name from the list of tax delinquencies:

(1) Tax delinquencies for which the person liable for the tax has contacted the board and resolution of the delinquency has been arranged.

(2) Tax delinquencies for which the board has verified that an active bankruptcy proceeding has been initiated.

(3) Tax delinquencies for which the board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts.

(4) Tax delinquencies that the board has determined to be uncollectible.

(g) A person whose delinquency appears on the quarterly list, and who satisfies that delinquency in whole or in part, may request the board to include in its quarterly list any payments that person made to satisfy the delinquency. Upon receipt of that request, the board shall include those payments on the list as promptly as feasible.

(h) Notwithstanding subdivision (a), a person whose delinquency appeared on the quarterly list and whose name has been removed pursuant to paragraph (1) of subdivision (f) shall comply with the terms of the arranged resolution. If a person fails to do so, the board shall add that person's name to the list of delinquencies without providing the prior written notice required by subdivision (d).

SEC. 11. Section 19195 of the Revenue and Taxation Code is amended to read:

19195. (a) Notwithstanding any other provision of law, including Section 6254.21 of the Government Code, the Franchise Tax Board shall make available as a matter of public record at least twice each calendar year a list of the 500 largest tax delinquencies in excess of one hundred thousand dollars (\$100,000) under Part 10 and Part 11 of this division. For purposes of compiling the list, a tax delinquency means the total amount owed by a taxpayer to the State of California for which a notice of state tax lien has been recorded in any county recorder's office in this state, pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

(b) For purposes of the list, a tax delinquency does not include any of the following and may not be included on the list:

(1) A delinquency for which payment arrangements have been agreed to by both the taxpayer and the Franchise Tax Board and the taxpayer is in compliance with the arrangement.

(2) A delinquency for which the taxpayer has filed for bankruptcy protection pursuant to Title 11 of the United States Code.

(3) A delinquency for which the person or persons liable for the tax have contacted the Franchise Tax Board and for which resolution of the tax delinquency has been accepted by the Franchise Tax Board.

(c) Each list shall, with respect to each delinquency, include all the following:

- (1) The name of the person or persons liable for payment of the tax and that person's or persons' address.
- (2) The amount of tax delinquency as shown on the notice or notices of state tax lien and any applicable interest or penalties, less any amounts paid.
- (3) The earliest date that a notice of state tax lien was filed.
- (4) The type of tax that is delinquent.
- (5) The type, status, and license number of any occupational or professional license held by the person or persons liable for payment of the tax.
- (6) The names and titles of the principal officers of the person liable for payment of the tax if that person is a limited liability company or corporation. The Franchise Tax Board shall refer to the limited liability company's or the corporation's Statement of Information filed with the Secretary of State or to the limited liability company's or the corporation's tax return filed pursuant to this part to determine the principal officers of the limited liability company or corporation. Principal officers appearing on a list solely pursuant to this paragraph shall not be subject to Section 494.5 of the Business and Professions Code, or Section 10295.4 of the Public Contract Code.

(d) Prior to making a tax delinquency a matter of public record as required by this section, the Franchise Tax Board shall provide a preliminary written notice to the person or persons liable for the tax by certified mail, return receipt requested. If within 30 days after issuance of the notice, the person or persons do not remit the amount due or make arrangements with the Franchise Tax Board for payment of the amount due, the tax delinquency shall be included on the list.

(e) The list described in subdivision (a) shall include the following:

- (1) The telephone number and address of the Franchise Tax Board office to contact if a person believes placement of his or her name on the list is in error.
- (2) The aggregate number of persons that have appeared on the list who have satisfied their delinquencies in their entirety and the dollar amounts, in the aggregate, that have been paid attributable to those delinquencies.

(f) As promptly as feasible, but no later than five business days from the occurrence of any of the following, the Franchise Tax Board shall remove that taxpayer's name from the list of tax delinquencies:

- (1) Tax delinquencies for which the person liable for the tax has contacted the Franchise Tax Board and resolution of the delinquency has been arranged.
- (2) Tax delinquencies for which the Franchise Tax Board has verified that an active bankruptcy proceeding has been initiated.
- (3) Tax delinquencies for which the Franchise Tax Board has verified that a bankruptcy proceeding has been completed and there are no assets available with which to pay the delinquent amount or amounts.
- (4) Tax delinquencies that the Franchise Tax Board has determined to be uncollectible.

(g) A person whose delinquency appears on the list, and who satisfies that delinquency in whole or in part, may request the Franchise Tax Board to include in its list any payments that person made to satisfy the delinquency. Upon receipt of that request, the Franchise Tax Board shall include those payments on the list as

promptly as feasible.

(h) Notwithstanding subdivision (a), a person whose delinquency appeared on the list and whose name has been removed pursuant to paragraph (1) of subdivision (f) shall comply with the terms of the arranged resolution. If the person fails to do so, the Franchise Tax Board may add that person's name to the list of delinquencies without providing the prior written notice otherwise required by subdivision (d).

SEC. 12. Article 7 (commencing with Section 19291) is added to Chapter 5 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 7. Collection of Tax Debts Due to the Internal Revenue Service or Other States

19291. (a) The Franchise Tax Board may enter into an agreement to collect any delinquent tax debt due to the Internal Revenue Service or any other state imposing an income tax or tax measured by income if, pursuant to Section 19377.5, the Internal Revenue Service or that state has entered into an agreement to collect delinquent tax debts due the Franchise Tax Board.

(b) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent income tax liability, including, but not limited to, the recording of a notice of state tax lien under Article 2 (commencing with Section 7170) of Chapter 14 of Division 7 of Title 1 of the Government Code, and the issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(c) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this section in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this section, except to the extent that any provision is either inconsistent with this section or is not relevant to this section.

(d) The activities required to implement and administer this section shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(e) In no event shall a collection under this section be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 13. Section 19377.5 is added to the Revenue and Taxation Code, to read:

19377.5. (a) The Franchise Tax Board may enter into an agreement with the Internal Revenue Service or any other state imposing an income tax or tax measured by income for the purpose of collecting delinquent tax debts with respect to amounts assessed or imposed under Part 10 (commencing with Section 17001), this part, or Part 11 (commencing with Section 23001), provided the agreements do not cause the net displacement of civil service employees. The agreement may provide, at the discretion of the Franchise Tax Board, the rate of payment and the manner in which compensation for services shall be paid.

(b) At the discretion of the Franchise Tax Board, the Internal Revenue Service or the other state collecting the tax debt pursuant to subdivision (a) may, as part of the collection process, refer the tax debt for litigation by its legal representatives in the name of the Franchise Tax Board.

(c) For purposes of this section, "displacement" includes layoff, demotion, involuntary transfer to a new class, involuntary transfer to a new location requiring a change of residence, and time base reductions. "Displacement" does not include changes in shifts or days off, nor does it include reassignment to any other position within the same class and general location.

SEC. 14. Section 19533 of the Revenue and Taxation Code is amended to read:

19533. In the event the debtor has more than one debt being collected by the Franchise Tax Board and the amount collected by the Franchise Tax Board is insufficient to satisfy the total amount owing, the amount collected shall be applied in the following priority:

(a) Payment of any delinquencies transferred for collection under Article 5 (commencing with Section 19270) of Chapter 5.

(b) Payment of any taxes, additions to tax, penalties, interest, fees, or other amounts due and payable under Part 7.5 (commencing with Section 13201), Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or this part, and amounts authorized to be collected under Section 19722.

(c) Payment of delinquent wages collected pursuant to the Labor Code.

(d) Payment of delinquencies collected under Section 10878.

(e) Payment of any amounts due that are referred for collection under Article 5.5 (commencing with Section 19280) of Chapter 5.

(f) Payment of any amounts that are referred for collection pursuant to Section 62.9 of the Labor Code.

(g) Payment of delinquent penalties collected for the Department of Industrial Relations pursuant to the Labor Code.

(h) Payment of delinquent fees collected for the Department of Industrial Relations pursuant to the Labor Code.

(i) Payment of delinquencies referred by the Student Aid Commission.

(j) Payment of any delinquencies referred for collection under Article 7 (commencing with Section 19291) of Chapter 5.

(k) Notwithstanding the payment priority established by this section, voluntary payments designated by the taxpayer as payment for a personal income tax liability or as a payment on amounts authorized to be collected under Section 19722, shall not be applied pursuant to this priority, but shall instead be applied as designated.

SEC. 15. Section 19571 is added to the Revenue and Taxation Code, to read:

19571. (a) The Franchise Tax Board may disclose to state governmental licensing entities identifying information of persons appearing on the list of 500 largest tax delinquencies pursuant to Section 19195 for purposes of administering Section 494.5 of the Business and Professions Code. "Identifying information" means the name, social security number or taxpayer identification number, and the last known address of the persons appearing on the list of the 500 largest tax delinquencies.

(b) Neither the state governmental licensing entity, nor any officer, employee, or agent, or former officer, employee, or agent of a state governmental licensing entity, may disclose or use any information obtained from the Franchise Tax Board pursuant to this

section, except to administer Section 494.5 of the Business and Professions Code or to inform the public of the denial, refusal to renew, or suspension of a license or the issuance of a temporary license pursuant to Section 494.5 of the Business and Professions Code.

(c) For purposes of this section, state governmental licensing entity means a state governmental licensing entity as defined in Section 494.5 of the Business and Professions Code.

SEC. 16. Section 19572 is added to the Revenue and Taxation Code, to read:

19572. (a) The Franchise Tax Board may disclose to state agencies identifying information of persons appearing on the list of the 500 largest tax delinquencies pursuant to Section 19195 for purposes of administering Section 10295.4 of the Public Contract Code.

"Identifying information" means the name, social security number or taxpayer identification number, and the last known address of the persons appearing on the list of the 500 largest tax delinquencies.

(b) A state agency, and any officer, employee, or agent, or former officer, employee, or agent of a state agency, shall not disclose or use any information obtained from the Franchise Tax Board, pursuant to this section, except to administer Section 10295.4 of Public Contract Code.

SEC. 17. Section 34623.1 is added to the Vehicle Code, to read:

34623.1. The motor carrier permit of a licensee may be suspended pursuant to Section 494.5 of the Business and Professions Code if a licensee's name is included on a certified list of tax delinquencies provided by the State Board of Equalization or the Franchise Tax Board pursuant to Section 7063 or Section 19195, respectively of the Revenue and Taxation Code.

SEC. 18. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act or because costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #9 – Bureau Budget Report

Presentation by Tommy Nhan – DCA Budget Analyst

Public Comment:



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #10 – BreEZe Project

BreEZe Updates:

The Department of Consumer Affairs announced that a new online program is coming that will revolutionize the way we do business, the way our licensees and license applicants do business with us, and the way consumers interact with us. It's called BreEZe - BreEZE, because many of the tasks that were paper-based and took some time and effort to complete will now be a, well, BreEZe. Once completed, BreEZe will be the largest online enterprise licensing and enforcement solution in the world, bringing with it improved access to our services, greater ease of use for our stakeholders and improved back-office functionality that will greatly enhance our licensing and enforcement efficiency. For periodic updates on the project, visit the Professional Fiduciaries Bureau Website and click on the BreEZe icon for updates. The Bureau will also send updates to the interested parties mailing list.

Public Comment:



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #11 – Discussion and Possible Action regarding Professional Fiduciary Charges to Clients

Background: A series of San Jose Mercury News Articles in July, 2012, highlighted professional fiduciaries charging costly and questionable bills – and even more if they are challenged. (see attached articles)

The Bureau is seeing more charges on accounting documents where the fiduciary is charging their clients for Bureau contacts on complaints and investigations. Expert Consultant's state fiduciaries should only be making charges when it appears to be in the best interest of the consumer.

Advisory Committee Action Requested:

Staff is requesting a discussion of the issue and possible solutions to prevent unnecessary charges to the client.

Public Comment:

Santa Clara County's court-appointed personal and estate managers are handing out costly and questionable bills

By Karen de Sá kdesa@mercurynews.com © Copyright 2012, Bay Area News Group San Jose Mercury

News

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In a span of three years, two cars plowed into Danny Reed, leaving him brain-injured and partially paralyzed. But the San Jose man eventually earned a measure of relief -- a trust fund created for a lifetime of care.

Then he was hit again, this time in a seldom-watched branch of Santa Clara County Superior Court, when the man appointed by a judge to protect Reed's assets delivered the bill for 4 1/2 months on the job. With tasks charged at up to \$250 an hour, the bill totaled \$108,771.07 -- a pace of spending that would wipe out the cash in the 37-year-old's trust in about three years.

"I couldn't believe it," Reed said. "After I read through page after page of sickening page, it was just hard to believe that something like this could be permitted in the court system."

Believe it. While Reed's case stands out among the roughly 1,500 elderly and incapacitated adults whose lives and finances are overseen by Santa Clara County's probate court, a six-month investigation by this newspaper found a small group of the county's court-appointed personal and estate managers are handing out costly and questionable bills -- and charging even more if they are challenged. The troubling trend is enriching these private professionals -- working as conservators and trustees -- and their attorneys, with eye-popping rates that threaten to force their vulnerable clients onto government assistance to survive.

"In theory, they're looking at a person's estate and wondering: 'How much can I make here before they pass away?'" said Denis O'Neal, a former deputy Santa Clara County counsel, who is familiar with the group's billing practices and drew some sharp conclusions about the worst cases he saw in his 30 years in the field of elder abuse. "Their goal is to tap into that money."

Despite the culture of excess, O'Neal and others say, there are plenty of Santa Clara County estate and care managers who work hard for modest pay to rescue voiceless people from neglect and tangled finances. They often toil as unwelcome outsiders, battling complex family dynamics.

Still, the abuse persists in a county where, this newspaper found, lavish bills were seldom challenged and routinely approved for years. Unlike other Bay Area courts, Santa Clara County's has few guidelines for appropriate charges and -- many observers say -- a history of indifference that encourages some of these conservators to ask for the moon, with hourly rates that are double what other courts typically allow.

In one case reviewed by this newspaper, a conservator charged a Belmont dementia patient \$1,062 to help celebrate her birthday. Another billed an incapacitated Sunnyvale couple \$26,946, including attorneys' fees, for the 12 days she spent sorting through mail and orchestrating a cleanup of their roach-infested home. And a third firm billed a San Jose quadriplegic \$298,135 for a year's service, including attorney fees.

Now, court investigators and some attorneys -- including the San Jose law firm championing Reed's cause -- are fighting back against these excesses, triggering a series of legal confrontations. They're also taking aim at troubling local practices and state law that they say have rigged the system against the very people it's supposed to protect.

Under California law, challenging an excessive bill presents an astounding damned-if-you-do dilemma: A private estate manager can bill the cost to defend his charges right back to the person who protested the bill in the first place. Reed learned that the hard way: When he fought trustee Thomas Thorpe's original six-figure demand, the Los Gatos professional simply charged Reed for the fight. The total for those bills: \$261,878, more than double the amount of the charges he was defending.

That perverse predicament would become central in Reed's fight.

An imperfect match

Just how Reed and Thorpe ended up in a court-ordered relationship illustrates the trouble that can come when for-profit estate managers are matched with people the court deems in need.

On the one side are adults, most with little voice and little decision-making ability, who surrender their legal rights and all aspects of their care and finances under the state's probate laws. On the other side are California's 563 fiduciaries: Licensed to provide personal care and money management, they oversee more than \$5 billion in other people's assets.

Their relationship begins when family members or public servants conclude outside help is needed and petition the court for assistance.

Reed's life became tied up in probate court when he was 22, after a drunken, drug-addled motorist rammed into his tent at the Burning Man Festival in the Nevada desert, splitting open his skull. He emerged from a coma suffering from a traumatic brain injury and a mostly paralyzed left arm. In 1999, he was awarded \$815,000 in a negligence lawsuit.

That same year, he was hit again by a car in a downtown San Jose crosswalk. Again, he ended up in the hospital with brain damage. Again, he successfully sued, receiving an additional \$900,000.

At first, the court appointed Reed's mother, Jolaine Allen, to oversee his finances and care. She bought a modest townhouse for him and deposited the rest in the bank. In the decade that followed, Reed struggled to regain his brain function and independence. He still has virtually no use of his left arm and suffers from chronic pain, but he managed to get his driver's license and study Web design in community college.

Then, suddenly, after failing to review Reed's case for years, court officials raised questions about how his mother was managing the \$650,000 then remaining in his trust. In her effort to diversify his investments, one account was mislabeled, jeopardizing Reed's ability to draw disability income vital to his care. County officials convinced Judge Thomas Cain to appoint someone to temporarily oversee Reed's trust.

A court investigator consulted a binder that lists the county's licensed fiduciaries and chose Thorpe, a former wealth and trust adviser for several major banks who manages \$6.8 million in assets.

From the start, Reed objected, but his mother figured once she cleared up the confusion the judge would remove Thorpe.

"We didn't know," she said, "that once they appoint a trustee it's almost like you need dynamite to blast them out."

Charges mount



In court, from left: Danny Reed, Mike Desmarais, Matt Crosby and deputy public defender Mark Dames. (Karen T. Borchers, Mercury News)

Indeed, in 2010, Thorpe and his attorneys, Diane Brown and Michael Desmarais, asked the court to approve \$108,771 in charges to Reed's trust for 473 hours of tasks by Thorpe and his staff. Thorpe had changed the titles on two bank accounts, paid a handful of bills, increased some insurance and prompted a cleanup of Reed's townhouse, described in court papers as a "hoarder's lair."

So how did the charges climb so high so quickly? A closer review of Thorpe's task-by-task billing system underscores the way some local private estate managers do business -- charging top rates for conversations and consultations with colleagues, on top of charges for emails, calls and faxes.

For example, on a single day in August 2010, Thorpe's bill came to \$2,232 for 16.4 hours of time that he and three colleagues at Dragomir Fiduciary Services of San Jose spent on the case. Thorpe's services that day included an unannounced visit to Reed's townhouse with two police officers to inspect the property; inquiries into a neuropsychiatric evaluation of Reed's mental capacity; and time spent meeting with and emailing his colleague Mircea Dragomir.

Disgusted by what he saw as he flipped through that first bill, Reed said he was determined to fight back. He had no idea, however, just how difficult and costly that fight could be -- or that he would be up against a system that for years had allowed conservators and trustees like Thorpe to prosper.

Reed not alone

Most people whose lives are under the control of probate court have no ability to understand their plight like Reed does. But other aspects of his situation are chillingly familiar.

This newspaper's investigation found that for years private estate managers working under court supervision in Santa Clara County have been handing out detailed six-figure bills -- and that in many cases, their clients were ill-prepared to push back or even review them.

Among some more recent examples:

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In September 2010, during the same period Thorpe was handling Reed's trust, a judge approved the \$257,948 bill that Thorpe and his attorney Steve Yarbrough submitted for just over a year's work handling the trust and personal affairs for Hans Bakke, a former Portola Valley resident and World War II veteran.

Bakke died in March 2010, with court records showing his trust valued at \$854,613, which he planned to leave for his 43-year-old daughter who suffers from mental illness. The trust helped support Bakke's daughter and buy her a condominium as Thorpe and Yarbrough wound down Bakke's affairs. Two years later it is nearly empty.

Yarbrough described the case as extraordinarily difficult, including a major cleanup to sell Bakke's house and the costly care for his daughter. There also were bills to pay, back taxes and funeral expenses.

And there was one last round of Thorpe's charges. In a letter in April, Yarbrough informed the attorney for the conservator of Bakke's daughter that once his and Thorpe's final fees were deducted from the \$77,743 left in the trust, there would be just \$8,796 left.

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The husband-wife team of Sue and Dave Katra, owners of Trusted Solutions Los Gatos, charged \$85,505 for their work managing the life and estate of 71-year-old Paige Simpson over 15 months in 2010 and 2011.

Their bill included tens of thousands of dollars for a lengthy but never-completed remodeling project at Simpson's San Jose home.

In their accountings, Sue Katra charged \$1,062 for 8½ 1/2 hours she spent purchasing a gift and celebrating Simpson's birthday. She joined Simpson for a Christmas luncheon at a Belmont dementia facility for a \$437.50 fee. And when Simpson needed knee surgery, Katra charged \$906.25 for helping with travel and pre-op arrangements, and an additional \$937.50 the day of surgery -- time mostly spent driving and in the waiting room.

Many private care managers bring in lower-paid staff or reduce their rates to perform perfunctory tasks. The Katras, however, say they prefer to be there for their clients, who may wander or have complicated emotional needs.

"Our care philosophy costs more," Dave Katra said, "but our clients live better and longer."

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The cost of trustees, conservators and attorneys helped ravage the estate of Anna Garcia, a retired San Jose day care provider who together with her husband had scrimped over a lifetime for a comfortable old age. Now an 80-year-old widow with dementia, Garcia has seen her estate plunge in value under the court's watch from \$2 million in 2008 to less than

\$300,000 today, according to an attorney appointed by the court to defend her interests, Victoria Tran Sood.

Garcia's last in a succession of money managers, Richard Lambie, charged rates from \$165 to \$250 an hour. His attorney Yarbrough described the job as exceptionally challenging because of warring siblings, and things got more expensive when Tran Sood protested the fees. The court recently approved Lambie's and Yarbrough's last bill for roughly a year of service, totaling \$105,590, about one-third of what Garcia has left as she faces the high costs of end-of-life care in a board and care home.

"My mother's estate is paying for that whole circus," said Garcia's daughter, Diana Garcia, who has now taken over as her trustee free of charge. "She was just the golden goose."

Santa Clara stands out

In many counties, officials say, such bills would be promptly rejected -- or private estate managers wouldn't dare to submit them in the first place. But for years, Santa Clara County has been different.

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Its rules are looser, even though its 38 licensed fiduciaries handle \$612.9 million in assets -- more than double the total of any other Bay Area county. While other Bay Area counties limit overall fees or hourly rates, Santa Clara County's court does neither. The court also is alone in allowing conservators to charge additional administrative fees that can total thousands of dollars a year.

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Its community of private estate managers and probate attorneys is tight-knit and -- critics say -- overly cozy. The same attorneys are representing conservators' clients in some cases, and conservators in others, creating what they say is a potential conflict of interest.

"It's a big circle of friends and no one will take them on," said O'Neal, the former deputy county counsel.

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Its watchdogs often lack experience. In some neighboring counties, judges serve lengthy stints on the probate bench, developing expertise as they oversee the same cases for years. Santa Clara generally rotates judges into probate every two years.

To its credit the court has sought more resources from the state. In 2008, following the publication of a Los Angeles Times investigation that showed an overwhelmed probate court system failing vulnerable elderly and dependent adults, the state began licensing fiduciaries. It also instructed courts to hire more investigators who could help judges monitor cases and scrutinize fees. Santa Clara County proposed to double the size of its investigative office to 14. But two successive governors have rejected the funding needed for the probate reform, so the county now has just eight investigators to handle more than 180 cases apiece.

There are signs, however, that Judge Cain, who took Santa Clara County's probate post in 2010, is starting to bolster court oversight. He requested a third year and is widely considered to be more critical of fees than his predecessors were, according to at least a dozen observers. As this newspaper has monitored a series of probate cases closely in recent months, the judge has cracked down.

In one instance, Cain lashed out at fiduciary Nancy Norris when she submitted a bill for herself and for her attorney of almost \$27,000 even before she had the court's permission to take on the case of an elderly Sunnyvale couple. Cain told her to eat the costs and return more than \$6,000 she received directly from the couple.

Court officials are also now reviewing Dave Katra's charges and, in a rare move, are urging the judge that he pay back Simpson's estate more than \$40,000 for unlicensed home repairs. A March 21 court investigator report described charges for meetings with contractors as "false and misleading" -- claims Katra is contesting.

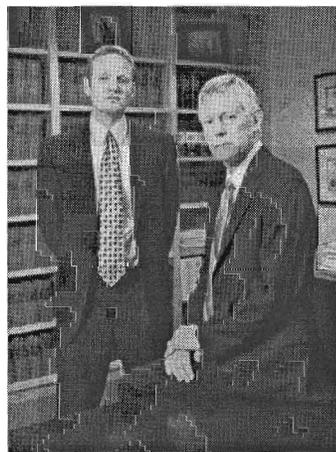
Defenders of private estate managers say while sometimes fees can seem high, their work is demanding and underappreciated. "If we didn't have them, I don't know what would happen to these people," said Sheri Sudweeks, a Los Gatos estate and trust attorney. "They generally are stepping into a very big mess. If it were simple, friends or family would do it."

In two wide-ranging interviews, Cain agreed that private professionals perform a desperately needed service, given the great number of families locked in bitter disputes or misusing relatives' funds.

But the judge acknowledges concerns about some prematurely depleting their clients' life savings.

When high bills catch his attention, Cain said, "the private professionals and the attorneys that represent them are very aware that they better be well prepared to defend themselves."

'Being held hostage'



Mike Crosby and his father, Matthew Crosby, lawyers representing Danny Reed. (Patrick Tehan, Mercury News)

Cain's intensifying grip on probate court has had limited impact to resolve the colossal struggle playing out between Reed and Thorpe. If Reed's fight is the beginning of a power shift from trustees like Thorpe to the vulnerable adults the system is supposed to be helping, as many insiders hope it is, then progress is likely to be long and ugly.

The two had been at odds even before they met, and Reed later begged the judge to remove his trustee while Thorpe asked to be appointed permanently. In one clash in Cain's court that typifies the leverage estate managers try to use, Thorpe's attorney Desmarais told the judge that Thorpe would step down "only after his accounting is approved and his fees have been ordered by your honor."

"So I'm being held hostage?" the judge snapped back.

In October 2010, Thorpe did resign from the case and was replaced by Reed's sister Jenivee, who works free of charge. But there was still the matter of his bill -- and he was far from finished tallying his costs. In fact, court records show, Thorpe and his attorneys charged Reed an additional \$44,000 weeks after he resigned, mostly to assemble their fees.

To fight back, Reed has needed a level of resources and resolve that few, if any, of the people who rely on this system have at their disposal.

He has found an advocate in deputy public defender Mark Dames, who was assigned to represent Reed during his journey through the probate court. And he has benefited from critical reports by court investigator Eugene Franco, whose job it is to review bills like the one Thorpe and his attorneys submitted for \$108,771.

But what has allowed Reed to take his fight beyond where any has gone before is the pro bono support of the father-son team of Matthew and Michael Crosby. The San Jose attorneys joined the battle early last year, saying they were fed up after years of watching court-appointed professionals take advantage of vulnerable people.

Matthew Crosby had successfully challenged Thorpe and Dragomir in another case. When Thorpe and company charged a blind quadriplegic stabbing victim \$298,135 for a year's work, Crosby fired off a letter of protest and the conservators quickly cut their fees by \$99,586.

Thorpe's supporters call it the art of compromise, and they fault Reed for refusing to consider a settlement in his case -- a refusal that could cost him dearly.

But for Reed and his legal team, taking on Thorpe and exposing a system that they say is stacked in favor of private estate managers was worth the risk. Their goal wasn't just to cut the fees Reed had to pay. It was to send a message to conservators, trustees, judges and California lawmakers that things had to change.

They launched their fight on many fronts, suing Thorpe in civil court for emotional distress, attacking his bill in probate court, claiming he had breached his fiduciary duties -- a claim which, if validated in court, could cost Thorpe his license -- and challenging the state law that discourages anyone from confronting a private estate manager in the first place.

Little did they know how long the fight would last.

'The top 1 percent'

What started in December 2010 -- heightened by Franco's confidential report to the judge calling Thorpe's approach "an overzealous and at all costs mentality" -- has traveled to three courtrooms, three branches of the legal system and is still going strong.

In court documents, Dames labeled Thorpe's bill "an astonishing and shameless example of unrestrained greed ... made more deplorable in that it is attempted at the expense of a disabled person who will desperately need the money for his own survival."

Thorpe, who has declined repeated requests to be interviewed, has defended his fees in court documents as "eminently reasonable," depicting Reed as hostile and meddlesome and his attorneys as the greedy ones using Reed to drum up future business.

At one hearing, Thorpe's attorney Desmarais -- a past president of the Silicon Valley Bar Association charging \$475 an hour -- argued that Reed deserves no special treatment. "Danny Reed," he said, is now among "the top 1 percent" with his townhouse and his \$650,000 in cash.

"My goodness," Desmarais exclaimed. "I want to be this kind of victim."

In April 2011, after settlement talks broke down, the battle for Thorpe's still-unpaid bill spilled into a rare six-day trial on another floor in the downtown San Jose courthouse.

In a July 2011 ruling, Judge Franklin Bondonno reduced the \$108,771 bill by more than half, rejecting \$57,485. The judge found no evidence Thorpe violated his court-appointed duties. But he found most of his fees unreasonable, rejecting charges for consulting with colleagues, and numerous phone calls and emails related to Thorpe's legal defense that Bondonno stated did nothing to advance "the interests of the Danny Reed Trust."

But months later, in a second ruling, a clearly pained Bondonno found that while Thorpe was not entitled to any money for his legal defense, Reed's trust must pay Thorpe's attorney \$146,556 for the costs of defending the original bill. Together, the two rulings awarded nearly one-third of the money Reed has remaining.

"Unfortunately, for Danny Reed," the judge wrote of the California law that made Reed responsible for his own legal costs and those of his adversary, "this is a social policy issue better raised in the Legislature or the Court of Appeal."

For Thorpe, the outcome was a resounding victory, even though the judge rejected more than \$106,000 he billed Reed for his role in the case. In his only direct response to this newspaper, Thorpe emphasized in an email that Bondonno "ruled that I DID NOT breach my fiduciary duties, nor violate my code of ethics in any way."

When Reed made that charge, the judge ruled, he raised the stakes to a "life and death level for Thomas Thorpe," a position Reed took "at his peril, and he lost."

But Reed's team isn't giving up and has taken its case to the Sixth District Court of Appeal.

"There's a flaw in the system that's being exploited," attorney Michael Crosby said. "And for Danny Reed to take the steps to fix that flaw -- or at least bring awareness to that flaw -- I think has a much more lasting impact than the pure dollar amount.

"What he is doing could hopefully prevent this from happening to a number of other people."

The two years of battle to get back control of his life have left Reed angry, mystified and agonized over his predicament. Still, the power of his example persists: In a system whose victims rarely have the ability to defend themselves, Reed is speaking up.

"Oftentimes you don't have that voice because the person doesn't understand what's going on," Matthew Crosby said. "He was able to step up and say: 'Help me do something about this.'"

Mercury News editorial: County judges must impose tighter rules for managing vulnerable residents' estates

San Jose Mercury News 6/30/12

Posted:

MercuryNews.com

Mercury News reporter Karen de Sá's report on the court-sanctioned raiding of vulnerable Santa Clara County residents' assets is heartbreaking and infuriating. How can this usually progressive county allow court-appointed conservators to prey upon people the courts are supposed to protect?

Other counties, including Alameda, Contra Costa and Marin, have guidelines that prevent conservators from charging exorbitant fees and draining the bank accounts of the elderly and disabled. Since de Sá began her inquiries, Santa Clara County is considering doing the same. No kidding. The pity is that it can't make the rules retroactive. Maybe the judges who have allowed this to go on could take up a collection for the victims.

Most conservators in Santa Clara County charge reasonably for their important work. But de Sá's six-month investigation found a small group of court-appointed personal and estate managers submitting huge, questionable bills -- and if people challenge them, they charge more. These are licensed professionals appointed to handle the affairs of clients who have resources but cannot manage them themselves.

Once the conservators -- and think of the irony of that label -- milk bank accounts dry, people who thought they were financially secure are faced with needing government assistance. And that means everybody pays for this predation.

The CEO of Santa Clara County's Superior Court, David Yamasaki, told de Sá that the court follows state guidelines. Judges told her they are reviewing the governing codes.

Not good enough. Immediate action is needed.

For starters, the county needs a guideline to limit trustees, guardians and conservators to annual fees of no more than 1 percent of the net value of an estate per year. And notification of charges should be required monthly to tell if the costs conservators are racking up are reasonable.

Take the case of Danny Reed. The 37-year-old San Jose resident was awarded more than \$1.75 million in damages after two accidents left him brain damaged and partially paralyzed, de Sá reported. In 2010, a court-appointed trustee and his two attorneys billed Reed \$108,771.07 for 4½ months of work. When Reed tried to fight the bill, the trustee charged him an additional \$261,878 to pay for his legal "expenses."

The same trustee and his attorney charged the estate of Portola Valley resident Hans Bakke more than \$250,000 for about a year's work. The entire estate was worth \$854,613, which was intended for his mentally disabled daughter.

Another court-appointed trustee billed 71-year-old Paige Simpson more than \$85,000 to manage her estate for a 15-month period -- including more than \$1,000 to help celebrate Simpson's birthday.

Nobody competent would hire a financial manager at these rates. But the Santa Clara County Superior Court does. Or did.

It has to stop.

Santa Clara County court-appointed estate manager quits case after questions about fees, judgment

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 6/30/12

MercuryNews.com

Two years after a Los Gatos Jesuit center settled an explosive sex-abuse lawsuit, a Santa Clara County judge entrusted Russ Marshall to oversee the \$2.5 million awarded to one of two mentally disabled dishwashers molested for decades by clergy.

Such a delicate and high-profile assignment seemed a natural fit for Marshall, one of Silicon Valley's premier estate and elder-care managers, overseeing \$76 million in assets.

But late last year, with questions mounting over his billing practices, Marshall resigned from the case as court officials made a troubling discovery: The \$50-an-hour personal companion he had hired to take his long-abused client on outings turned out to be a former priest.

"Appalled" that a former priest had been anywhere near the traumatized man, Judge Thomas Cain blocked Marshall from charging his client's estate \$19,406 for the companion's trips to ice rinks, ballgames and other events during a 22-month period. Cain said hiring the companion "shows all kinds of problems with regard to not only background checks but judgment and everything else. He never should have been there to begin with."

A deeper look into Marshall's background shows this wasn't the first red flag.

In 1983, long before Marshall served as president of the Professional Fiduciary Association of California, his real estate license was revoked and then restricted for 18 years after state officials found him partially responsible for \$155,000 that went missing from a trust account. Marshall blamed the impropriety on the president of his real estate brokerage firm.

And a decade ago, he was accused by the Santa Clara County Counsel and Public Defender's offices of violating his professional duties after he moved an incapacitated San Jose couple from their home against their wishes and without court approval. The accusation unfolded into an extraordinarily rare 13-day trial that ended with a judge finding that Marshall violated some of his legal responsibilities but caused no harm. He was fined a dollar.

This newspaper's examination of court-appointed private estate managers' fees showed Marshall as a standard-bearer for charging hourly rates that are far higher than what most Bay Area courts allow -- and for layering many staff charges into his bills.

Marshall declined repeated requests to be interviewed. But in a brief courthouse conversation with a reporter, he emphasized that a judge has never cut his fee requests.

Yet, in confidential reports referenced in public documents, two court investigators have questioned the bills Marshall submitted for caring for the 61-year-old Los Gatos man, a sex-abuse victim referred to in civil court filings as James Doe.

They wanted to know, for instance, why James should have to pay for Marshall's \$105-an-hour caseworker, Sarah Benson, to meet him at the bank when he was already being accompanied by a caretaker from a local nonprofit agency. From 2009 to 2011, Marshall charged \$4,755 for Benson to meet James at the bank 96 times.

And elsewhere in the reports, a court investigator described as "excessive" Marshall's charges for Brian Leipzig, a former priest who was hired to provide male companionship after James' sister, who had managed his care and finances, died. What's more, in court filings Leipzig is described as "a Licensed Vocational Nurse" and "a licensed social worker and nurse." However, there's no evidence in state records that he holds licenses to work in those professions.

Leipzig declined interview requests.

Questions about Leipzig's past led to more bills for James Doe. Marshall charged \$702 for two July staff meetings to discuss "responding to the court investigator." And in January, he charged \$97.50 for a half-hour discussion with Benson and Leipzig to instruct the companion to have "no future contact" with James.

Most of Marshall's services last year were performed at \$195 an hour, although the rate climbed at times to \$240 an hour.

In contrast, Patricia Bye, who replaced Marshall in October, bills at a maximum \$125 hourly rate. Among her first moves was to raise James' monthly allowance for groceries and miscellaneous expenses by \$800 to \$3,000, his first increase in two years.

While Bye works on her own, as many as six Marshall Fiduciary Services employees worked on everything from James' pet hamster to his tankless water heater, often on every day of the business week.

In court documents, Marshall defended his work on James' case, arguing that his fees are similar to "the compensation customarily allowed" in Santa Clara County's probate court. He maintained he has managed the estate "frugally and without waste."

And to many, Marshall is an industry leader. A former manager of estate administration in the county Public Guardian's Office, he helped craft statewide probate reforms. "He's someone I'd rely on for myself or my family," said Douglas Miller, a staff attorney for the state Administrative Office of the Courts.

But Los Gatos shopkeeper Holly Ilse, who first reported the priest abuse in 1997, laments how Marshall was managing James' painfully earned estate.

"Somebody who was supposed to be the best in the field," she said, "took advantage of him again."

Contact Karen de Sá at 408-920-5781.

Santa Clara County lacks rules to rein in fees of court-appointed conservators

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/11/12

MercuryNews.com

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In California, elderly and disabled adults, blessed with some savings but incapable of caring for themselves, foot the bill when judges appoint private business people to manage their finances or daily affairs.

But when it comes to racking up those charges, no place in the Bay Area stands out like Santa Clara County.

An examination by this newspaper found that in Contra Costa, Alameda and Marin counties, court-appointed conservators wouldn't get very far if they tried to charge the \$330 maximum hourly rate that turns up on one San Jose professional estate manager's rate schedule, or the \$295 an hour described on a well-known Campbell conservator's fee list. That's more than double what other courts allow.

And if estate managers burned through the life savings of a dependent adult in San Francisco or San Mateo counties, they would be expected to stay on the job the rest of their client's life -- for free.

But in Santa Clara County, this newspaper found, these court-overseen services can come at exorbitant costs in a probate court system with few specific rules to rein them in. When families can't care for elderly and incapacitated adults, these private professionals can be assigned as conservators or trustees to arrange everything from complex money management to rides to the grocery store.

In Santa Clara County, some work alone, charging top rates for their services. Others employ staff members, whose multiple tasks layered on top of fiduciary fees can also add up to astounding six-figure bills for a single year.

"The buck stops at the court, and we should have more guidelines and more factors to determine reasonable fees," said Victoria Tran Sood, a South Bay probate and trust attorney who represents the elderly and their families. "Here we don't have that, so people take their chances. The young fiduciaries charge according to what they're taught, and the older guys charge double and layer their bills because they can get away with it."

A survey by this newspaper of five Bay Area superior courts found that the Santa Clara County probate division lacks guidelines routinely enforced elsewhere.

While Contra Costa, San Francisco and Marin counties all provide guidelines for fees based on hourly rates or the percentage of assets, Santa Clara County has no defined limit on what a private estate manager can charge.

For example, this newspaper on Sunday published the story of one San Jose man's costly attempt to fight a \$108,771 bill he received from a court-appointed trustee after just 4 1/2 months on the job. While state law says fees must be "just and reasonable," the Danny Reed case and others featured Sunday show how broadly that code is interpreted.

Presented with this newspaper's findings, Santa Clara County Superior Court Presiding Judge Richard Loftus expressed concern, saying the court had started its own review when this newspaper started raising questions months ago.

"We really need to begin to address this, and that's what we are trying to do," Loftus said in an interview last week. "We are looking at how they do this in other places," making sure people are adequately cared for in a cost-effective way.

"If there are ways to do this better or smarter," he said, "we're going to look at those."

Private estate managers and the attorneys who represent them argue that their fees can seem high at first glance -- such as the six-figure annual bills this newspaper uncovered -- but supporters say they are fully justified in this high-cost region.

Like other local attorneys who defend fiduciaries, Los Gatos trust and estate attorney Janis Carney said judges here understand the special skill set required to handle complex elder care and manage messy estates. Carney, past president of the Silicon Valley Bar Association, described the probate court in Santa Clara County as "more fair" because judges have not limited conservator compensation as routinely as they do in the surrounding region.

"I hear horror stories in other places," Carney said, but she noted that "the culture here is not to cut fees."

Judges in Marin County, for example, have become so critical of fees that private estate managers are leaving the business, said longtime Corte Madera elder law attorney Patricia Tobin.

Indeed, Santa Clara County's court -- which oversees more than twice as many assets as any other Bay Area court does -- stands out for its relatively loose guidelines:

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High hourly rates are barred elsewhere. Most Bay Area courts surveyed said allowable fees range from \$90 to \$125 an hour -- with higher fees approved in only the rarest circumstances. Yet private estate managers in Silicon Valley typically charge between \$135 and \$165 an hour, according to attorney Steve Yarbrough, who represents them in court and monitors their hourly rates. Those rates can reach as high as \$350 for court testimony, he noted, and this newspaper found numerous examples of \$250-an-hour charges approved by judges.

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Fee limits rein in costs. San Francisco, Contra Costa and Marin counties provide guidelines for annual fees of no more than 1 percent of the value of a client's assets. The Santa Clara County court does not.

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No room for bill-padding. Most Bay Area courts reject monthly "administrative fees" that in Santa Clara County can be charged on top of daily tasks, at times adding thousands of dollars a year to private estate managers' bills.

San Mateo County probate Judge George Miram said he would consider such requests excessive. "That's not what we're paying them for," Miram said. "Fees in addition to that hourly rate doesn't make a whole lot of sense to me."

The CEO of Santa Clara County Superior Court, David Yamasaki, said judges follow state-mandated guidelines -- such as weighing the size of an estate, the complexity of a case and typical local rates -- and then ultimately decide what a private estate manager should be paid.

Establishing whether fees are reasonable is no simple task, said the county's lead probate judge, Thomas Cain. He said he does not approve fees unless he receives explanations that satisfy him. And when he needs to raise objections to fees, he does.

But often his questions are met with surprise, Cain noted: "I can't tell you the number of times conservators presenting their fees in court say: 'Well, no one's objecting.' "

Cain is now in a rare third year on the Santa Clara County probate bench. In other Bay Area counties, judges tend to stay in probate longer -- some for a decade or more -- rather than cycling on and off the bench as they do in Santa Clara County, typically within two years or less. Elder law experts say the constant rotation can lead to lower levels of scrutiny.

"Certainly a new judge is more inclined to just approve what had been approved before -- and after they've been there for a while ... they'd be more likely to recognize a fee that is out of line," said recently retired Contra Costa County Probate Judge Pro Tem Don Green, who served for 11 years. "The fact that I was more experienced meant people were less inclined to think they could get away with it."

Contact Karen de Sá at 408-920-5781.

TIPS TO AVOID COSTLY CARE

Conservatorships can become extremely costly to elderly and incapacitated adults when private estate managers are named by the local probate court. But good planning and asking questions can reduce the likelihood of such a scenario.

Elder law experts recommend:

- Consulting a good estate-planning attorney when you are still young and well enough to plan for your future. Every year or two, or when circumstances change, have a follow-up meeting with the attorney to update the plan.
- Creating a "Durable Power of Attorney For Finance" that assigns a trusted person to handle your financial and personal affairs should you become mentally or physically incapacitated. This person must be competent to perform the necessary duties and be able to work with other family members.
- Creating an "Advance Health Care Directive," which allows you to designate someone to make medical decisions for you and provide instructions for your end-of-life decisions should you become incapacitated. This person also determines where you live and who can visit you.

To learn more, go to

www.mercurynews.com at noon Monday to join our online chat.

Santa Clara County judges vow limits on conservator fees within weeks

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/21/12

MercuryNews.com

With Santa Clara County's top judges promising reform, advocates for the elderly and local probate attorneys on Monday called for swift action to stop court-appointed estate and care managers from charging excessive fees to the dependent adults they serve.

The reaction comes after "Loss of Trust," a two-day series in this newspaper, highlighted cases of private conservators and trustees submitting six-figure bills to incapacitated adults under the court's watch. In some cases, they are charging lofty hourly rates that are double what's allowed in neighboring counties.

The Superior Court on Monday vowed changes within weeks. "Not years, not months, but weeks," said Assistant Presiding Judge Brian Walsh.

"We are not going to stand for our most vulnerable being taken advantage of -- period."

Presiding Judge Richard Loftus and top probate Judge Thomas Cain have been surveying courts up and down the state for solutions since the newspaper approached the bench months ago with early findings of its investigation.

The changes won't come soon enough, said elder rights advocate Pat McGinnis, executive director of the nonprofit California Advocates for Nursing Home Reform. She said "there's no justification" for six-figure bills that deplete life savings, like the ones highlighted in "Loss of Trust."

Court-appointed trustees and conservators are appointed by judges to handle the daily affairs and finances of elderly and disabled people who lack support of family or friends.

Their fees have grown to alarming levels over the years in Santa Clara County, evidenced by the case of Danny Reed, a 37-year-old man left brain-damaged after he was struck twice by cars. Reed's court-appointed trustee Thomas Thorpe and his attorneys charged more than \$108,000 for 4 1/2 months' service. And -- in an all-too-common probate scenario justified by California law -- Reed has been billed about \$260,000 by Thorpe and his attorneys in a legal fight over the original bill.

In an email Monday to members, the Professional Fiduciary Association of California said the newspaper report was "very one sided and failed to portray all the great work fiduciaries do to serve their clients."

In an interview, the association's president, Norine Boehmer, lamented Reed's predicament -- but noted private business people in probate court are only paid with judges' approval.

"It's truly unfortunate for Mr. Reed, and it's truly unfortunate for everybody involved that so much time and money has been spent on a case that was meant just to protect somebody's assets and to help them," Boehmer said.

Boehmer added that court-appointed estate managers make decisions based on their own rates and business models. Earlier this year, for example, Boehmer charged her Los Angeles clients \$100 an hour, while Thorpe charged Reed up to \$250.

"Even though people's lives and livelihoods are in our hands we are still business people," she said. "I will not say I would have done what Mr. Thorpe did, but I don't know the whole case."

Thorpe and his attorneys have denied repeated interview requests.

New state laws in 2006 increased court oversight of probate cases like Reed's. Yet while new licensing requirements were imposed on private conservators and trustees, little was done to limit the fees they can charge. McGinnis, who spent years crafting statewide reforms, said that holes in the new laws led to problems such as the fees seen in Santa Clara County -- annual charges as high as \$298,000 a year in the case of one quadriplegic.

Other Bay Area counties have responded with guidelines that limit hourly rates and annual fees.

Longtime Palo Alto probate attorney Peter Stern has represented one of the private conservators in the "Loss of Trust" series whose fees have been challenged. He said in his experience, Russ Marshall "has behaved ethically and he has not overcharged estates." When Stern has raised concerns about Marshall's charges, he said Marshall has been "most flexible and most considerate about my suggestions he cut his fees."

Still, Stern believes there are larger issues. That's because the incapacitated adults at the heart of these cases "often do not have the ability to represent themselves and to speak up for their own interests," Stern said. Therefore, the court needs to be "more vigilant."

"The court in Santa Clara County should look at the fee question much more closely and try to come up with guidelines that will avoid some of the abuses that may have happened in the past," he said.

Stern and other local attorneys are calling for new guidelines that would include better disclosure -- on a monthly or projected annual basis -- of how much estates will be charged. Others have sent proposals to the court for maximum limits based on how much is left in a person's estate, and elimination of monthly "administrative" fees often piled on top of hourly rates.

Before taking action, the judges will meet with probate attorneys and estate managers -- the very teams that work the local probate cases. The judges said their input is necessary before new limitations are put in place and they have expressed concern about limiting fees too much, in case that drives away talented professionals they rely upon.

One of the issues the court may address is top hourly rates being charged for tasks that do not require a high level of expertise, such as basic elder care. While some conservators work solo, others employ layers of staff members who perform tasks at varying hourly rates. But the lower rates are not always applied appropriately, Judge Loftus said. "Sometimes you look at it and ask: 'Do you really have to have the top person doing this at the top rate?'" Contact Karen de Sá at 408-920-5781.

July 3 Readers' letters

San Jose Mercury News

Posted: 7/2/12

MercuryNews.com

Halting trustee abuse is within judges' power

The first shocking thing I learned in law school saddened me: ethics is not the same as morality; learn it early and learn it well.

The opportunistic billing practices of some professional fiduciaries will continue as long as the law and court rules allow them. Although such practices may be cast in your article (Page A1, July 1) as unjust and immoral, because they are within ethical bounds, they will continue to be "eminently" legally defensible. I worked in the trusts and estates field in Santa Clara County for 10 years and I so want to see your article garner a sea of community support that will bring the change that Danny Reed and his supporters seek from the Legislature and the courts.

Geigy Stringer

San Jose

Judge Cain will restore integrity to system

I have been a practicing attorney in Santa Clara County for almost 30 years. When I read the article "Loss of trust" (Page A1, July 1) and the attendant editorial (Editorial, July 1) I was reminded of the exposé by the Mercury News of the county criminal justice system, where I have spent the better part of my career. I do not practice probate law, nor represent conservatees as described in the articles and editorial. I am not familiar with any of the attorneys cited in the articles. But I do know one of the individuals named in the reports, Judge Thomas Cain. I know him professionally as an attorney who appeared on a multitude of criminal matters as well as representing minors in matters which require court intervention in personal injury recoveries.

I can assure you that he will fix this problem and ensure the integrity of our court system. Many judges in our county are equally capable of doing so, but none better.

Albie B. Jachimowicz

San Jose

Trustees who milked their clients must go

I am outraged by the trustee abuses outlined by the Mercury News (Page A1, July 1).

The responsibility for these abuses lies with the judges of the Santa Clara County Superior Court. They were the ones who could have adopted guidelines that would have prevented it. In addition to the needed action outlined by the Mercury News (Editorial, July 1), I would add:

Trustees whose obvious abuse was noted must never be allowed to be trustees again; expenses limited to 1 percent per year of assets and a single hourly billing rate for all trustees; and immediate dismissal of the current court CEO, who failed in his oversight.

Judges are elected officials. They are the county "officials" responsible. Voters should be outraged.

Brian McCormick

San Jose

Remember the man who birthed freedom

As we celebrate the birthday of our nation, few look past 1776. Thomas Jefferson, John Adams, George Washington and all the rest acted to preserve, rather than invent, freedom.

Our freedom was first birthed in 1636 when Roger Williams fled Massachusetts' borders and established Providence Plantation as a haven for people to live and speak according to their conscience. With little thought for personal comfort or gain, Williams risked his life repeatedly for the purpose of creating and securing the first free place in the world.

People really need to know why the Declaration of Independence states:

"We have reminded them of the circumstances of our emigration and settlement here."

This history is very well chronicled in John M. Barry's "Roger Williams and the Creation of the American Soul."

I will be flying the flag on the Fourth in honor of 1776, but I will also be thinking of 1636.

Peter Signor

San Jose

Deep local reporting is a community service

The investigative reporting done by the Mercury News on the Santa Clara County Probate Court (Page A1, July 1 and July 2) and excessive fees charged by trustees is an excellent example of why local newspapers are important. Yes, you can get news from the Internet. However, you need a local newspaper who is invested in the community to investigate and report on essential issues such as this.

These excessive fees are a travesty, and the court needs to remedy the situation before more vulnerable dependents are fleeced.

Congratulations to Karen de Sá and the Mercury News for covering this important story.

Teri Tingley

Morgan Hill

Health care mandate not punitive, just fair

I fail to understand Charles Krauthammer's argument that the health care mandate requiring all American citizens to purchase health insurance is obviously "punitive."

I am mandated to pay taxes for the fire department although I have never directly used its services. However I, as will most Americans in their lifetime, have used our health and medical services.

Should some Americans be able to elect not to pay for health services, then the rest of us have to pay their share of the costs?

So what is punitive about having everyone pay for services we will all probably use?

John Roper

Los Gatos

Stadium money could have funded fireworks

I see that the city of Santa Clara has canceled its July Fourth fireworks this year "due to budget constraints." I guess they spent all their money on that stadium.

Terry Carroll

San Jose

California legislator wants conservator fees capped throughout state

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/31/12

MercuryNews.com

A California lawmaker on Tuesday joined a chorus of outrage over exorbitant fees depleting the life savings of elderly and disabled adults in Santa Clara County, calling for new state rules to cap what court-appointed estate managers can charge for their service.

Assemblyman Jim Beall, D-San Jose, said "immediate" action is also needed to stop conservators and trustees from billing an incapacitated adult's estate thousands of dollars more to defend their own fees in court.

Beall's call for statewide change comes a day after Santa Clara County's top judges vowed reforms to rein in fees following an investigation by this newspaper. "Loss of Trust" uncovered how some court-appointed conservators are charging hourly rates up to \$250, double what most courts allow. The newspaper's series this week found six-figure annual bills eating into the trusts of elderly and disabled adults who have no family or friends to care for their finances and daily needs.

Reading of the cases "just made me sick," said Beall, who has a developmentally disabled adult with a special-needs trust in his family. "We need to limit these rates and set up some parameters so we don't have people's life savings or their family's life savings drained away."

"Loss of Trust" highlighted conservators and their attorneys charging extraordinary fees: A Portola Valley man's estate was billed \$258,000 in a year, money he hoped to leave his mentally ill daughter; a Belmont dementia patient was charged \$1,062 for the 8.5 hours that her conservator spent purchasing a gift and celebrating the woman's birthday.

Beall's office on Tuesday contacted the state's Judicial Council in his efforts to adopt statewide rules to cap court-overseen professionals' hourly rates. He said he will also pursue legislation in the fall to change a state law that holds the estates of dependent adults responsible for paying both sides of any legal fight arising from fee disputes.

That predicament was clear when a San Jose man with disabilities tried to challenge a \$108,000 bill after 4 1/2 months of work by his court-appointed trustee. Even though a judge threw out the majority of trustee Thomas Thorpe's bill, he awarded Thorpe's attorney more than \$150,000 from Reed's trust for defending Thorpe and the original bill. The judge said he had no choice, ruling it was a matter for the Legislature or appeals court.

State law, as defined by a 1989 California Supreme Court ruling, allows so-called "fees on fees," but noted concerns that such awards could lead to a "Kafkaesque judicial nightmare."

"If I had my way," Beall said, "that law would not exist after tomorrow."

The Democrat, who is now running for the Senate, is particularly close to the issue, because of his own family situation.

"The worst nightmare of a parent is if they pass on and set up a trust for their disabled children, that someone's going to creep in and steal all their money and leave their child uncared for and vulnerable," Beall said.

Curtis Child, director of governmental affairs for the state's Judicial Council, said Tuesday that he had been in touch with Beall's office and expressed openness to reforming state rules.

"Certainly the Judicial Council would be committed to looking at any rule of court that may be necessary," Child said. "We would work with the legislature on any solutions that they may be interested in proposing."

Insurance Commissioner Dave Jones said Tuesday he does not believe new state laws are necessary. He cited the newspaper's report on how courts in other counties have been able to more effectively rein in fees with their own guidelines.

"The system relies on the courts to police the fees," Jones said.

When he was a state lawmaker, Jones authored a package of reform bills that overhauled the probate system, which oversees the lives and estates of the elderly. But while those changes led to new licensing requirements, it was left up to the courts to approve appropriate fees.

"For whatever reason, that does not appear to be happening in Santa Clara County," Jones said.

Santa Clara County Superior Court judges have responded swiftly to the newspaper's exposé. The day after the two-part series, the presiding judges vowed new local guidelines "within weeks" to rein in estate managers' fees.

Now those efforts may reach beyond Silicon Valley.

After reading "Loss of Trust," Russ Heimrich, spokesman for the state agency that licenses California fiduciaries, encouraged residents to contact his bureau with reports of any excessive fees.

"When it looks like people are taking advantage of the people who are being overseen by the conservators, then we can and we will initiate investigations," Heimrich said.

Private trustees have reacted angrily to details of the cases in the newspaper. Thorpe, Reed's former trustee, on Tuesday described the reports as "incredibly unfair," but said he could not discuss details because of the ongoing legal battle. Thorpe told a reporter: "The truth is still out, and you haven't written about it. For goodness sake, print something positive."

Trustee Russ Marshall reacted with dismay to the newspaper's exposure of his role as conservator for a developmentally disabled man who had been abused years earlier by clergy. A judge chided Marshall for hiring a former priest to be the man's daily companion. Although the paper did not name the man, Marshall said in an email that the story had "caused him harm" nonetheless.

Contact Karen de Sá at 408-920-5781.

FBI probes \$17 million missing from Santa Clara County trusts

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/11/12

MercuryNews.com

The FBI is investigating how \$17.3 million has vanished from the trust funds of dozens of people who relied on a Silicon Valley money manager to oversee their life savings.

A love betrayed and an alleged embezzlement scheme are emerging as the storylines behind this latest chapter exposing the vulnerability of trust funds and estates.

Santa Clara County probate court records show the case centers on the office of Christine Backhouse, who administers more than \$104 million in assets -- and lacked sufficient insurance to make up for the theft.

While she is responsible for the money, Backhouse claims she was the victim of an unscrupulous boyfriend who, court records allege, secretly wired millions of dollars out of the trusts.

The scandal is unfolding shortly after this newspaper published "Loss of Trust," an investigation that revealed how some of Santa Clara County's estate and care managers charge exorbitant fees to handle the money and affairs of dependent adults under the probate court's watch.

The vast majority of Backhouse's cases were private arrangements with no judicial oversight of either her fees for service, or the process by which the Campbell money manager accounted for and invested her clients' funds.

But taken together, both examples underscore the vulnerability of elderly and often incapacitated people who rely on private business people to oversee their assets.

The FBI probe focuses on Backhouse's longtime personal and professional partner, Leo Kennedy, who worked as controller in her office. Kennedy is linked in probate court records with unauthorized wire transfers of \$17.3 million from 35 individual trust accounts.

Attorneys familiar with the missing money would say little about the victims but note trusts are often established for the elderly and for families to protect their assets for the children.

Now, desperate to recoup the vanished funds, Backhouse is working with white-collar fraud experts at a global law firm to track down the money.

"Ms. Backhouse remains devastated that someone she trusted for so many years could cause so much damage to clients who have reposed trust and confidence in her," Backhouse's attorney Andrew Watters stated in an email. "As soon as Ms. Backhouse learned of the wrongful activity, she terminated both her professional and personal relationship with Mr. Kennedy and reported the loss of \$17.3 million to the appropriate federal and state authorities, as well as to the affected clients."

Watters added that his client is innocent: "Until the discovery of the misappropriations, there was no indication to Ms. Backhouse that Mr. Kennedy was not trustworthy. Ms. Backhouse is deeply sorry that these losses happened and she is doing everything she can to make the beneficiaries whole."

FBI spokeswoman Julianne Sohn confirmed that her agency "is looking into allegations that an individual stole funds from Backhouse Fiduciary Services," but said there have been no related arrests.

The Silicon Valley case comes shortly after allegations of two other unusual Bay Area thefts from elderly people's estates. In one instance, an Alameda County Superior Court judge is free on more than \$500,000 bail after being arrested on suspicion of stealing his neighbors' belongings that he oversaw through a durable power of attorney. And in a second case revealed in June, two San Mateo County public employees face federal charges that they stole from the assets of deceased people whose estates they administered.

The Backhouse case began unraveling Feb. 7, when Backhouse found a curious mismatch between the balances in her office's internal record-keeping program and her master account at Heritage Bank. That same day, court records show, she called the bank, which then produced 49 one-page wire transfer forms signed by Kennedy. Attorneys say he was sending money to Washington state between May 2010 and December 2011.

Backhouse says the same day she discovered the wire transfers, she confronted Kennedy about the missing funds. Court records claim Kennedy then fled the area.

Attorney Phil Gregory, of the law firm Cotchett, Pitre & McCarthy, is beginning its work on behalf of the gutted trusts to track down the missing money.

The firm will be investigating whether banks and others associated with Kennedy failed to closely monitor what was happening and should bear some responsibility.

Gregory also complained about federal law enforcement officials, who have not apprehended Kennedy. He said his office was easily able to locate Kennedy through family in the East Bay. The FBI had no comment.

"It sure would be a lot easier for these victims if the people investigating Mr. Kennedy would step up the effort and bring him in," Gregory said.

Meanwhile, Backhouse's fiduciary license remains intact while the criminal probe proceeds. And local elder law attorneys remain reflective about the case.

"Whenever you have somebody responsible for large sums of money they have to be extraordinarily careful about the management and security of those assets," said Michael Gilfix, a Palo Alto elder law attorney who is unfamiliar with the specifics of the Backhouse case but noted its clear lessons. "I'm sure she feels even more horrible than you or I can imagine," he said, "but it's often a thankless task and a very challenging business -- you have to be really careful."

Contact Karen de Sá at 408-920-5781.

Norine Boehmer: Court-appointed estate managers do their best to help people

By Norine Boehmer Special to the Mercury News San Jose Mercury News

Posted: 7/23/12

MercuryNews.com

The San Jose Mercury News' investigative articles and video "Loss of Trust" raised issues relative to fees of court-appointed personal and estate managers, or licensed professional fiduciaries. Readers should have additional facts to provide a thorough and balanced perspective regarding their compensation.

Courts determine the amount of compensation based on the California Rules of Court established by the Judicial Council -- specifically, Rule 7.756, "Compensation of Conservators and Guardians." Those rules say the court may consider various factors in determining just and reasonable compensation, including the size and nature of the estate; the necessity of the services performed; amount of time spent; and whether services were routine or required more than ordinary skill or judgment, or unusual expertise or experience. The customary level of compensation in the community also can be considered.

"No single factor listed ... should be the exclusive basis for the court's determination of just and reasonable compensation," the rule says. It does not authorize a court "to set an inflexible maximum or minimum compensation or a maximum approved hourly rate for compensation."

In the case of the fees that were the subject of the article and video, this rule was utilized. The fiduciary submitted to the court a bill for services consistent with the business model of his company. The court applied the rule and reduced the fees significantly to the level it deemed appropriate. There has been no court determination that there was any wrongdoing or violation of the law.

Experience demonstrates that costs and effort are highest in the first several months of a conservatorship or special needs trust, depending on the difficulty of a situation -- hoarding issues, financial abuse or mismanagement, mental issues, family dysfunction, etc. The worse the situation, the more the skill and effort needed to create a safe and stable environment in which a conservatorship/special needs trust can be maintained.

This is where the expertise of an experienced and licensed professional provides value and protection to the individual who is in need. The goal is to become quickly engaged in the situation, establish control and protect the individual. That can take significant time and effort. But that's what professionals do well and why they are called into situations of conflict, duress, and potential harm. Usually the professional conservator is called as a last resort, when family, friends and even the Public Guardian have tried and not succeeded.

Most fiduciaries are highly empathetic and caring, consciously taking the responsibility of fighting for people who cannot take care of their own affairs, including Alzheimer's patients, mentally ill clients, alcohol and drug-dependent users and at times, dysfunctional families.

Fiduciaries are on call, 24/7, 365 days a year. Compensation is often delayed. In a conservatorship, for example, payment for the services performed typically is not paid for at least 18 months. In many situations, professional fiduciaries receive no compensation as they work pro bono for the causes they support. Most make a commitment to continue working even when their client's funds are depleted. In those cases fiduciaries receive no compensation. Some fiduciaries provide some support to their clients out of their personal funds.

When situations arise that sound bad, consider the complete picture, including licensure, training and skills of individuals who provide a sorely needed service, who pursue their client's best interests, who follow the court's directive or bylaws of an established trust, and who receive compensation as decided by the courts in accordance with established rules intended to protect individuals in need.

Norine Boehmer is president of the Professional Fiduciary Association of California, a statewide organization with over 500 members. She wrote this for this newspaper.

Santa Clara County court takes swift action to rein in excessive fees charged by estate managers

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/26/12

MercuryNews.com

In a first step toward reform, Santa Clara County's lead probate judge has tightened the rules in his courtroom to prevent court-appointed estate managers from saddling outrageous fees on the elderly and disabled people they are entrusted to help.

The court announced the changes Thursday, a day after justice officials convened a task force of state lawmakers, judges, attorneys and estate managers aimed at reining in fees that the court had routinely approved for years. The changes come less than a month after this newspaper published "Loss of Trust," an investigation that exposed the problems in the local courts.

"The Court has promised the residents of Santa Clara County that we were going to take this matter seriously and act in a timely manner -- and we're making good on that promise," assistant presiding Judge Brian Walsh said in a news release.

Supervising probate Judge Thomas Cain has already begun implementing new rules that require court-appointed professional money managers -- known as fiduciaries -- to file monthly statements of their activities and fees, allowing for more routine scrutiny of their charges.

Previously, fiduciaries had one year initially, and then two years thereafter, to present their service fees for court approval. More regular accounting allows court investigators and others to better monitor how quickly fees are adding up and what types of services are being performed.

"Judge Cain is letting everyone know that if you don't comply with our filing requirements and aren't estimating reasonable fees for the services provided, you'll have to answer to him directly," Walsh stated.

The court appoints private estate managers to oversee the life savings and in some cases the personal care of incapacitated adults who have no family or friends to do the job.

Cain is described by his court colleagues as deeply concerned about fees that diminish the life savings of elderly and disabled people appearing before him. He sought change in his department more quickly than the time it will take to finalize the broader court rules, which require public notification and a vote by the entire bench.

Meanwhile, the local changes are being closely watched by state officials vowing broader reforms. Wednesday's task force meeting included Assemblyman Jim Beall, D-San Jose, and a staffer for Assemblyman Jerry Hill, D-San Mateo as well as a representative from the California Judicial Council.

State officials are monitoring Santa Clara County's rule changes as they pursue broader reforms to rein in fees that so far include the possibility of caps on hourly rates and curbs on legal bills.

The newspaper's investigation uncovered numerous cases in which estate managers and their attorneys charged elderly and disabled adults hundreds of thousands of dollars a year to administer their care and finances.

Among the most extreme examples is the case of Danny Reed, a partially paralyzed San Jose man whose court-appointed trustee charged \$108,000 after just four and a half months' work. When Reed and a public defender challenged those fees in court, trustee Thomas Thorpe and his two attorneys charged Reed almost twice that amount to defend their original bill. Reed's case is back in court Friday, with Reed's pro-bono legal team challenging the most recent fee award.

The outcome is being closely watched by local attorneys and estate managers.

Assistant Public Defender Nona Klippen, who oversees the probate unit, is also a member of the court's task force on fees. Last week, Cain authorized one of Klippen's deputies to review the case of a disabled San Jose woman whose family was charged \$257,948 by Thorpe and his attorney Steve Yarbrough for just over a year's work. The woman asked for the review after the newspaper published her story in "Loss of Trust."

On July 16, the judge authorized a rare examination of the already-approved fees, despite vehement protest by the attorney and trustee involved.

Klippen said in creating new rules for all probate cases, she is "impressed and pleased that the court has taken such swift action." She added that she's confident judges will craft "a fair and reasonable fee structure that will protect and preserve the rights and limited resources of some of our most vulnerable citizens."

Contact Karen de Sá at 408-920-5781.

San Jose: Judge rejects nearly \$30,000 attorney fee to disabled man's trust

By Karen de Sá kdesa@mercurynews.com San Jose Mercury News

Posted: 7/31/12

MercuryNews.com

SAN JOSE -- In his strongest language yet, a Santa Clara County judge threw out almost \$30,000 in attorney's fees charged to the trust of a disabled San Jose man whose fight against excessive charges in the local probate court is spawning sweeping reforms.

While Judge Franklin Bondonno said he lacks the power to strike down another \$145,000 in attorney's fees billed to the trust of Danny Reed, the judge -- in a highly unusual gesture -- implored a higher court to overturn his decision.

The ruling comes in the aftermath of this newspaper's investigation, "Loss of Trust," which highlighted Reed's costly fight to beat back high trustee and attorney's fees billed to the 37-year-old brain-damaged man's special needs trust. When Reed objected, his trustee's attorney charged even more to defend the original bills.

"At some point, this endless wasting of Danny Reed's trust assets must stop," Judge Franklin Bondonno stated in a ruling released Monday. "As far as this Court is concerned, that moment is long past."

Bondonno's latest action strikes down a third set of fees requested by attorney Michael Desmarais, who is representing prominent Silicon Valley trustee Thomas Thorpe in this closely watched case illustrating the high cost of estate managers who serve elderly and disabled adults -- and how the court did little for years to stop it. In less than a month, the newspaper's series has prompted more scrutiny in Santa Clara County's lead probate judge's courtroom and a 25-member task force to study more far-reaching changes.

Original charges

In 2010, Thorpe hired Desmarais to defend a six-figure bill for just 4 1/2 months' work as a court-appointed trustee to manage Reed's estate, which -- under state law -- is on the hook for "reasonable" legal bills racked up on all sides of the case. When Reed objected to Thorpe's and his attorneys' original \$108,000 bill, the costs soared.

The bills submitted by Thorpe's team so far amount to more than half of the money Reed has left in his trust. Reed's legal team includes a public defender and two private attorneys working free of charge.

In previous rulings, Bondonno struck down 80 percent of fees Thorpe charged Reed's estate, and has said he lamented awarding Thorpe's attorney more than \$145,000. But he said he was hamstrung by a 1989 California Supreme Court ruling in the Estate of Trynin, which allows for so-called "fees-on-fees" in disputes such as these. When Reed's side claimed Thorpe had breached his professional duty, the judge ruled Thorpe had a right to defend himself.

Nonetheless, the judge has still nipped at costs. Bondonno denied 60 percent of Desmarais' first fee request for \$11,000. In the second round of fees, he found \$18,646 to be inappropriate and double-billed. And the judge rejected all of Desmarais' third set of fees: "The Court is not satisfied that the claimed sum of \$29,364.77 is reasonable," Bondonno wrote. "More to the point, this Court refuses to make another fee award to be paid from Danny Reed's diminishing trust assets."

When reached by phone, Desmarais declined to comment on the decision, telling a reporter "you should be ashamed of yourself."

Bondonno's rulings awarding Desmarais six-figures in the Reed case are questioned by some legal scholars.

"It seems crazy on the face of it," said UC Berkeley law professor Eric Rakowski, who specializes in trusts and estates, and called the award "absurd."

"It's completely unreasonable for a (trustee) to spend more money defending a fee request than the amount of the fee itself," Rakowski said.

'Kafkaesque' case

In Trynin, the justices ruled that a "Kafkaesque judicial nightmare" could result from a request of fees for fees that devolved into "an infinite regression" of legal wrangling. But they added that the problem "is largely theoretical and seldom arises in practice." If it were to occur, the ruling stated, trial courts have broad discretion to deny fees.

Rakowski said Bondonno failed to use his discretion in the Reed case. "They said it's not going to happen," he noted of the justices' "nightmare" warning. "Well, this is a case where it did."

Yet Bondonno has now made clear he wished there were an alternative. In his ruling released Monday he wrote for a second time that he awarded Desmarais fees from Reed's estate "with great reluctance." And he noted his satisfaction that his earlier awards are now before the Sixth District Court of Appeal. In a rare request by a trial court judge to potentially be overturned, Bondonno stated: "This Court hopes that its present decision will be appealed. This Court also hopes that the appellate courts and/or the legislature can do what it is not permitted to do -- and develop a new and more workable rule for fees-on-fees cases."

That challenge is now being taken up by two state lawmakers -- Assembly members Jim Beall, D-San Jose, and Jerry Hill, D-San Mateo -- who are hoping to introduce new legislation in the coming session to fix the "fee-on-fee" predicament for the elderly and disabled.

Hill said after reading the Mercury News series that "the arrogance, the unfairness and the injustice" of high fees charged by some Santa Clara County private estate managers and their attorneys has his office seeking new laws. "I was shocked and offended by what I read, and if this occurs elsewhere then we have a major problem and many more victims," Hill said.

He added that piling legal bills on top of fees that are already "inappropriate, high and excessive," is wrong. "To me, it's criminal."

Contact Karen de Sá at 408-920-5781.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #12 – Strategic Plan Update / Discussion

Background: The current 2010 – 2013 Strategic plan was developed in conjunction with Committee members, PFAC Representatives, and audience members. The final document was approved in 2010. The current action plan was developed and revised in 2011, but has not been put to final vote yet.

Advisory Committee Discussion:

Should a new strategic plan and action plan be developed in 2013 to reflect the current realities facing the Bureau and the profession.

Attachment

Public Comment:

Professional Fiduciaries Bureau

Strategic Plan

2010-2013

Committee Members

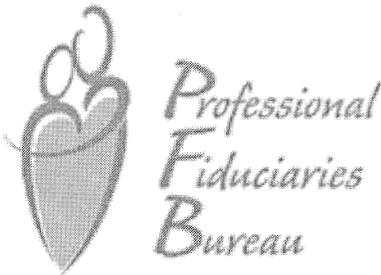
Daniel Stubbs, Chair

Sharon O'Neill, Vice Chair

Lisa Berg

Cynthia Morrow

Clark Parker



"Caring for California's loved ones"

Developed July 26, 2010 in conjunction with the DCA Strategic Planning & Development unit

Professional Fiduciaries Bureau

MISSION:

To protect the consumer through licensing and monitoring, and to ensure competent and ethical standards of practice for professional fiduciaries.

VISION:

To maintain and enhance the physical, emotional, and financial well being of consumers by promoting the highest professional fiduciary standards.

VALUES:

- **Integrity and Ethics** – We are honest, fair, and respectful in our treatment of everyone.
- **Accountability** – We are accountable to consumers and licensees. We operate transparently and encourage public participation in our decision-making whenever possible.
- **Effectiveness** – We make informed decisions in order to achieve positive, measurable results.
- **Customer Service** – We identify the best ways to deliver high-quality services with the most efficient use of our resources.

Goal 1: Licensure

- Increase the number of licensees by reaching out to other professions with relatable experience (i.e. social workers, gerontology, etc.).
- Partner with other government entities to increase licensure.
- Research the feasibility of creating an entry level license type for trainees, and develop the program if viable.

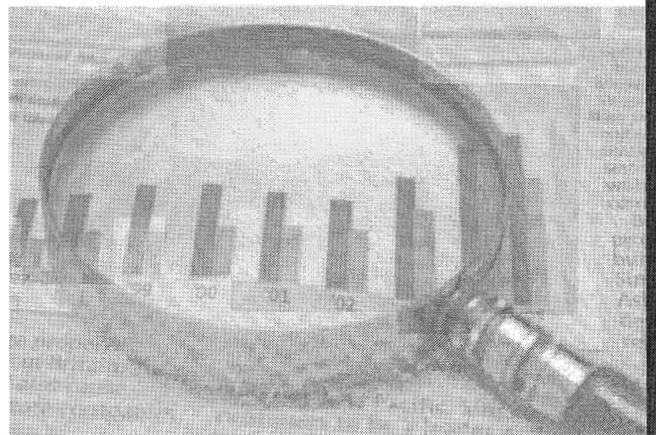


Goal 2: Enforcement

- Establish the Bureau's Cite and Fine program.
- Actively seek out unlicensed activity in partnership with the Department's Unlicensed Activities Unit.
- Leverage enforcement activity with Division of Investigation.
- Attend underground economy task force meetings and partner with Economic Employment Enforcement Coalition (EEEC).
- Post formal disciplinary accusations against licensed professionals on the bureaus' website.
(Formal accusations are drafted by the Office of the Attorney General and issued by the Bureau only after significant wrong doing has been established through investigation.)
- Participate in the Department's Consumer Satisfaction survey on closed complaints.

Goal 3: Communication & Education

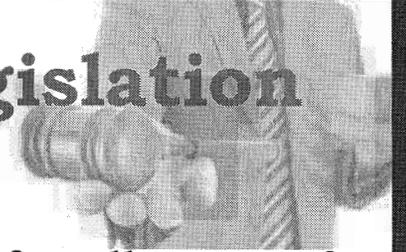
- Educate consumers and provide license information to professionals (online FAQ's for licensing information and Professional Fiduciaries Bureau forms).
- Seek out media opportunities.
- Develop Professional Fiduciaries Bureau publications in multiple foreign languages.
- Work with the Department's Publications Design unit to develop new publications.
- Partner with CIC and Outreach to increase the dissemination of PFB messages and publications.
- Develop PSA's and forums for the Senior Legislature.
- Partner with State Bar's Trust and Estate section to increase outreach.



Goal 3 (cont.): Communication & Education

- Attend local PFAC and California Association Superior Court Investigators meetings and their Annual conference for training purposes.
- Establish Outreach and communication to judges through the Administrative Office of the Courts (AOC).
- Gather and disseminate examples of industry best practices.
- Gather and disseminate victims' accounts of consumer fraud and abuse.
- Clarify the license renewal process.

Goal 4: Regulation and Legislation



- Seek Legislation to require licensure for all types of Durable Power of Attorney and Estate Administration not currently covered under present statutes.
- Develop Cite and Fine regulations.
- Develop advertising regulations requiring the inclusion of a licensee's professional fiduciary license number.
- Seek ways to streamline the license process through legislation.



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #13 – Future Meeting Dates and Agenda Items

November 2012:

March 2013:

July 2013:



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #14 – Public Comment on Items Not on the Agenda



MEMORANDUM

DATE	August 28, 2012
TO	Advisory Committee Members Professional Fiduciaries Bureau
FROM	Gil DeLuna, Acting Chief
SUBJECT	Agenda Item #15 – Adjournment

Time: