

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 BMS _____

NORTH CAROLINA BOARD OF)
FUNERAL SERVICE,)
Petitioner,)
)
v.)
)
CODY T. MCCAIN, HENRY COLVIN, JR., and)
COLVIN FUNERAL HOME & CREMATORY,)
Respondents.)

**PETITION FOR CONTESTED CASE HEARING AND
REQUEST FOR DESIGNATION OF ADMINISTRATIVE LAW JUDGE**

NOW COMES the North Carolina Board of Funeral Service (“Petitioner Board”), and submits a Petition for Contested Case Hearing and a Request for Designation of an Administrative Law Judge in accordance with N.C. Gen. Stat. §§ 150B-38, 150B-40(e), 90-210.25(e), 90-210.69(c), (d), and shows unto the Administrative Law Judge (“ALJ”) the following:

1. **Nature of the Proceeding** This Petition involves the referral of a pending case before Petitioner Board (Board of Funeral Service Case No. M15-026), requesting a determination by an Administrative Law Judge under the above statutes and rules as to whether grounds exist to discipline the licenses and permits of Respondents and, if so, what measure of discipline is warranted.

2. **Issues to be Resolved**

- a. Does Petitioner Board have a sufficient factual basis under N.C. Gen. Stat. §§ 150B-38, 90-210.25(e), 90-210.69(c), (d) and the attendant rules to suspend, revoke, or otherwise discipline the licenses of Respondents?
- b. If Petitioner Board has a sufficient factual basis to suspend, revoke, or otherwise discipline the licenses of Respondents, what measure of discipline is warranted?

3. **Statutes and Rules Involved** Chapter 90, Article 13A, of the North Carolina General Statutes and the rules promulgated by the North Carolina Board of Funeral Service as set forth in 21 N.C. Admin. Code 34.

4. **Brief Statement of the Facts**

- a. Respondent Cody T. McCain (“McCain”) is licensed by Petitioner Board as Funeral Director No. 4071, holds a preneed sales license on behalf of Respondent Colvin Funeral Home & Crematory (“Colvin FH”), serves as the licensed manager of Colvin FH, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21, Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
- b. Respondent Henry Colvin, Jr. (“Colvin”) is licensed by Petitioner Board as Funeral Service No. 1031, holds a preneed sales license on behalf of Colvin FH, is President of the North Carolina corporation owning Colvin FH, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21,

Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).

- c. Respondent Colvin FH is licensed by Petitioner Board as Funeral Establishment No. 111 and Preneed Funeral Establishment No. 172, and is subject to Chapter 90 of the North Carolina General Statutes; Title 21, Chapter 34 of the North Carolina Administrative Code; and the standards set forth in Funeral Industry Practices, 16 C.F.R. § 453 (1984).
- d. On January 24, 2017, Petitioner Board's inspector M. David Hall ("Inspector Hall") conducted an examination of Colvin FH's trust and insurance funded preneed contracts ("2017 Examination") pursuant to N.C. Gen. Stat. §§ 90-210.24 and 90-210.68.
- e. During the 2017 Examination, Inspector Hall found that multiple preneed funeral contract files specifying cremation were incomplete in that they did not specify the disposition of those cremated remains subsequent to the death of the following preneed funeral contract beneficiaries:
 - a. Jeanette Bostick;
 - b. Lorraine Collins;
 - c. Dorothy Fielder;
 - d. Glyn K. Lewis;
 - e. Deanna Matthews; and
 - f. Margie Sue Rutledge.
- f. During the 2017 Examination, Inspector Hall found that the trust-funded preneed contract files for John T. Council and Mable E. Council could not

be audited because Respondents failed to make the associated bank statements available for review and inspection.

- g. During the 2017 Examination, Inspector Hall found that Respondents failed to retain the original preneed contract of Virginia Blinn.
- h. During the 2017 Examination, Inspector Hall found that Respondents failed to retain pay-out information upon performing the preneed funeral contracts for Glyn Lewis and Margie Rutledge.
- i. During the 2017 Examination, Inspector Hall found that Respondents failed to retain copies of at-need Statements of Funeral Goods and Services Selected, signed by a licensed funeral director, following the performance of preneed funeral contracts for the following beneficiaries:
 - a. Virginia Blinn;
 - b. Lorraine Collins;
 - c. Deanna Matthews;
 - d. Margie Rutledge; and
 - e. Mitchell Thompson.
- j. During the 2017 Examination, Inspector Hall found that several closed preneed contract files did not contain copies of certificates of performance for the following decedents:
 - a. Lorraine Collins;
 - b. Robert Garner;
 - c. Glyn Lewis;
 - d. Margie Rutledge; and

- e. Mitchell Thompson.
- k. During the 2017 Examination, Inspector Hall was made aware that Respondents failed to file Certificates of Performance for the following preneed contract beneficiaries:
 - a. Luise Chevere;
 - b. Walter Cline;
 - c. Freddie Cockerm;
 - d. Emma Felton;
 - e. Robert Garner;
 - f. Irene Hiller;
 - g. James E. Kelly;
 - h. Ernest Looney;
 - i. Theresa Lowrey;
 - j. Joseph McPherson;
 - k. Edward Moore;
 - l. Rosa Owens;
 - m. Ashley Rozier;
 - n. Nancy Sheridan; and
 - o. Barbara Williams.
- l. During the 2017 Examination, Inspector Hall found that in the closed preneed contract file for Glyn Lewis, Respondents failed to record the final payout at the time of death, thus making it impossible to compute the

formula for calculating the cash advance and sales tax items and subsequent possible refunds owed to the beneficiary's family.

- m. Colvin FH's Preneed Annual Report for 2014 contained omissions regarding several preneed contracts. Petitioner Board requested the necessary information from Colvin FH on multiple occasions, but has not received a sufficient response to date.
- n. Colvin FH's Preneed Annual Report for 2015 contained omissions regarding several preneed contracts. Petitioner Board requested the necessary information from Colvin FH on multiple occasions, but has not received a sufficient response to date.
- o. Colvin FH's Preneed Annual Report for 2016 contained omissions regarding several preneed contracts. Petitioner Board requested the necessary information from Colvin FH, but to date has received no response.
- p. Pursuant to N.C. Gen. Stat. §§ 90-210.25(e) and 90-210.69(c)(6), Petitioner Board may take disciplinary action against a licensee who violates and/or cooperates with others to violate any provision of Petitioner Board's governing statutes and rules. Upon a finding that the licensee has become unfit to practice, suspension or revocation of licensure is warranted. Upon a finding that the licensee has committed one or more of the violations alleged but remains fit to practice, probation and/or imposition of a civil penalty up to Five Thousand and No/100 Dollars (\$5,000.00) is appropriate.

WHEREFORE, Petitioner Board requests that:

- I. This Petition for Hearing be granted, in accordance with N.C. Gen. Stat. § 150B-40(e);
- II. The Administrative Law Judge recommend appropriate disciplinary action on the funeral establishment permit of Respondent Colvin Funeral Home & Crematory;
- III. The Administrative Law Judge recommend appropriate disciplinary action on the preneed funeral establishment permit of Respondent Colvin Funeral Home & Crematory;
- IV. The Administrative Law Judge recommend appropriate disciplinary action on the funeral service license of Respondent Henry Colvin, Jr.;
- V. The Administrative Law Judge recommend appropriate disciplinary action on the funeral directing license of Respondent Cody T. McCain;
- VI. Petitioner Board be reimbursed for all attorney fees and costs, as allowed by law; and
- VII. Petitioner Board be granted such other relief as may seem just and equitable to the Administrative Law Judge.

This the 22nd day of March, 2017.



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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Petition for Contested Case Hearing and Request for Designation of Administrative Law Judge** upon the following named persons by depositing a copy of the foregoing document in the United States Mail, Certified Mail, return-receipt requested as follows:

Colvin Funeral Home and Crematory
c/o Henry Colvin, Jr.
P.O. Box 9579
Fayetteville, NC 28311-9088

Cody T. McCain
938 Stewarts Creek Drive, Apt. 02
Fayetteville, NC 28314-4102

Henry Colvin, Jr.
3405 Gables Drive
Fayetteville, NC 28311-7613

And a copy mailed to the Attorney for Respondent Colvin Funeral Home and Crematory:

Jose A. Coker, Esq.
The Charleston Group
P.O. Box 1762
Fayetteville, NC 28302-1762

This the 22nd day of March, 2017.



Christina D. Cress