

STATE OF NORTH CAROLINA
COUNTY OF CUMBERLAND

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
17 BMS 02004

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

PETITIONER’S PREHEARING STATEMENT

NOW COMES the North Carolina Board of Funeral Service (“Petitioner Board”), by and through its undersigned Counsel and submits this Prehearing Statement in accordance with Chapter 150B of the NC General Statutes and 26 N.C. Admin. Code 03 .0104 and shows 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 Respondents’ licenses and, if so, what measure of discipline is warranted.
2. **Issues to be Resolved.** Petitioner proposes that the following issues are to be resolved in this case:
 - a. Does Petitioner Board have a sufficient factual basis under N.C. Gen. Stat. §§ 150B-38, 90-210.25(a), and 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 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 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 *Funerall 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:
 - i. Jeanette Bostick;
 - ii. Lorraine Collins;
 - iii. C. Dorothy Fielder;
 - iv. Glyn K. Lewis;
 - v. Deanna Matthews; and
 - vi. 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:
 - 1) Virginia Blinn;
 - 2) Lorraine Collins;
 - 3) Deanna Matthews;
 - 4) Margie Rutledge; and
 - 5) 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:
 - 1) Lorraine Collins;
 - 2) Robert Gamer;
 - 3) Glyn Lewis;
 - 4) Margie Rutledge; and
 - 5) 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:

- 1) Luise Chevere
- 2) Walter Cline;
- 3) Freddie Cockerm;
- 4) Emma Felton;
- 5) Robert Gamer;
- 6) Irene Hiller;
- 7) James E. Kelly;
- 8) Ernest Looney;
- 9) Theresa Lowery;
- 10) Joseph McPherson;
- 11) Edward Moore;
- 12) Rosa Owens;
- 13) Ashley Rozier;
- 14) Nancy Sheridan; and
- 15) 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 Respondent Funeral Home 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 Respondent Funeral Home 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.
- 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.

5. **List of Proposed Witnesses.** Petitioner Board presently intends to call the following witnesses:

- a. Lyn Cochrane;
- b. M. David Hall;
- c. Brett Lisenbee;
- d. Tanya Pearson;

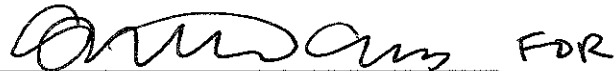
- e. Cody T. McClain;
 - f. Henry Colvin, Jr.;
 - g. Any current or former employee of Colvin FH;
 - h. Any expert witness that Petitioner Board may call to testify at hearing; and
 - i. Any witnesses identified in Respondents' Prehearing Statement or discovery responses.
6. **Discovery.** Petitioner Board intends to engage in discovery through Interrogatories, Requests for Production of Documents, and Requests for Admissions. Petitioner Board also may take the deposition of any witnesses with discoverable knowledge.
7. **Hearing Location.** Petitioner Board requests that the hearing take place in Fayetteville, North Carolina, as set forth in the Scheduling Order.
8. **Estimated Length of Hearing.** 1 day.
9. **Attorneys.** The undersigned will proceed as attorneys of record for Petitioner Board.
10. **Date Ready for Hearing.** At this time, Petitioner Board is available for a hearing during the week beginning July 17, 2017, as set forth in the Scheduling Order.
11. **Other Special Considerations.** Petitioner Board requests that a mediated settlement conference be scheduled during the week beginning May 22, 2017.

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This the 19th day of April, 2017.



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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served the foregoing **Petitioner Board's Prehearing Statement** upon the following counsel of record by depositing a copy of the foregoing document in the United States Mail, Certified Mail, return-receipt requested as follows:

Quintin D. Byrd, Esq.
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Attorney for Cody T. McCain

This the 19th day of April, 2017.


Christina D. Cress