

II. BRIEF STATEMENT OF THE FACTS AND REASONS SUPPORTING McCAIN'S POSITION IN THE MATTER.

McCain contends the Board does not possess a sufficient factual basis to suspend revoke or otherwise discipline his license under the facts of this matter.

McCain is not responsible for the alleged errors that occurred at Colvin Funeral Home & Crematory located at 2010 Murchison Road, Fayetteville, NC 28301 ("Murchison Road location") because, upon information and belief, McCain was not employed or working at the Murchison Road location when the alleged errors occurred as McCain only began working at the Murchison Road location on or about December 13, 2016. Prior to December 13, 2016, McCain was employed by Colvin Funeral Home & Crematory at its Lumberton, NC location, 1904 E. Elizabethtown Road, Lumberton NC 28358.

The Board conducted its audit that is the basis of this action on January 24, 2017. That audit was conducted by Inspector M. David Hall. *See* Exhibit A. (Inspector Hall's Preliminary Audit Findings ("Audit") has been attached to this Prehearing Statement as Exhibit A and is herein incorporated by reference.)

Inspector Hall's audit meticulously details the alleged errors, including names and dates of the decedents or clients associated with each alleged error. *Id.* at Exhibit A. Inspector Hall's audit provides, in pertinent part, the following:

<u>Name</u>		<u>Date of Death or Alleged Error</u>
Margie Rutledge	-	5/5/16
Deanna Matthews	-	11/5/14
Dorothy Fielder	-	None Listed
Lorraine Collins	-	3/30/15
Mitchell Thompson	-	None Listed
Glyn Lewis	-	None Listed
Virginia Blinn	-	11/25/14
Robert Garner	-	9/1/15
Joseph McPherson	-	7/7/16
Edward Moore	-	5/23/16

Rosa Owens	-	4/12/14
Ashley Rozier	-	3/26/16
Nancy Sheridan	-	11/14/15
Barbara Williams	-	12/16/16
Luise Chevere	-	11/16/14
Walter Cline	-	7/9/16
Freddie Cockerm	-	6/26/16
Emma Felton	-	11/29/15
Irene Hiller	-	5/8/14
James Kelly	-	8/17/14
Barbara Long	-	3/19/16
Ernest Looney Jr.	-	8/11/15
Theresa Lowrey	-	12/15/14

See Id. at Exhibit A

Additionally, the Board's Petition for Contested Case Hearing ("Petition") provides a summary of the information contained within the audit confirming the names and timing of the alleged errors listed above, as well as, alleged errors or omissions on annual reports which pre-date McCain's working at the Murchison Road location. *See* Exhibit B. (The Board's Petition has been attached to this Prehearing Statement as Exhibit B and is herein incorporated by reference.)

As demonstrated by the facts discussed and exhibits attached, the alleged errors occurred prior to McCain's employment at the Murchison Road location began. As such, the Board does not possess a sufficient factual basis to suspend, revoke or otherwise discipline the license of Respondent McCain.

III. LIST OF PROPOSED WITNESSES.

Because discovery has not been completed, Petitioner is not in a position to list all proposed witnesses. Based upon his present knowledge of the facts and circumstances of this matter, however, McCain may call the following witnesses:

- A. Cody T. McCain
- B. Henry Colvin, Jr.

- C. Aggie Rogers
- D. Thomas McKee
- E. Judy McMillan
- F. Beverly Campbell
- G. Delaney Leach
- H. Keith Stanton
- I. Rufus McMillan
- J. Alton Harper
- K. M. David Hall
- L. Any witnesses whom the Petitioner and other Respondents may call.

McCain reserves the right to name additional witnesses, including expert witnesses, as becomes necessary.

IV. WHETHER YOU WISH TO PURSUE DISCOVERY; IF SO, THE LENGTH OF TIME REQUIRED IF DIFFERENT FROM THE TIME SET IN THE SCHEDULING ORDER.

McCain reserves the right to pursue discovery, to be completed on or before June 26, 2017.

V. REQUESTED LOCATION OF HEARING, IF DIFFERENT FROM THE LOCATION SET IN THE SCHEDULING ORDER.

McCain agrees with the location of the hearing and the time set forth in the Scheduling Order entered on March 24, 2017.

VI. ESTIMATED LENGTH OF HEARING

McCain estimates the hearing in this matter should take approximately one (1) day.

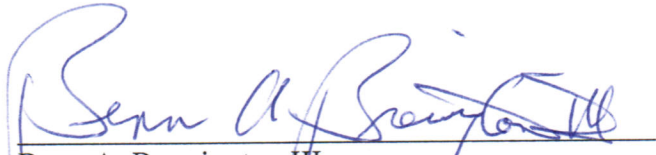
VII. IF YOU DO NOT HAVE AN ATTORNEY, YOUR HOME AND BUSINESS ADDRESS AND TELEPHONE NUMBERS.

McCain is represented by the undersigned counsel.

VIII. OTHER SPECIAL CONSIDERATIONS.

McCain has no other special considerations at this time.

This the 23rd day of April, 2017



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Attorneys for Cody T. McCain

Preliminary Audit Findings

COLVIN FUNERAL HOME and CREMATORYPre-need Establishment Name Permit # 172Audit Date: 01/24/17

During the performance of this audit, the inspector/examiner noted the following:

1. The trustee maintains an accurate cash receipt journal (Form PN-6) or the equivalent representing a complete record of all payments received from pre-need purchasers. Receipt book utilized.

Yes ☒ No ☐ Comments: _____

2. Current preneed establishment permit is displayed, applications for permits are maintained, prior annual reports are maintained and prior audit reports are maintained.

Yes ☒ No ☐ Comments: _____

3. Sample of contract files that were examined contained all required documents.

Yes ☐ No ☒ Comments: cremation final disposition not indicated on P/N contracts, namely;

Margie Rutledge, Deane Matthews, Dorothy Fickler, Lorraine Collins,

4. Trustee maintains all required bank records and insurance company records.

Yes ☐ No ☒ Comments: RANDOM AUDIT OF HOMESTEADERS AND ATLANTIC COAST LIFE

*COULD NOT FIND LUMBEE GUARANTY BANK STATEMENTS.

5. Trustee has administered all payments made by preneed consumers in accordance with G.S. § 90-210.61.

Yes ☐ No ☒ Comments: Unknown - due to lack of pay-out info for: Glyn Lewis,

Margie Rutledge, No signed AT-need contracts in files of:

Mitchell Thompson, Deane Matthews, Lorraine Collins, Margie

6. Trustee has filed all documents (contracts, SGSS's, COP's) with the Board in accordance with the requirements of Article 13D.

Yes ☐ No ☒ Comments: No COPs for: Robert Garner, Lorraine Collins,

9/1/15 3/30/15

By signing my name below I acknowledge receipt of this document and understand this does not represent the official report that will be filed with the Board office and transmitted to establishment. I certify the establishment has deposited all preneed funds and filed all contracts as required by law. I further acknowledge that if I am not the manager of the preneed establishment, I am responsible for delivering this document to the manager.

Signature: [Signature]

Date: 1/24/17

Name and Signature of Inspector/Examiner: M. DAVID HALL M. David Hall

OTHER COPs NOT FILED INCLUDE: Luise Chevere, Walter Cline, Freddie Cockerm,
EMMA FELTON, ROBERT GARNER, 11/16/14 1/9/16 6/26/16
11/29/15 9/1/15 Irene Hiller, JAMES E. KELLY, BARBARA LONG
5/5/14 08/17/14 3/19/16
ERNEST LOONEY, JR 8/11/15, THERESA LOWREY 12/1/14

Barbara Williams 12/16/16

Joseph McPherson 7/7/16
Edward Moore 5/23/16
Rosa Owens 4/12/14
Ashley Rozier 3/26/16
Nancy Sheridan 11/14/15

OTHER ITEMS NEEDED

*Need to review Preneed receipt book or journal

*Need to review Five (5) closed cremation files over the last 12 months.

*Need to see a copy of the Annual report 2015.

*Need to see a copy of applications for renewal for 2016.

*Need to review year-end bank trust stmts for 12/31/15.

*Need to review all insurance Year-end stmts for 12/31/15.

Colvin - Fayetteville**CLOSED PRENEED FILES**

NAME	DEATH DATE	CONTRACT
BALLARD, OLENER S ✓	08/12/16	I/I
BLINN, VIRGINIA ANN (AFF) ✓	11/25/14	S/I
COLVIN, ESSIE LEE ✓	03/20/14	S/I
GARNER, HENRIETTA ✓	08/02/15	S/I
KELLY, ETHEL ? <i>Don't know</i>	06/30/14	I/I
LEWIS, GLYN K (AFF) ✓	01/16/14	I/I
MATTHEWS, DEANNA ? ✓	11/05/14	I/I
RUTLEDGE, MARGIE SUE ✓	05/05/16	S/I
STEWART, LEON C ✓	02/16/15	S/I
THOMPSON, MITCHELL (Lumb) ✓	02/10/14	S/I

OPEN PRENEED FILES

NAME		NAME	
• BARFIELD, GERALDINE	S/I	• BOSTICK, JEANETTE	I/I
• COLLINS, LORRAIN	S/I	• FIELDER, DOROTHY	S/R
• GARNER, ROBERT	I/R	• GRAHAM, SAMUEL C	I/I
• LEE, BILLIE	I/R	• McNEILL, FRANCES M ?	S/R
• ROSS, MARGARET	I/I	• VANNER, JACQUELINE	I/R

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.

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**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.

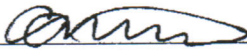
WHEREFORE, Petitioner Board requests that:

- 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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 FOR CE

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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

CERTIFICATE OF SERVICE

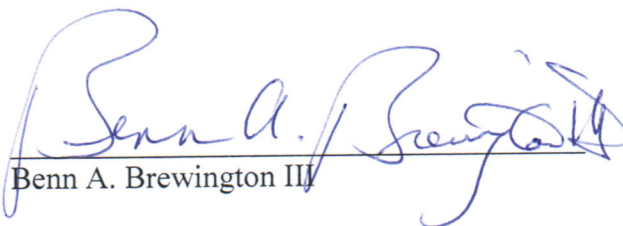
I hereby certify that I have this day served a copy of the foregoing **PREHEARING STATEMENT** by electronic service via the North Carolina Office of Administrative Hearings Electronic Filing System and by depositing a copy of the same in the United States Mail, postage prepaid, in an envelope properly addressed as follows:

Christina D. Cress
North Carolina Board of Funeral Service
Attorney for Petitioner
1033 Wade Avenue, Suite 108
Raleigh, NC 27605

Catherine E. Lee
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Attorney for Petitioner
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Jose A. Coker
R. Jonathan Charleston
Quintin D. Byrd
The Charleston Group
Attorneys for Respondent Colvin Funeral Home &
Henry Colvin, Jr.
P.O. Box 1762
Fayetteville, NC 28302-1762

This the 23rd day of April, 2017.


Benn A. Brewington III