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The Honorable Carlos Velategui

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

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KING COUNTY, WASHINGTON

MAY 19 2005

SEA
SUPERIOR COURT CLERK

SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

In Re the Matter of:

LIFETIME ADVOCACY PLUS AUDIT

No. 04-4-02008-2 SEA

REPORT OF SPECIAL
REPRESENTATIVE and REQUEST
FOR DISCHARGE OR FURTHER
INSTRUCTIONS

(SEALED FILE)

I. PRELIMINARY INFORMATION

1. Appointment. I was appointed Special Representative under RCW 11.96A on June 10, 2004, to represent the interests of individuals having trusts or guardianships managed by Lifetime Advocacy Plus (hereinafter "LA Plus" or "agency"). The Order of Appointment contains a detailed list of items which the court requested be included within my report. Those items are addressed in Section IV, below, in the same order as presented in the Order.

2. Precipitating Issues. My appointment occurred after a "reportable condition" was noted in LA Plus's audit for the year 2002. Specifically the 2002 audit discovered certain potentially illegal transfers from the custodial cash account (the "Fiduciary Account") to the

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ORIGINAL

1 agency cash account. By letter dated April 7, 2004, LA Plus's attorney, Michael Olver,
2 attempted to schedule a meeting with the King County Superior Court Presiding Judge, the
3 Honorable Richard Eadie, to discuss the issue. Judge Eadie referred the matter to the *ex*
4 *parte* probate department, after which I was appointed to investigate.

5
6 **3. Concerns and Reasons for Delay.** The Court originally requested my report
7 within 90 days of the date of the order. The due date was extended by court order and
8 agreement with counsel for LA Plus several times for various reasons; the most recent report
9 date being March 15, 2005. The Court also indicated that it did not have an issue in
10 extending the deadline. Therefore, in order to avoid incurring additional fees and costs I did
11 not proceed to court to obtain an order specifically extending the March 15th deadline. I
12 notified LA Plus's attorney, Michael Olver of the delay and he waived any further notice of
13 requests for continuances.

14
15 The investigation and report became more time intensive and difficult to prepare than
16 originally anticipated due to the voluminous information that was reviewed and the time
17 period over which it spanned. Contradictory statements made by various individuals as well
18 as the conflicting information provided on documents raised initial concerns and required
19 additional investigation and review. With this report, I have answered the specific questions
20 raised by the court, but have noted those instances where I have continuing concerns or
21 question.

22
23 At the onset of my investigation, LA Plus provided me with a notebook of
24 information containing its own answers to the inquiries of the court. I believed it was not
25 appropriate to simply accept the agency's answers to these inquiries and instead did an
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1 independent investigation of the matter, which required me to request and review documents
2 beyond those originally provided by LA Plus. The agency was responsive in providing me
3 with documents when requested, however, it appears that financial documents were not
4 maintained in any organized fashion during the relative time period. LA Plus attempted to
5 organize documents and prepare reports after the fact, which also raised some concerns on
6 my part, which are more specifically discussed below.

7
8 I was also initially concerned when Ms. Lindley requested that I not directly contact
9 the agency's bookkeeper, Larry Davis, to get information from him. I ultimately did contact
10 Mr. Davis directly and he has indicated to me that he indeed knew that the transfers were
11 occurring and that he "never liked it". He further stated that he had in fact discussed this
12 with Ms. Lindley. This was explained by Ms. Lindley as a "miscommunication" as is further
13 discussed within my report below. Nonetheless, the fact that Ms. Lindley initially asked me
14 not to contact him directly raised some concerns on my part about the accuracy of the
15 information provided to me. Thus I felt I needed to more thoroughly review the information
16 provided and to compare the documents provided to me initially with those obtained later.

17
18 I also have concerns regarding the inconsistent financial reports that I received. I
19 originally requested copies of financial reports that were prepared monthly and would have
20 been reviewed by the finance committee of the Board during the relative time period leading
21 up to the discovery of the problem. Ms. Lindley provided me with a notebook of financial
22 reports. However, upon closer inspection, it was apparent that the reports were prepared
23 after the discovery of the problem. When asked about this, Ms. Lindley stated that the
24 reports had been redone early in 2004 because she had no confidence in the work done by the
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1 previous Chief Financial Officer, who was responsible for the "reportable condition". LA
2 Plus's uneasiness with the numbers was understandable, but I needed to review the actual
3 reports that would have been seen by the board at the time. Upon further request, I was
4 provided with the actual reports generated at the time. The reports differ in that the borrowed
5 funds (advance fees) appear as a "liability" on the financial reports prepared during the
6 relative time period, but are stated as "receivables on account" on the updated version.
7 Again, this failure to provide the actual original documents initially raised some concerns.

9 Finally, I had concerns regarding the loan obtained by LA Plus to repay the Fiduciary
10 Account. Although the agency originally hoped to be able to repay the account itself through
11 a series of budget cuts, it soon realized it could not do that within any reasonable time period.
12 It then began the process of attempting to obtain a bank loan. I requested to be kept informed
13 of the process. In approximately December of 2004, I received a message from either Mr.
14 Oliver or Ms. Lindley that the agency had indeed obtained a loan and the Fiduciary Account
15 had been repaid. No details were provided until I specifically requested them. It was then I
16 learned that the loan was not a bank loan, but a personal loan from its attorney. I received
17 redacted copy of the Promissory Note, but no additional paperwork regarding the loan. Only
18 upon a second request did I receive the Loan Agreement, again in redacted form. I have
19 since reviewed the original, non-redacted version.

21 I have included these paragraphs in my report, not to cast aspersions on anyone in
22 particular, or to claim that the agency has not been cooperative in my investigation, but rather
23 to advise the court of the reasons for my concerns and resultant delay. The agency has in fact
24 complied with my requests for information and cooperated fully. Any specific remaining
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1 concerns as to individual areas of my investigation are discussed in Section IV below.

2 **II. SUMMARY OF IMPORTANT FINDINGS**

3 **1. Harm to Individual Clients.** No individual client of Lifetime Advocacy Plus
4 (hereinafter "LA Plus" or "agency") appears to have suffered any losses as a result of the
5 "reportable condition" discovered in the 2002 audit.

6 **2. Individual Accounts.** LA Plus has now transferred each client's funds from the
7 consolidated fiduciary account to an individual account. The fiduciary account was made
8 whole with a one-time payment plus interest. The interest was properly apportioned among
9 all clients prior to transfer to individual accounts.

10 **3. Knowledge of the Agency.** My investigation reveals that the Executive Director,
11 Ms. Lindley, either knew or should have known no later than February 2003 that transfers
12 were being made from the fiduciary account to the agency account. A line item was
13 specifically created in the agency's software to track these transfers. The line item appeared
14 as a liability entitled "advance fees". Ms. Lindley authorized and signed large checks for
15 payments from the fiduciary account to the agency account which were categorized as
16 "advanced fees". One such transfer in the amount of \$60,000.00 occurred in February 2003.
17 The accompanying email, requesting the transfer, was sent to Ms. Lindley at the time.
18 Therefore, it is difficult to believe that she did not know the transfers were occurring. If she
19 did not know, she certainly should have known, given the information she had available to
20 her.
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24 **III. DOCUMENTS REVIEWED AND INDIVIDUALS INTERVIEWED**

25 **1. Documents Reviewed.** During the course of my investigation, I reviewed
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1 numerous documents provided to me by LA Plus as well as many of its individual case files.
2 I did not review each and every file for which LA Plus serves as a guardian or trustee, but
3 rather conducted a random review of approximately 40 files. The files included both
4 guardianship and trust matters and matters, both within and outside of King County. In
5 addition to reviewing the random files, the documents provided to my by LA Plus, which I
6 reviewed, include the following:
7

8 • LA Plus's written responses, with attachments, to the court's questions as
9 contained in the Order of Appointment;

10 • Caseload Distribution sheet showing LA Plus Client Accounts and *pro bono*
11 costs;

12 • LA Plus's "Four Point Plan" for dealing with the shortages;

13 • Audit Reports for years ending 2002 and 2003 prepared by Jacobson Jarvis &
14 Co., CPAs;

15 • Bank Statements for the agency and fiduciary accounts for the years 2001
16 through 2003;

17 • Minutes of Board Meetings for the years 2002 and 2003;

18 • Minutes of Finance Committee Meetings for the years 2002 and 2003
19 (incomplete);
20

21 • Minutes of Executive Sessions for late 2003 and 2004;

22 • Financial Reports for 2002 and 2003 (incomplete);

23 • Various transaction ledgers showing the transfer of funds from the fiduciary
24 account to the agency account and from the agency account to the fiduciary account;
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1 • Various correspondence and emails to and from Executive Director, Elizabeth
2 Lindley, the Chief Financial Officer, Francoise Maxie and other employees of LA Plus;

3 • The Insurance Policy issued to LA Plus in effect at the time of the losses and
4 correspondence with the company regarding the potential claim;

5 • Bank of America and Trust Net printouts regarding the individualized
6 accounts;

7 • Receipts for establishment of individualized accounts;

8 • The Loan Agreement for repayment of the borrowed funds;

9 • Letter from Francoise Maxie dated September 8, 2003, following her
10 dismissal, addressed to Liz Lindley;

11 • Letters to and from the Professional Guardian Certification Board regarding
12 the investigation;

13 • LA Plus budget for 2004 and 2005 (proposed); and

14 • Draft of Operations and Fiscal Procedures Manual.

15 2. **Persons Interviewed.** In addition to discussing the matter with LA Plus's
16 attorney, Michael Oliver, I have spoken with the following individuals:

17 • Elizabeth Lindley, Executive Director of LA Plus;

18 • Francoise Maxie, former Chief Financial Officer of LA Plus;

19 • Lynne Darnell, staff member at LA Plus;

20 • Larry Davis, bookkeeper at LA Plus;

21 • Michael Born, contract bookkeeper at LA Plus and former comptroller;

22 • Hannelore Wright; Board Member and Treasurer;

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- Tom Lehning, Board Member and current head of Finance Committee;
- Wendy Jacobson, Certified Public Accountant with Jacobson Jarvis & Co.
- Julcen Snyder, Certified Public Accountant with Jacobson Jarvis & Co.
- Lynne Alfasso, Certified Professional Guardianship Board.

3. **Experts Retained/Consulted.**

- I retained the services of Ms. Laura Ohringer of Anderson ZuhMuehlen & Co. P.C. to assist me with my investigation of the financial matters. Ms. Ohringer reviewed the transfers between the fiduciary and agency cash accounts, verified the amount of funds transferred between each, and reviewed the calculation of interest to individual clients prior to establishment of the individual accounts.

- I consulted with Ms. Karen Boxx, Professor of Law, University of Washington School of Law, with regard to the potential conflicts surrounding the loan made to LA Plus by its attorney Michael Oliver.

IV. SPECIFIC INQUIRIES BY THE COURT WITH ANSWERS THERETO

1. **A detailed timeline of events which occurred at LA Plus with regard to client funds invested in consolidated fiduciary accounts and a concise description of the events that transpired regarding the use of the funds in the consolidated account to pay agency expenses, which led to the discovery of the "reportable condition", and a timeline of events that followed the discovery.**

<u>Date</u>	<u>Event</u>
Jan. 2002	Francoise Maxie is hired as the Chief Financial Officer for LA Plus. LA Plus is still using a DOS program for its accounts. Ms. Maxie represents that she has experience using the program. Ms. Lindley checks references but does not check with previous employers with whom Ms. Maxie has worked.
May 2002	Francoise Maxie takes an extended leave of absence for medical reasons.

1	Feb. 11, 2003	First transfer by check is made from the Fiduciary Account to the Agency Account in the amount of \$60,000.
2	March 7, 2003	Ms. Maxie sends email to Larry Davis requesting he cut a check for \$31,500 for an advance.
3		She sends a second email the same day - increasing the requested amount to \$45,500.
4	March 7, 2003	Check for \$45,500 drawn on Fiduciary Account is deposited to Agency Account, labeled "advance fees".
5	March 17, 2003	Check for \$35,000 drawn on Fiduciary Account deposited to Agency account, labeled "LA PLUS FEES PAID".
6	March 24, 2003	Regular board meeting. Board discusses, among other things, the fact that they are behind in Financial Reports. The Board also discusses the process of trying to obtain a bank loan for cash flow purposes. The financial report shows decreased revenue and increased expenses.
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9	April 16, 2003	Ms. Maxie sends email to Mr. Davis requesting check for \$25,000. Check is issued from the Fiduciary Account and deposited into the Agency Account.
10	April 16, 2003	Ms. Maxie sends email to Mr. Davis requesting check for \$25,000. Check is issued from the Fiduciary Account and deposited into the Agency Account.
11	April 28, 2003	Regular monthly board meeting: minutes very brief as to discussion regarding financial report. Report shows expenses up and revenue down.
12	May 6, 2003	Check for \$55,000 drawn on Fiduciary Account and deposited into Agency Account.
13	May 14, 2003	Mike Bonn sends email to Ms. Maxie (copy to Ms. Lindley) regarding the \$10,000 transfer to the agency account from the fiduciary account in May 2002. He further references his knowledge that "during the last two months" there have been additional "loans" from the Fiduciary Account which he does not think is showing up as a liability on the agency's books. He expresses concern about "co-mingling or self-dealing".
14	May 14, 2003	Mike Bonn sends email to Ms. Maxie (copy to Ms. Lindley) regarding the \$10,000 transfer to the agency account from the fiduciary account in May 2002. He further references his knowledge that "during the last two months" there have been additional "loans" from the Fiduciary Account which he does not think is showing up as a liability on the agency's books. He expresses concern about "co-mingling or self-dealing".
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20	May 15, 2003	Ms. Maxie responds via email and assures Mr. Bonn that the amounts have been booked as a liability to LA+ and have a visible audit trail. She further states that the May reconciliation will reflect the amounts transferred back to the Fiduciary Account.
21	May 15, 2003	Email from Ms. Maxie to Mr. Davis requesting a check for \$35,000 as advance on fees. Check is issued from Fiduciary Account and deposited to Agency Account.
22	May 15, 2003	Ms. Lindley meets with Ms. Maxie to discuss the 2002 transfers raised in Mike Bonn's email. According to Ms. Lindley, Ms. Maxie told her the \$10,000 transfer in May of 2002 and the \$22,000 transferred in December 2002 were the only transfers that had occurred. She also advised her that the \$22,000 transfer in December was repaid in January.
23	May 15, 2003	Ms. Lindley meets with Ms. Maxie to discuss the 2002 transfers raised in Mike Bonn's email. According to Ms. Lindley, Ms. Maxie told her the \$10,000 transfer in May of 2002 and the \$22,000 transferred in December 2002 were the only transfers that had occurred. She also advised her that the \$22,000 transfer in December was repaid in January.
24	May 16, 2003	Ms. Lindley telephones Mr. Bonn to discuss the transfers and why he had not previously brought them to her attention. He states that he felt his responsibility was reporting directly to Ms. Maxie as she was the Chief
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	Financial Officer.
	During this time period (Jan - May 2003), Mr. Bonn continues to reconcile the Fiduciary Account but does not specifically review the individual checks going from the Fiduciary Account into the Agency Account. Because they were not a direct transfer, as were the transfers in 2002, the checks reportedly did not raise any cause for concern for him.
May 16, 2003	Ms. Lindley makes initial adjustment to reduce program expenditures by \$32,000.
	No Board Meeting in May
June 2003	Ms. Lindley contracts with a CPA to do agency bank account reconciliation reports which had not been completed from February 2002 through June 2003. The reconciliations needed to be completed in order to schedule the 2002 Audit. They are prepared and the audit begins.
June 23, 2003	Regular Board Meeting. No discussion of the issues regarding the inappropriate transfers. Ms. Lindley states that she did not advise the Board at that time, instead waiting for the 2002 audit to be done.
July 28, 2003	Regular Board Meeting. No discussion of issues regarding inappropriate transfers.
August 15, 2003	Supervising Auditor calls Ms. Lindley to schedule a meeting without Ms. Maxie present.
August 16, 2003	Auditor informs Ms. Lindley that they have found reportable conditions that must be included in their audit report. They have found that \$32,000 was transferred, possibly illegally, from the Fiduciary Account. Additionally the auditor advises Ms. Lindley that she thinks at least \$10,000 to \$20,000 had also been transferred in 2003.
August 16, 2003	Ms. Lindley speaks with Ms. Maxie about the auditor's report and advises her not to speak with the auditors.
August 16, 2003	Ms. Lindley plans an additional series of program adjustment to cut the budget another \$20,000.
August 16, 2003	Ms. Lindley makes telephone calls to Board Members to alert them to the problems with the audit but is unable to reach all board members as most are on vacation. No written notice is sent to any board members.
August 17-21 2003	Ms. Lindley begins an internal review of the Accounts Payable file maintained by Ms. Maxie and finds the system to be in a state of disarray. She begins contacting creditors and setting up payment plans for overdue bills and to prioritize current bills.
August 19, 2003	Ms. Lindley has conversation with Ms. Maxie regarding the overdue bills in order to attempt to prioritize and determine available funds to pay bills. Ms. Maxie tells Ms. Lindley that she believes there is an additional \$12,000, over what the auditors have found, that has been transferred and not repaid.
August 20, 2003	Ms. Maxie takes scheduled vacation from August 20 to August 22.

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1	August 20, 2003	Ms. Maxie telephones Ms. Lindley during her vacation and tells her that the \$42,000 figure is not correct, that she is unsure of the total amount, but it could be as much as \$130,000. Ms. Lindley attempts to call various board members, but is only able to speak to Norris Haring about the issue. No board meeting is scheduled or held in August.
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4	August 22, 2003	Ms. Maxie returns from vacation and meets with Ms. Lindley. Ms. Lindley asks her to provide a complete chronology of the transfers.
5	August 25, 2003	Ms. Lindley reaches Board Member Bill Dussault, makes an appointment and decides to call an Executive Committee meeting soon.
6	August 26, 2003	Ms. Maxie and Ms. Lindley meet and discuss the chronology of the transfers. Ms. Maxie continues to request a meeting with the Auditors and feels that her actions should be defended by the Board and Ms. Lindley.
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9	August 27, 2003	Ms. Lindley advises Ms. Maxie not to go to the Auditor until after the Executive Committee determines the best course of action.
10	Aug 27 - 29	Agency does not have sufficient funds to meet payroll. Ms. Lindley pays those who need payment immediately and the rest agree to wait.
11	Sept. 4, 2003	Ms. Maxie and Ms. Lindley meet with banker to present LA Plus's financial figures in request for a loan. No discussion of the outstanding liability is had with the banker. Ms. Lindley questions these activities of Ms. Maxie, but she herself did not mention the liability in the meeting, either.
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15		[I am still somewhat unclear as to the purpose of this bank meeting. Ms. Lindley tells me that she wanted to "test" Ms. Maxie to see if Ms. Maxie would fully represent the advanced fees as a liability, which it was. She further advised me that she never expected LA Plus to get the loan - she just wanted to see if Ms. Maxie truly understood the procedures.]
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18		Ms. Maxie tells Ms. Lindley that the "advanced fees" are really "deferred receivables".
19	Sept. 5, 2003	Ms. Lindley hand delivers a letter to Ms. Maxie, dated September 4, 2005, advising her to seek an attorney. Ms. Maxie defends her actions stating that it was "ok to take fees in advance". She also told Ms. Lindley that she felt she was being the "sacrificial lamb" as everyone knew or should have known what she was doing. The money transferred was always listed as a "liability" on the financial reports. She provided a clear trail of where the money was going so she felt her actions were not inappropriate. She also said she felt pressure to get bills paid and had no other way to do it. Ms. Maxie threatens to resign and Ms. Lindley "accepts her resignation". Ms. Maxie is escorted from the office that day.
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25	Sept. 8, 2003	Auditors state that they will not continue or complete the Audit until they receive full payment of their account.
26	Sept. 8, 2003	Executive Committee meets and the entire situation is fully discussed. By

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	this point, Ms. Lindley has determined that the total owing to the Fiduciary Account is of \$152,371.93.
Sept. 8, 2003	Letter from Francoise Maxie to Ms. Lindley, cc'd to Board Members
Sept. 22, 2003	Board Meeting in Executive Session. The Executive Committee discusses that it needs to advise the Court and the Guardianship Board of this problem. They discuss insurance issues and decide not to make a claim at that time. They begin a plan to pay back the money
Sept. 30, 2003	Ms. Lindley conducts a thorough review of the accounts to determine whether any of the transferred funds were used for personal gain or fraudulent purposes. The check is completed using methods suggested by the Auditor. She finds no evidence of fraud.
Oct. 2003	Ms. Lindley informs United Way agencies by telephone that the LA Plus Audit will be late and that the Auditor has found that funds had been transferred from the Fiduciary Account.
Oct. 27, 2003	Board Member Bill Dussault contacts the insurance company to advise it of the potential claim.
Oct. 27, 2003	Regular Board Meeting is held discussions include beginning to establish individual accounts and the updated Audit. The Board Executive Session meets and again discusses how best to pay back the funds.
Oct. 29, 2003	Letter received from insurance company requesting further information and Proof of Loss form.
October 2003	Letter to Insurance Company drafted but never sent. Agency decides that it will repay the money itself.
Nov. 2003	LA Plus continues to try to implement a repayment plan through budget cuts, etc.
Nov. 5, 2003	Proof of Loss form completed and submitted to Insurance Company.
Dec. 2003	Audit fees are brought current and the auditor conducts a follow up audit to complete the 2002 audit.
Dec. 15, 2003	Scheduled Board Executive Session meeting is cancelled and moved to January 2004.
Dec. 22, 2003	United Way King County sequesters funds allocated to LA Plus due to late audit.
January 2004	Several Board Members meet with the auditors and request softened language in the 2002 Audit Report. The auditors advise them that the language is standard.
Jan. 26, 2004	Board Executive Committee meets and discusses drafting a letter to King County Superior Court and decides to inform the court in early February, hopefully <i>ex parte</i> . They are hoping to have the results of the Audit by February. Discussion is had to seek to be included on the March agenda of the Guardianship Certification Board meeting. Ms. Lindley is to inform United Way of the probable Audit response in early February.
Jan. 28, 2004	Board Meeting. Members discuss deconsolidation of accounts and the

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1		budget for the new year.
2	January 29, 2004	2002 Audit report made to Agency. The auditors note the "reportable condition" of the transfer of unearned fees from the fiduciary account to the agency account to alleviate cash flow shortages.
3		
4		The auditors further state that the fact that the transactions occurred and were not timely detected indicates a significant weakness in the agency's internal control structure, and specifically state a lack of timely bank reconciliations and lack of management and Board oversight and timely review of financial information contributed to the problem.
5		
6		
7	Feb. 26, 2004	Board Meeting. Members discuss completion of the 2002 Audit, the 2004 budget and the court commissioner's concerns regarding pooled fiduciary accounts.
8		
9	Feb. 28, 2004	Executive Committee meeting. Reviewed plan to repay the money within a year. Again discuss going to court soon and deconsolidating the accounts
10		
11	March	No Board Meeting or Executive Committee Meeting
12	April 7, 2004	Letter sent from Mike Olver to Judge Eadie regarding an appointment on April 14, 2004 to discuss the issue.
13	April 14, 2004	Letter from Commissioner Velategui to Mr. Olver regarding letter to Judge Eadie stating that the matter should be handled formally in the <i>ex parte</i> department.
14	April 15, 2004	Court issues Order directing the Clerk to open a file in the matter.
15	April 19, 2004	LA Plus files Petition for Temporary Relief Re: Pooled Accounting.
16	April 26, 2004	Board Meeting - reports that no money was repaid to the Fiduciary Account during the first quarter of 2004. Executive Session Meeting - discusses how the problem occurred. Ms. Lindley takes full responsibility for failure to adequately supervise and admits that there were many events that should have served as red flags to her.
17		
18	May 7, 2004	Letter from Commissioner Velategui to Mr. Olver and me regarding appointment of Special Representative.
19	June 10, 2004	Order Appointing Special Representative is entered and investigation begins.
20		
21	July 16, 2004	2003 Audit is completed. The amount owing to the Fiduciary Account is verified and corresponds with the amount calculated by LA Plus. The amount is listed as a liability "payable to custodial accounts".
22	Dec. 31, 2004	LA Plus obtains a loan and repays the Fiduciary Account the total due and owing, plus interest.
23	Jan. - Mar. 2005	All cases in the Fiduciary Account are set up with individual accounts.

24 In addition to the specific transfers noted in the timeline above, additional transfers were
 25 made from the Fiduciary to the Agency Account and back again, as repayments.
 26

REPORT OF SPECIAL REPRESENTATIVE and
 REQUEST FOR DISCHARGE OR FURTHER
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1 that case over the consolidated account and LA Plus's knowledge of the shortage at the time.

2 In the course of my random review of client files at LA Plus, I reviewed the file in
3 The Guardianship of Estell Cornell, Cause Number 90-4-01625-8 SEA. In that matter, LA
4 Plus had sent its Annual Report to King County Superior Court for approval. On July 23,
5 2003 the Court denied approval of the annual accounting and made the following minute
6 entry:
7

8 Guardianship or trustee report indicates complicated/significant
9 financial issues that need further discussion; matter should be
10 noted on the ex parte calendar for oral presentation in accordance
11 with LR 98.16; *especially re: consolidation; 1% management fee;
notice requirements.* (Commissioner's handwritten comments in
italics)

12 Following receipt of the Order Ms. Lindley filed a Declaration of Guardian,
13 addressing the points raised by the court. Her Declaration is dated January 13, 2004, at least
14 five months **after** the discovery of the shortages in the consolidated account, and before the
15 account had been fully repaid. Ms. Lindley states in her Declaration at Paragraph II:

16 The Board of Trustees of LIFETIME ADVOCACY PLUS has
17 agreed to open an individual account for MS. CORNELL, and
18 other clients, other than those eligible to participate in a pooled
asset trust according to 42USC 1396 (p)(d)(4)(C).

19 The Guardian realizes that opening an individual account for MS.
20 CORNELL will reduce the risk to the client and to the agency.

21 LIFETIME ADVOCACY PLUS has begun a process to determine
22 how to best make this transition and requests a twelve-month
23 hiatus to ensure a seamless transfer of accounts for each client
involved.

24 The Court then approved the report on January 20, 2004 and reserved the issue of
25 consolidation "pending discussion with J. Eadie."
26

REPORT OF SPECIAL REPRESENTATIVE and
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1 The Cornell matter subsequently came on for hearing for approval of guardianship
2 fees on February 24, 2004. The court approved the fees and further ordered:

3 The guardian shall note for hearing before the presiding
4 Department, its previously requested twelve month exemption
5 from Judge Eadie's general order prohibiting consolidation of
guardianship account.

6 No hearing was every noted. Further, the funds held on Ms. Cornell's behalf in this matter
7 were not transferred to an individual account until after January 2005. At no time during the
8 proceedings summarized above was there ever any discussion, either in writing or apparently
9 orally at the hearings, of any of the problems that had already been discovered with the
10 Fiduciary Account. I specifically discussed this case with Ms. Lindley and inquired first, as
11 to why the cases had not all been individualized when Judge Eadie's general order was first
12 issued in January of 2003. She stated: 1) that she was unaware of the Order until sometime
13 after it was issued (the end of 2003) and 2) that she had hoped to be able to convince the
14 Court to allow LA Plus to continue to consolidate the accounts as she believed that to be the
15 better way to manage the assets.
16

17 Even though Ms. Lindley stated that she hoped to convince the court of this, no
18 petition was ever noted. Further, Ms. Lindley specifically did not follow the court's directive
19 in the Cornell case requiring her to note such a petition and she did not notify the court of the
20 problems that had already been discovered with the Fiduciary Account. When asked why
21 she did not advise the court in February during the hearing on Cornell, Ms. Lindley stated
22 that she had hoped that the agency would be able to rectify the shortages (i.e. pay back the
23 Fiduciary Account) prior to disclosing the shortages to the court.
24
25

26 Another issue noted during my review of the files was that none of the cases which I

REPORT OF SPECIAL REPRESENTATIVE and
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1 randomly reviewed contained any Declaration and/or specific Order from the court
2 authorizing consolidation of the accounts as was required by Section 406.10 of the Certified
3 Professional Guardians Standards of Practice, which was in effect at the time. That section
4 provides:

5
6 A guardian shall not commingle the funds of an incapacitated
7 person with funds of the guardian or the funds of staff. A
8 guardian may consolidate client accounts, using appropriate
9 accounting software and procedures, including pro-rata
10 assignment of interest earned and fees paid and accurate
11 individual accounting for each client's funds, **provided the
guardian has received specific authority from the court to do
so.** Each payment from a consolidated account shall be from
funds held in the account on behalf of the individual for whom
the payment is made. (emphasis added)

12 It appears that LA Plus did have appropriate accounting software and procedures in place to
13 account for each client's funds and to assign interest and fees paid. However, no specific
14 authority was requested in any individual file that I reviewed. Therefore, even though the
15 court had issued a general order in January 2003 that it would no longer approve
16 consolidated accounts, it is not clear that the court was advised that LA Plus's clients' funds
17 continued to be held in a consolidated account and no orders were obtained authorizing a
18 consolidated account in any particular case.

19
20 **4. Whether any financial reports in either guardianships or trusts which
21 were approved by the court after the shortages were discovered should
be amended to provide a report on the shortages.**

22 Technically, all of the accountings presented and approved by the court during this
23 time period were likely accurate. Since all of the funds were repaid, with interest, there were
24 no shortages in any particular case. The files that I reviewed showed no shortages and the
25 accountings appeared accurate, thus no amended report in any particular case is warranted.
26

REPORT OF SPECIAL REPRESENTATIVE and
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1 However, a different issue is the extent to which the clients of LA Plus should be
2 made aware of the problems that occurred within LA Plus. As mentioned above, it is
3 unlikely that individual clients ever knew that their funds were held in a consolidated
4 account, and that this issue could even arise. The accounts have all now been individualized
5 so the problem will not recur. If funds are borrowed from any particular client to pay agency
6 bills, they should be easily tracked to the individual client from whom the funds are
7 borrowed. The issue of what disclosure may be appropriate is discussed further in
8 Paragraphs 5 and 11, below
9

10 **5. Whether all parties and persons requesting special notice of**
11 **proceedings or who would otherwise be entitled to notice were notified**
12 **of the effect of the shortages in respective guardianships or trusts.**

13 Again, because the shortage did not affect any individual client, no individual clients,
14 or persons requesting notice, were advised of it. When LA Plus established individual client
15 accounts, it prepared an Affidavit in each case stating that the individual account had now
16 been created.¹ The Affidavit does not mention the misappropriation of the funds previously
17 held in the consolidated account. Thus, while no particular amended report is warranted, it
18 may be appropriate for LA Plus to notify clients of the change in its procedures and the
19 reasons for them. See, Paragraph 11 below
20

21 I did not personally contact any of LA Plus's clients individually. Rather, I randomly
22 reviewed the files at LA Plus's offices, and examined the most recently filed accountings to
23 determine their accuracy. I also determined that individual accounts had been set up for
24 each client and I reviewed the calculation of interest on the amounts owed to the fiduciary
25

26 ¹ If not already filed, the affidavits are being filed with the court as each file comes due for its regular
accounting.

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1 account to insure that each account had been made fully whole prior to transfer of the funds
2 from the fiduciary account to an individual account.

3 During my investigation, I was asked by the Certified Professional Guardianship
4 Board whether I would be contacting each individual client of LA Plus to let them know of
5 these issues. I advised them I would not be notifying all clients. If I had reviewed a file
6 where a shortage to a particular client was evident, notification of the matter to that
7 individual would clearly have been appropriate. Whether all clients should be notified
8 directly is a difficult issue.

9
10 I believe that a fiduciary's past performance is a matter of public interest as well as a
11 matter of interest to current and future clients. Therefore some notification seems
12 appropriate. However, such notification may create problems with the agency's ability to
13 continue to provide quality services. I am uncertain that LA Plus would be financially able
14 to bear the costs of notifying each client, as well as then enduring the potential loss of
15 business which may result from such notification to clients. Since the funds are no longer
16 held in a consolidated account, each individual account is more safely guarded and the
17 problem is unlikely to reoccur. I request further direction from the Court as to whether
18 notification to all clients is required and what role, if any, I should have in such notification.
19
20

21 **6. Whether LA Plus discovered the shortages in a timely manner.**

22 No. I believe that LA Plus was aware or should have been aware of the inappropriate
23 transfers of 2003 at the time they were being made. As stated by the auditors in the 2002
24 Audit Report, the failure to timely reconcile the bank accounts and to timely review financial
25 information allowed the situation to occur.
26

REPORT OF SPECIAL REPRESENTATIVE and
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1 The first transfer occurred in May 2002 in the amount of \$10,000. This transfer
2 occurred shortly after the Chief Financial Officer, Francoise Maxie, was out of the office on
3 an extended sick leave. A bank officer allegedly transferred the funds from LA Plus to cover
4 checks drawn on the agency account.² Although the transfer was done without specific
5 authorization, it came to the attention of Mike Bonn who was reconciling the Fiduciary
6 Account at the time, yet he never discussed it specifically with Ms. Lindley until May of
7 2003. The facts are somewhat unclear, and different people's accounts contradictory, as to
8 what the Executive Director actually knew about the transfers as they were made. Different
9 individuals suggest different levels of knowledge by the agency.
10

11 Ms. Lindley states that she relied completely upon Ms. Maxie to prepare the financial
12 reports and manage the financial side of the agency. She states that she had no idea Ms.
13 Maxie was making these transfers. She now admits, however, that she should have paid
14 more attention and that there were numerous "red flags" which should have caused her to
15 investigate the issue.
16

17 Ms. Maxie agrees that the first transaction was done, unauthorized, by the bank
18 employee in May 2002. However, according to her, the subsequent transfers were all done
19 with Ms. Lindley's knowledge. In early 2003, she states that she and Ms. Lindley decided to
20 set up a specific account in TNET (the agency's accounting software) to track the transfers
21 and keep a running balance of the funds that were borrowed. Larry Davis confirms that he
22 indeed set up such an account. Ms. Maxie states further that before each transfer was made,
23 she discussed the outstanding bills with Ms. Lindley in order to determine how much money
24

25 _____
26 ² I attempted to locate the bank officer, Matthew Blackmer, who is no longer with Bank of America, but was
unsuccessful.

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1 the agency needed to "borrow" from the fiduciary account that month to meet ongoing
2 expenses.

3 An example of this appears to be detailed in the email dated February 11, 2003
4 between Ms. Maxic and Mr. Davis and Ms. Lindley. Ms. Maxic states:

5 As per our discussion I am asking Larry to cut a check in the
6 amount of \$60,000 for the February fees. \$19,000+ has already
7 been given to LA+ for the I/O fees giving us a total of projected
8 collectable fees for February of \$79,000. It might be a little over
9 but can be adjusted in March.

10 Larry has created a transaction code in TNET (2291) which will
11 be used to offset the actual levy of the fees.

12 Ms. Lindley states that she does not specifically recall reviewing the February 11, but
13 states that she must not have paid enough attention to it. This email certainly gives the
14 indication that Ms. Lindley knew about the transfers. If in fact she did not know about them,
15 this email should have caused her to investigate. Instead, the transfers continued.

16 Mr. Davis states that he "never liked" what was being done and that he questioned
17 Ms. Lindley about it. Ms. Lindley advised him that everyone was aware and thus he never
18 questioned it further with her, but states that he was never comfortable with it from the
19 beginning. Ms. Lindley states that there was obviously some miscommunication on her part
20 with Mr. Davis. She states that she believed Mr. Davis was unhappy that the fees were being
21 taken out in one lump sum per month and that she told him that this was ok. Now Ms.
22 Lindley states that she realizes Larry was not concerned about taking approved fees only one
23 time per month, but rather was concerned that funds for fees not yet approved were being
24 taken from the account.

25 Since the checks were for fairly large amounts, in even numbers, it is difficult to
26

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1 believe that Ms. Lindley would not have realized that these were fees not approved, or even
2 yet earned. Mr. Davis states that he believes Ms. Lindley was in fact aware that the checks
3 were for fees not yet approved, but stated that he thinks Ms. Lindley did not realize how
4 much the amount that needed to be repaid was accumulating. In any event, Ms. Lindley
5 should have known the money was being transferred inappropriately.

6
7 Further, the minutes of Board meetings in late 2002 and early 2003 indicate
8 that the Board was at that time seeking a line of credit with a bank. Ms. Wright, Treasurer of
9 the Board at the time stated that they were looking for a line of credit due to cash flow
10 problems the agency was experiencing. The financial reports also show decreased revenues
11 and increased expenses over what had been budgeted. Therefore the director must have
12 known that the agency was having cash flow problems.

13
14 **7. Whether appropriate notification was provided to the Certified
Professional Guardian Board?**

15 No. There are no specific guidelines as to when the Certified Professional Guardian
16 Board should be notified by a professional guardian in such a situation. However, a review
17 of the information provided to me by LA Plus, and my discussion with Lynne Alfasso of the
18 Certified Professional Guardianship Board, indicates that LA Plus did not notify the
19 Guardianship Board in an appropriate fashion.
20

21 LA Plus knew of the inappropriate transfers in August of 2003, at the very latest, yet
22 the Certified Professional Guardianship Board was not notified until after I was appointed in
23 June 2004 - nearly 10 months later. Then the notification appears to have come only from
24 the Superior Court.
25

26 In its first set of documents provided to me, LA Plus provided its own response to the

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1 questions asked by the court. In answer to this particular inquiry, LA Plus referred to the
2 April 4, 2004 letter sent by Mike Olver to Judge Eadie. However, that letter was not copied
3 to the Guardianship Board. According to Lynne Alfasso, the Guardianship Board's first
4 notification of the issue came from Commissioner Carlos Velategui in July of 2004. Upon
5 further inquiry, Ms. Lindley states that since Judge Eadie was on the Certification Board at
6 that time, she believed that the letter directed to him was sufficient notification to the Board.
7 I believe specific notification to the Guardianship Board at an earlier date would have been
8 more appropriate. LA Plus specifically discussed trying to get the matter on the agenda for
9 the March meeting of the Guardianship Board, but this was never done.
10

11 Following notification from the Court, the Guardianship Board then sought review of
12 the information in the court file, which was, and remains sealed. The attorney for LA Plus
13 initially argued against unsealing the file and allowing access by the Guardianship Board.
14 Eventually an agreed order was entered providing it access to the file and authority to discuss
15 the matter with me. These facts, and Ms. Lindley's comments that they hoped to rectify the
16 problems before notification to the court, lead me to believe that LA Plus may have hoped to
17 avoid notifying the Guardianship Board until a later date, after the issue was resolved.
18 Therefore, although there are no specific guidelines as to when the Guardianship Board
19 should be notified of such a matter, I do not believe that LA Plus's actions were appropriate.
20
21

22 **8. Whether appropriate notification was provided to United Way.**

23 Notification to United Way appears to have been appropriate. Ms. Lindley reports
24 that notification was made to United Way via telephone in the fall of October 2003. She did
25 not record the specific dates of the calls but she first spoke with United Way of King County
26

REPORT OF SPECIAL REPRESENTATIVE and
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1 in October 2003. Pierce County was notified in September 2003 and Yakima County was
2 notified in February 2004. They would have all also received a copy of the Audit which
3 clearly states the problems.

4 **9. The ability of LA Plus to meet the financial burden of the discovered**
5 **shortage and the amount of time reasonably necessary to rectify the**
6 **shortages.**

7 LA Plus has now fully repaid the shortages to the Fiduciary Account, with interest.
8 LA Plus initially intended to rectify the shortages by making cuts within its own budget.
9 When it became clear that it would not be able to accomplish the repayment in any timely
10 fashion, it attempted to obtain a traditional bank loan, which proved to be unsuccessful. It
11 has since obtained a private loan in the amount of \$150,000 from its attorney in this matter.
12 Michael Olver. The terms of the loan require repayment over 7 years at the rate of 7.5%
13 interest. The loan is secured by the assets of LA Plus and other provisions of a Loan
14 Agreement.

15
16 The Loan Agreement provides that the borrowed funds are to be applied first to the
17 amount owed to the Fiduciary Account, plus interest; next to fees approved by the court
18 relative to this investigation; next to fees owed to Merrick and Olver, PS; and finally to any
19 outstanding debts of LA Plus. The Loan Agreement further provides Mr. Olver the right to
20 review and approve LA Plus's budget, gives him access to all financial records of LA Plus,
21 and the right to nominate and place up to three individuals on LA Plus's Board. In the event
22 of default of any of the obligations outlined in the Loan Agreement, Mr. Olver has the right
23 to appoint an Interim Director of the Agency.

24
25 The Loan Agreement was reviewed and signed by three members of LA Plus's Board
26

REPORT OF SPECIAL REPRESENTATIVE and
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1 of Trustees and specifically addresses the conflict issues which arise under Washington's
2 Rules of Professional Conduct 1.8(a). In order to fully understand whether the loan caused
3 any conflicts which should be reported to the Court, I consulted with Karen Boxx, Law
4 Professor at the University of Washington. Ms. Boxx did not believe that the actual loan was
5 inappropriate, given the statement regarding disclosure under Rule 1.8(a) in the Loan
6 Agreement. However, Ms. Boxx believes that the loan presents issues which may arise in the
7 future, depending upon Mr. Olver's ongoing relationships with LA Plus in its capacity as a
8 fiduciary.

10 Rule 1.7 of the Rules of Professional Conduct states:

11 (b) A lawyer shall not represent a client if the representation of that client
12 may be materially limited by the lawyer's responsibilities to another
13 client or to a third person, **or by the lawyer's own interests**, unless:

- 14 (1) The lawyer reasonably believes the representation will
15 not be adversely affected; **and**
16 (2) The client consents in writing after consultation and a full
17 disclosure of the material facts ... (emphasis added).

18 Ms. Boxx believes that Mr. Olver's own interests in making sure that LA Plus is
19 financially able to repay him creates a potential conflict with his duties in representing LA
20 Plus as a fiduciary. Under The Guardianship of Karen, 110 Wn. App. 76, 38 P.3d 396
21 (2002), the attorney for a fiduciary may be determined to owe a duty not only to the
22 fiduciary/client, but also to the ward. Hypothetically, if LA Plus, as a fiduciary for a
23 particular client were ever involved in a situation that Mr. Olver did not believe was in the
24 best interests of the ward, he may be limited in his representation due to his own interests in
25 having LA Plus continue to remain financial solvent in order that payments are made to him
26 in a timely manner. Generally, conflicts under RPC 1.7 can be rectified in advance by

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1 obtaining a signed consent from all parties. However, in this case, when a fiduciary is
2 involved, Ms. Boxx does not believe that a consent from the fiduciary adequately protects the
3 ward's interest. In most cases, the ward would not have capacity to sign such a consent.
4 This only becomes an issue if Mr. Olver represents LA Plus as a fiduciary for particular
5 clients while his loan is outstanding. Ms. Boxx's opinion is that Mr. Olver should cease from
6 representing LA Plus in its fiduciary capacity until the loan is repaid.
7

8 Additionally Ms. Boxx believes the business relationship between Mr. Olver and LA
9 Plus creates a conflict with respect to Mr. Olver's referral of clients to LA Plus for services.
10 Mr. Olver must disclose to such individuals his business relationship with LA Plus and the
11 potential for conflict.

12 Although LA Plus has now made the Fiduciary Account whole with the one-time
13 payment of the loan proceeds, it remains to be seen whether it will be able to continue
14 providing quality services while making all payments in a timely fashion. LA Plus made
15 adjustments to its budget in order to repay the loan in the normal course. To date, Mr. Olver
16 reports that all payments have been timely made.³ I reviewed only the draft 2005 budget, but
17 it does include the monthly payments to be made on the loan. Ms. Lindley reports that if the
18 budget is met, LA Plus will have a surplus of approximately \$30,000 at the end of the year.
19 As of the first quarter she reports that the agency is on target.
20
21

22 My conversations with Hannelore Wright and Tom Lehning make it clear that the
23 Board is well aware of the financial problems facing the agency. They are committed to
24 trying to resolve the issues. The agency has also made cuts by curtailing the number of *pro*

25 ³ While I have no reason to dispute this statement, again Mr. Olver's relationship with LA Plus as their
26 lawyer is troublesome because Mr. Olver, as LA Plus's lawyer owes a duty to keep confidential his
communications with it.

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1 *bono* cases it takes and in seeking volunteer attorneys to handle those cases. The director has
2 also taken a cut in salary. These cuts will certainly help with the agency's ability to meet its
3 own going expenses, but it will likely be quite difficult. Both Ms. Wright and Mr. Lehning
4 recognize the difficulties.

5
6 **10. The effect such shortage has upon the clients.**

7 As previously stated, no individual client suffered a shortage in his or her particular
8 account. The Fiduciary Account was made whole, with interest, prior to separation into
9 individual accounts. The only effect on the clients then is whether the agency will be able to
10 continue to provide quality services while attempting to repay the loan that was necessary in
11 order to rectify the situation. I have not specifically reviewed any of LA Plus's client files
12 for timeliness of reporting or quality of services provided. I request further instruction and
13 direction from the Court if it desires that I monitor the ongoing reporting of cases for
14 timeliness, accuracy and/or quality of services provided.

15
16 **11. How the shortages should be reported.**

17 As discussed in Paragraph 5 above, it is unlikely that LA Plus would be financially
18 able to bear the costs of immediately notifying each client individually as regards the
19 previous shortage. In addition, the mass notification to clients could cause financial
20 repercussions that the agency may be unable to overcome. However, I believe that this is a
21 matter of public interest and that notification could be made to individual clients in the form
22 of a statement by the Guardian/Trustee to its clients, and persons requesting notice, at such
23 time as the next regularly scheduled accounting or report is mailed in each particular case.
24 That way the agency could prepare one uniform statement that would not require a separate
25
26

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1 mailing, and most clients would be notified within one year.⁴ The notification could also
2 include a statement that the matter was investigated, rectified and sufficient safeguards put in
3 place (individual accounts) to prevent a similar episode. The Court may also consider
4 unsealing the Court file as a matter of public interest.

5
6 **12. Whether any liability insurance applies to the events in question.**

7 Probably, but no claim was pursued. LA Plus had a policy of insurance with United
8 National Insurance Company which was in effect at the time of the inappropriate transfers.
9 The policy limits were sufficient to cover the borrowed amounts. I reviewed the policy
10 provisions and it appears likely that the claims would have been covered.

11 LA Plus notified the company of the potential claim in October 2003 and filed a
12 Proof of Loss form in February 2004. No claim was pursued with the insurance company
13 because the director, and the Board, believed that making such a claim may inhibit the
14 agency's ability to obtain insurance in the future, which would have prevented LA Plus from
15 being able to continue to provide services. Since the funds have all now been repaid, no
16 claim is necessary.

17
18 **13. Whether there is any civil liability for the events in question.**

19 Probably not. Since no individual clients sustained any losses it is unlikely anyone
20 would be found civilly liable for the events; no one individual could substantiate any
21 damage. Julcen Snyder, the auditor with Jacobson, Jarvis, & Company who performed most
22 of the field work relative to the 2002 and 2003 audits, stated that the transfer of funds
23 occurred in a very "unsophisticated" manner and that there did not appear to be any fraud
24
25

26 ⁴ Some clients may have reporting periods of longer than a year.

1 involved. Ms. Lindley, with the advice and assistance of the auditors also did a thorough
2 review of the check registers to insure that none of the funds were used for any personal gain.
3 All transfers were used to pay agency expenses.

4 Ms. Snyder stated that the bookkeeper had in fact kept a specific trail of the transfers
5 and thus they were easy to trace. The amounts borrowed from the Fiduciary Account and
6 owing to it by the agency were tracked on the agency's software as "advanced fees" and
7 reported on the monthly financial reports as a liability⁵. Further, due to the issues that were
8 discovered during the 2002 audit, the auditors did a more in-depth review of the cash
9 accounts at LA Plus when they performed the 2003 audit. No additional issues were
10 discovered.
11

12 **14. Whether appropriate board of directors oversight existed.**

13 No. During the relative time period, the Board of Directors did not have appropriate
14 oversight of what was occurring with the consolidated Fiduciary Account. Although a
15 system was in place which should have been sufficient, it obviously did not work. The
16 system provided that the Finance Committee would meet regularly and review financial
17 statements. The Chief Financial Officer was to prepare reports and submit them to the
18 Finance Committee on a regular basis. The committee would then make its report to the
19 Board and the Executive Director.
20
21

22 The primary problem with this system at that time was that it put too much reliance
23 on the information supplied by the Chief Financial Officer, Francoise Maxie. Reports were
24 often not prepared in a timely fashion and sometimes not even received until after the
25

26 ⁵ However, the transfer amounts are referred to as "receivables on account" on later-done reports. See
explanation in Paragraph 14 below.

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1 committee had already met. No one held the Chief Financial Officer accountable for timely
2 reports. The agency bank account reconciliations had also not been done for over a year.
3 This should not have been allowed to occur. Both Hannelore Wright and Tom Lehning
4 admitted that a closer look at the reports that were submitted, and some follow-up questions,
5 would likely have revealed the issue sooner. Hannelore Wright was and is the acting
6 Treasurer and Tom Lehning is now head of the Finance Committee. Both admit they should
7 have taken a more active role in getting reports and carefully reviewing them.
8

9 The reports that were provided by Ms. Maxie specifically contained a line item under
10 Liabilities, entitled "Advance Fees". The number therein correlates to the total dollars that
11 were owed to the Fiduciary Account by the agency. Francoise Maxie stated that a special
12 category was set up in TNET to track these advance fees. Larry Davis confirmed this. Thus
13 the "advance fee" liability showed up on financial statements provided to the Board and the
14 Finance Committee but no one questioned it. When asked about this line item, both
15 Hannelore Wright and Tom Lehning stated that they did not specifically question it and no
16 one asked about the liability, or what it represented, as it continued to grow larger with each
17 report..
18

19 The reports themselves are also confusing, in that different reports were produced
20 following discovery of the borrowed money. The reports that were presented to the Finance
21 Committee (as prepared by Ms. Maxie) clearly include the "advanced fees" as a liability.
22 However, new reports were generated by Mike Bonn in early 2004 following discovery of
23 the borrowed funds. These reports list the same amount in the liability column but the
24 amount is identified as "accounts receivable".
25
26

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1 Initially when I requested the financial reports for the relative time period, I was
2 provided only with the newly prepared reports by Mike Bonn. I then specifically requested
3 the information that would have been seen by the Board Finance Committee. Ms. Lindley
4 told me that she had provided me with the "redone" reports because they were trying to get
5 the financial matters back in order and she felt these reports were more accurate. She did
6 eventually provide me with some reports that had been prepared by Ms. Maxie, although they
7 are incomplete. Ms. Lindley advises that the financial records kept by Ms. Maxie were in
8 quite a state of disarray.
9

10 Upon reviewing this information, it was somewhat disturbing to me that the reports
11 were "redone" to recategorize the borrowed money as "deferred receivables." Ms. Ohringer
12 states that she could understand why the agency would want to re-label the amount, since it
13 turned into more of a loan, rather than advanced fees, but she states that it should not, in any
14 event, be labeled as a "receivable" as that could be misleading. The audited financial
15 statements by the independent auditors clearly show the total as "payable to custodial
16 accounts".
17

18 When asked about this difference Ms. Lindley indicated that she had asked Mr. Bonn
19 to redo the reports so she could have a clear picture of the financial situation of the agency at
20 that time. After my discussions with Ms. Lindley and Mr. Bonn, I do not believe that the re-
21 labeling of the borrowed funds was done intentionally to mislead but is an example of the
22 confusing financial information the agency was dealing with at the time.
23

24 **15. Response of the Board of Directors.**

25 The Board of Directors first learned of the issue following the auditors' discussions
26

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1 with Ms. Lindley in August of 2002 regarding the "reportable condition". Although Ms.
2 Lindley had learned of the transferred funds by at least May of 2003, she opted to wait until
3 the audit was done until she reported it to the Board. The Board became fully aware in
4 approximately September, after all members had returned from various summer activities.
5 The Board immediately took actions to attempt to rectify the issue by looking at repayment
6 plans and budget cuts. It also immediately determined that the issue needed to be disclosed
7 to the Court, although that ultimately did not occur for another 7 months.
8

9 **16. Whether any office or director liability exists.**

10 Since no individual clients suffered any direct damages as a result of the borrowed
11 funds, it is unlikely that any civil liability on behalf of a board member or a director would be
12 found. However, the clients at LA Plus have been damaged tangentially by the required
13 resultant investigation. The resulting investigation has caused significant resources to be
14 devoted to providing information relative to the investigation and paying for services related
15 to it. As mentioned earlier, I have not specifically reviewed any client files to determine
16 whether the quality or quantity of services has declined. Further, I did not do any specific
17 legal research to determine if an officer or director who know, or should have known of the
18 misuse of client funds, could or should be held personally liable to pay the costs of such
19 investigation. Further investigation and/or research into this issue could be quite time
20 consuming and, given the time expended already to date, I request further instruction from
21 the court as to whether it wishes me to engage in such activity.
22
23

24 **17. Whether referral to law enforcement is appropriate.**

25 No. The auditors concluded that there was no fraud involved in the transfers.
26

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1 Therefore no crime was committed and referral to law enforcement is not warranted.

2 **18. Whether LA Plus has instituted appropriate procedures to prevent**
3 **future recurrences.**

4 Yes. LA Plus has now established individual accounts for each of its clients. Thus
5 the potential for borrowing from a fiduciary account is severely restricted. As the agency
6 receives new clients, individual accounts are automatically set up.

7 The agency has also updated its software and incorporated new systems to prevent a
8 recurrence. The Executive Director is taking a more active role in the day to day operations
9 of the agency. Reconciliations of the bank accounts are done on a monthly basis, and
10 reviewed by the Executive Director. A policy has been instituted whereby the Finance
11 Committee is to receive the monthly financial reports for review at least three days prior to
12 its monthly meeting. Although this had been the previous policy, the agency had been quite
13 lax about enforcing it. The agency also planned to hire a new full charge bookkeeper to do
14 the agency books. That has not been done due to budget constraints, and is doubtful that it
15 will be done.
16

17
18 LA Plus is also in the process of updating its financial operations manual which will
19 address the concerns raised in the 2002 audit and provide specific methods for dealing with
20 the various issues and ensuring that reports are timely prepared and reviewed. The 2004
21 audit of the agency will begin soon and will likely address whether the financial management
22 issues noted as problems in 2002 and 2003 are now being appropriately addressed.

23 Respectfully submitted this 10 day of May 2005.

24 
25 Paulette Peterson, Special Representative
26

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