

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF VENTURA  
OXNARD DIVISION**

**TENTATIVE RULINGS**

EVENT DATE: 11/05/2013  
JUDICIAL OFFICER: Glen Reiser

EVENT TIME: 09:00:00 AM

DEPT.: J6

CASE NUM: 56-2009-00336883-PR-CP-OXN  
CASE TITLE: IN THE MATTER OF RETA COOK

CASE CATEGORY: Probate

CASE TYPE: Conservatorship Of Person And Estate

EVENT TYPE: Miscellaneous Hearing (PRC) - Petition for Settlement of the First and Final Account and Discharge of  
CAUSAL DOCUMENT/DATE FILED: Petition (Subsequent), 06/14/2013

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Per this court's tentative ruling on 9/24/13:

"A temporary conservatorship was created 6/3/08 in Santa Clara County, expiring 7/15/08, in favor of the Santa Clara County Public Guardian. That Court extended temporary letters to 8/26/08, and then 10/7/08. Upon granting a venue transfer to Ventura County on 10/7/08, the temporary letters were extended by Judge Grilli to 12/30/08.

Ventura County certified receipt of the file on 2/9/09, with a new case number. Despite the completed venue transfer, the Santa Clara County Public Guardian somehow filed a \$28,544.47 opening inventory in the closed Santa Clara County case on 5/28/09.

There was no file activity for the next four years. On 6/14/13, the Santa Clara County Public Guardian filed a petition in this Court for final account and discharge.

The accounting shows that despite the expiration of temporary conservatorship powers, the Santa Clara County Public Guardian continued until July of 2009 to spend the temporary conservatee's account down to zero.

Where are the invoices supporting the over \$18,000 in private facility fees paid by the conservator, primarily in 2009; and under whose authority ?

Why is the conservator making numerous 2009 medical insurance payments and 2009 payments of assisted living "incidentals" ?

Why is the estate paying a bond fee to the Santa Clara County Public Guardian through 6/2/09 ?

Why are reimbursements shown on a statutory disbursement schedule ?

On Schedule "G", why is the Public Guardian incurring "NSF" fees ?

On ¶14 of the petition, why does Probate Code §2620(a) require the Court to serve a "request" for an accounting upon a conservator ? "

The Santa Clara County Public Guardian ("SCCPG") asked for time to file a supplement, which was authorized.

SCCPG's supplement asserts it does not have the "heightened" accounting evidence required of a private fiduciary.

The court is aware of the document production duties of the former temporary conservator in the first instance, but the conservator is not at liberty to refuse to produce supporting documents where, as here, such documents are expressly requested by the court at the time of hearing in order to support the account.

SCCPG argues that despite termination of the temporary conservatorship, SCCPG's concomitant designation as social security representative payee gave SCCPG rights to deal in the temporary conservatee's account after the conservatorship terminated. The court agrees SCCPG had the authority to deliver post-conservatorship social security checks over to the former temporary conservatee, or return them to the Social Security Administration, after 12/30/08 when SCCPG no longer had authority to act on behalf of the former temporary conservatee. After the temporary conservatorship terminated on 12/30/08, however, SCCPG had no right to continue to pay itself or the former temporary conservatee's alleged creditors, including the court.

SCCPG next states that its duties as a fiduciary to protect the former temporary conservatee's estate do not end when

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the conservatorship ends. SCCPG's petition alleges that it had \$19,476.40 in conservatee's funds which it wanted to return at the conclusion of the temporary conservatorship (pet., at ¶¶ 13-14), but does not explain how that sum was then "protected" by later paying the entire sum to itself and numerous parties other than the former temporary conservatee, without the express or implied consent of the former temporary conservatee.

Conceding that it would have been required to account within 90 days had a general conservator been appointed (Prob.C. §2256(a)), SCCPG argues that since the conservatorship was abandoned, it had no duty to ever account for the temporary conservatorship funds absent court order compelling it to do so. So, on one hand, SCCPG claims it has an absolute right to spend down the former temporary conservatee's account after its conservatorship letters terminated, and at the same time, as a public agency fiduciary, had no statutory or common law duty to ever account for private funds in its control. The court's position is to the contrary on both points.

The former temporary conservatee's declaration filed 10/31/13 is deemed an objection to the account.

The court orders SCCPG surcharged in the sum of \$19,476.40 in favor of the former temporary conservatee, plus legal interest on that conceded sum from and after 12/30/08. Whether SCCPG wishes to be equitably subrogated to the rights of the former temporary conservatee's alleged creditors, including the court, for post-12/30/08 payments SCCPG made when it had no authority to do so, is not properly before this court. The decision to pay those creditors, after 12/30/08, should have been the decision of the former temporary conservatee, not SCCPG.

Accounting approval denied. Surcharge and interest to be paid within 30 days, at which time SCCPG will be discharged. SCCPG to advise its bonding surety.

gmr

gmr