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VENTURA SUPERIOR COURT
FILED

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5 Attorneys for Petitioner
Public Guardian of the County of Santa Clara

MICHAEL D PLANET
Executive Officer and Clerk
BY: LOLITA PASION Deputy

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF VENTURA

10 In the Matter of the Conservatorship of the
11 Estate of

13 RETA COOK,

16 Conservatee.

Case No. 56-2009-00336883-PR-CP-OXN

SUPPLEMENT TO PETITION FOR
SETTLEMENT OF THE FIRST AND FINAL
ACCOUNT AND DISCHARGE OF
TEMPORARY CONSERVATOR

DATE: November 5, 2013
TIME: 9:00 A.M.
DEPT.: J6
JUDGE: Honorable Glen Reiser

17 The Petition for Settlement of the First and Final Account and Discharge of Temporary
18 Conservator was previously before the Court on September 24, 2013. The Public Guardian was
19 directed to present a verified supplement to his petition for settlement of the first and final account
20 and discharge of temporary conservator with the matter to be heard on November 5, 2013 at 9:00am
21 in Department J6.

22 Donald R. Moody, Public Guardian of the County of Santa Clara, as the former temporary
23 Conservator of the Estate of RETA COOK, Conservatee, respectfully submits the following verified
24 supplemental to his Petition for Settlement of the First And Final Account and Discharge of
25 Temporary Conservator:
26

27 A. THE FORMER CONSERVATEE'S RESIDENTIAL CARE FACILITY
28 INVOICES WERE NOT REQUIRED TO BE INCLUDED IN THE
ORIGINAL PETITION FOR SETTLEMENT OF FIRST AND FINAL
ACCOUNT AND DISCHARGE OF TEMPORARY CONSERVATOR.

1 The Public Guardian as temporary conservator for Reta Cook marshaled funds from her bank
2 account and deposited those funds in a pooled account with other assets of conservatorship estate
3 pursuant to the provision of Probate Code section 2940. For this reason, the Public Guardian is
4 exempt from the heightened accounting supporting evidence requirement imposed on private
5 professional fiduciaries. This exemption is supported by both the plain language of the statute as
6 well the underlying legislative purpose behind the Omnibus Conservatorship and Guardianship
7 Reform Act of 2006.

8 Conservators are required to include with each court accounting certain supporting
9 documents. But public conservators placing funds of conserved clients in a pooled account with
10 other funds of conserved clients is not subject to the heightened showing required for private
11 professional fiduciaries and other conservators. Probate Code section 2620(c)(6). This exemption
12 includes the requirement under section 5 of subdivision (c) of Probate Code section 2620 of
13 including the original bill statements if a conservatee is in a residential care facility or a long-term
14 care facility. There are several good reasons for this distinction. The legislative history of the
15 Omnibus Conservatorship and Guardianship Reform Act of 2006 implementing the supporting
16 documents for accountings requirement found that professional fiduciaries were not adequately
17 regulated and public guardians lacked the resources to represent the best interests of Californians,
18 and, therefore many in need of assistance go without. By placing an additional burden on public
19 conservators to file original bills for each conservatee in a residential care home does not remedy the
20 flaw in the conservatorship system. Public conservators do not have a profit motive therefore it
21 makes perfect sense to exempt them from the heightened accounting requirements. Public
22 conservators have hundreds of individuals under their protection. A significant number of publicly
23 conserved individuals in residential care homes or long term care facilities are indigent or have
24 extremely limited financial resources. Therefore, it does not make policy sense to extend the
25 original billing requirement to public conservatorships.

26 The application of the scheme to excuse the Public Guardian from filing original billing
27 statements from facility does not leave public conservators immune from scrutiny. The opposite is
28 true. Under section (e) of subdivision (c) of Probate Code section 2620 all conservators, including

1 public conservators, are required to make available for inspection and copy to any person designated
2 by the court all books, records, and receipts for any conservatorship expenditure. Thus, if there are
3 legitimate questions concerning the legitimacy of an accounting receipt or expenditure the Court
4 could then order the production of billing statements to any party. Nonetheless, the Public Guardian
5 with this supplement to his petition for settlement of the first and final account and discharge of
6 temporary conservator will file billing statements retrieved for facility charges disbursed by the
7 Public Guardian during the period of the account as a confidential document as specified under the
8 provisions of Probate Code section 2620(c)(7).

9
10 **B. THE PUBLIC GUARDIAN REASONABLY ACTED UNDER ITS**
11 **EXPRESSED AUTHORITY AS RETA COOK'S REPRESENTATIVE**
12 **PAYEE AND LIMITED AUTHORITY AS THE FORMER**
13 **TEMPORARY CONSERVATOR TO PROTECT THE ESTATE.**

14 A representative payee is a person or entity selected by the Social Security Administration
15 ("SSA") when the agency determines that a beneficiary is not able to manage or direct the
16 management of Social Security benefit payments in his or her own interests. 42 U.S.C. § 405(j) and
17 20 C.F.R. §404.2001. If the beneficiary is dissatisfied with the appointment of the representative
18 payee, the beneficiary is entitled to a hearing and ultimately judicial review of the administrative
19 determinations. 42 U.S.C. § 405(j)(E)(i). In this capacity the representative payee is vested with the
20 responsibility to use social security funds received for the benefit of the beneficiary in a manner
21 deemed to be in the best interest of the recipient. 20 CFR §404.2035.

22 Following the Public Guardian's appointment as temporary conservator, the Public Guardian
23 was appointed as Reta Cook's representative payee by SSA and properly managed Reta Cook's
24 Social Security funds in this capacity. The Public Guardian's status as representative payee
25 remained an appropriate function for the Public Guardian despite the expiration of the letters of
26 temporary conservatorship. Under 42 U.S.C. §405(j)(1)(A), a representative payee may be
27 appointed – and by implication remain appointed -- regardless of the legal competence or
28 incompetence of the individual entitled to benefits. If SSA determines that the interests of a
beneficiary are no longer being served by the representative payee, SSA will promptly stop

1 payments to the representative payee. SSA will then send payments to an alternate payee or directly
2 to the beneficiary. 20 CFR §416.650.

3 1. Fiduciary Duty Continues After Expiration of Letters of Conservatorship

4 After the expiration of the letters of temporary conservatorship, the Public Guardian had a
5 fiduciary duty of conservation of the estate pending delivery of the estate to the former conservatee.
6 The Public Guardian attempted to promptly deliver funds of the estate to Reta Cook but the check
7 was returned to the Public Guardian. The payment of essential bills by the Public Guardian, such as
8 outstanding facility charges and medical insurance payments, served the legitimate purpose of
9 protecting the estate from loss or prejudice. By contrast, delaying payment of these important bills
10 could have negatively impacted the estate and Reta Cook.

11 The relationship between a conservator and a conservatee is a fiduciary relationship, like that
12 between a trustee and a beneficiary. (Probate Code section 2101; *Conservatorship of Leftkowitz*
13 (1996) 50 Cal.App.4th 1310, 1313.) The law of trusts generally governs the relationship between the
14 conservator and conservatee. (*Id.*) In short, the conservator's duty is one of "ordinary care and
15 diligence." (Probate Code section 2401, subd. (a).) What constitutes ordinary care and diligence is
16 determined by all of the circumstances of the particular estate." (*Ibid.*)

17 Upon the termination of a conservatorship, a former conservator still remains in a fiduciary
18 relationship with his or her former conservatee while the affairs of the conservatorship wind up.
19 And therefore the former conservator must continue to use ordinary care and diligence in winding up
20 the affairs of the conservatorship. This inherent authority after termination is first embodied under
21 the provisions of Probate Code section 2467. That section provides that a conservator after the death
22 of a conservatee continues to have the duty of custody and conservation of the estate pending
23 delivery of the estate to the personal representative. In this context, a former conservator is vested
24 with such powers as are necessary for the custody and conservation of the estate. (Probate Code
25 section 2467, subd. (b).) Likewise, after termination of a trust, a trustee continues to have those
26 powers reasonably necessary under the circumstances to wind up the affairs of the trust. (See
27 Probate Code section 15407, subd. (b).)

28 Although not explicitly provided by statute, the same inherent authority extending to

1 conservators after the death of a conservatee or trustees after the termination of a trust should
2 likewise extend to a conservator in the transition period shortly after the expiration of letters of
3 temporary conservatorship. In this context, if a former conservator is unable to immediately turn
4 over assets of the estate, as here, under the ordinary care and diligence standard the former
5 conservator is impliedly vested with the power to conserve the estate from loss. If there are
6 legitimate debts owed by the estate, like here, the former conservator should be encouraged to pay
7 those debts to prevent adverse actions being taken against the estate. The duty is no different from
8 the duty of an attorney after being terminated. In that scenario, the attorney has the same duty to
9 protect the client from prejudice until the matter before which the matter is pending has permitted
10 the counsel to withdraw or a substitution of attorney has been filed.

11 The Public Guardian fulfilled his fiduciary duty by paying certain essential bills
12 of the estate following the expiration of the temporary conservatorship, particularly in
13 light of the Public Guardian's attempt to deliver the estate assets to Reta Cook in January.
14 Delaying payment of these essential bills may have prejudiced the estate and for that
15 reasons these disbursements were entirely proper and justified.

16
17 C. THE PUBLIC GUARDIAN IS ALLOWED TO COLLECT AN
18 ANNUAL BOND FEE FROM CONSERVATORSHIP ESTATES.

19 The Public Guardian collected an annual bond fee of \$71.55 for the period starting on the
20 date of his appointment as temporary conservator through the next 365 days. The final disbursement
21 to Reta Cook took place on March 30, 2009 as well as a disbursement to SSA on May 18, 2009, and
22 the Court Investigation's unit in July 0f 2009. Based on these circumstances a pro-rata annual bond
23 fee is not justified. And neither the statute justifying the bond fee or its legislative intent justifies a
24 reduction. *Conservatorship of Cooper* (1993) 16 Cal.App.4th 419, 420 [Courts are without discretion
25 to reduce properly charge bond fee].

26 Under the fiduciary duty still existing after the expiration of the letters of temporary
27 conservatorship, the Public Guardian remained subject to potential surcharge for activities through
28 June 2, 2009. For the sake of argument, if the funds returned to SSA were somehow lost due to a

1 mistake, the Public Guardian could have faced a possible surcharge for handling these funds.
2 Therefore, the bond fee provided a benefit to the estate for the entire year.

3 Under Probate Code section 2942, “[t]he public guardian shall be paid from the estate of the
4 ward or conservatee for all of the following ... (c) An annual bond fee in the amount of twenty-five
5 dollars (\$25) plus one-fourth of 1 percent of the amount of an estate greater than ten thousand dollars
6 (\$10,000). ...” In the *Conservatorship of Cooper*, (1993) *supra*, the Court looked at the Law
7 Revision Commission’s comments to determine the legislative intent which reads in part:

8 “... The official bond of the public guardian and the liability of the county for the public
9 guardian stand in place of the ordinary bond of a guardian or conservator. Since the public
10 guardian’s bond and liability are for the benefit and protection of the ward or conservatee and
11 persons interested in the estate of the ward or conservatee, it is proper that these persons, rather than
12 the public should bear the cost. ...” The court went on to state “...even though the county’s cost of
13 ‘doing business’ is disproportionately greater than the cost of the official bond, the Legislature
14 showed a rational basis for allowing the public guardian the \$25 (plus ¼ percent) fee in each
15 guardianship estate.” (*Id.*)

16 For these reasons the bond fee payment was proper.

17 D. THE PLACEMENT OF REVERSAL AS REIMBURSEMENTS ON THE
18 RECEIPT SCHEDULE VERSUS REVERSALS ON THE
DISTRIBUTION SCHEDULE.

19 The “reimbursements” shown in the statutory disbursements schedules are checks that have
20 been reversed (due to them being returned, clerical error, or over six months old) and are simply
21 reversals which Santa Clara County Public Guardian’s accounting system records as a negative
22 disbursement rather than a reimbursement. The net effect is the same as whether shown as
23 reimbursements on the receipts or as reversals (negative charges) on the disbursements.

24 E. INCURRING INSUFFICIENT FUND CHARGES WERE
25 REASONABLE UNDER THE CIRCUMSTANCES OF THE
TEMPORARY CONSERVATORSHIP

26
27 As reflected on Schedule G, the Public Guardian’s office withdrew \$28,369.47 from Reta
28 Cook’s credit union account the day following his appointment of a temporary conservator and

1 placed the funds in the Santa Clara County Public Guardian account for Reta Cook. Since the
2 account was not cancelled yet, Insufficient Fund (NSF) fees were charged to the account because
3 scheduled automatic withdrawals, set up prior to the conservatorship, were processed without
4 enough money to cover those charges and there was not the required \$50 in a savings account to
5 avoid NSF fees. The circumstances surrounding the Public Guardian's appointment as temporary
6 conservator justified immediately withdrawing the funds from the bank account. Immediately
7 closing the account to avoid potential insufficient fund charges would not have been prudent because
8 the Public Guardian reasonable required a reasonable opportunity to identify potential sources of
9 automatic deposits. And temporary conservators should use their power as conservator carefully and
10 prudently because they are only vested with those powers that are necessary to support the
11 conservatee and conserve and protect the estate from loss or injury. Probate Code section 2250(a).
12 In this context, the Public Guardian's actions were appropriate.

13
14 F. FINAL ACCOUNTS ARE ONLY DISCRETIONARY FOR
15 TEMPORARY CONSERVATORS WHEN A GENERAL
16 CONSERVATOR IS NEVER APPOINTED

17 The Public Guardian normally presents accounts covering its tenure as conservator. In
18 Paragraph 14 of the Petitioner's Petition for Settlement of the First and Final Account and Discharge
19 of Temporary Conservator, the Petitioner stated that "the Public Guardian has not received a request
20 to file a first and final account." Based on this information, the Court questioned whether it was
21 required to request an accounting from the conservator. To clarify, the Public Guardian never
22 intended to suggest that the Court should have reminded the Public Guardian to present a first and
23 final account as temporary conservator. Instead, the information was offered to highlight that Reta
24 Cook's counsel never requested a final account after being provided an informal account.

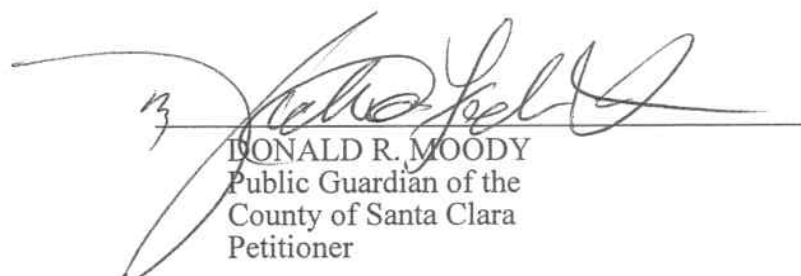
25 As a matter of law, temporary conservators are not required to file an accounting until a
26 general conservator appointed or ordered to do so. With a general conservator never being
27 appointed in these proceedings, the Public Guardian final account is discretionary petition for
28 account not a mandatory accounting. Temporary conservatorship accountings are governed by

1 Probate Code section 2256(a) instead of Probate Code 2620(a). Probate Code section 2256(a) states
2 "...the temporary guardian or temporary conservator of the estate shall present his or her account to
3 the court for settlement and allowance within 90 days after the appointment of a guardian or
4 conservator of the estate or within such other time as the court may fix." Since a general conservator
5 was never established, the 90 day deadline after the appointment of a general conservator became a
6 legal nullity and no other deadline was fixed by the Court as allowed by Probate Code section
7 2256(a).

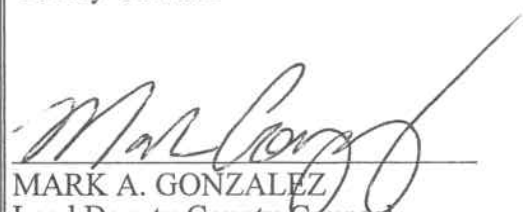
8
9 WHEREFORE, Petitioner prays that the First and Final Account be allowed, settled, and
10 approved; that all of the Public Guardian's acts and transactions as Conservator during the period of
11 said account be approved;

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct.

14
15 DATED: Oct. 21, 2013


DONALD R. MOODY
Public Guardian of the
County of Santa Clara
Petitioner

16
17
18 ORRY P. KORB
19 County Counsel

20
21 
22 MARK A. GONZALEZ
23 Lead Deputy County Counsel
24 Attorneys for Petitioner
25 Public Guardian of the County of Santa Clara
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27
28

VERIFICATION

I, the undersigned, declare as follows:

I am the Public Guardian of the County of Santa Clara, petitioner herein, or his designee authorized to sign this Verification on his behalf pursuant to Court Order.

I have read the foregoing Petition, and know the contents thereof. The same is true of my knowledge, except as to matters which are therein stated on information and belief, and those matters, I believe it to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Oct. 21, 2013, at San Jose, California.


DONALD R. MOODY (or designee)
Public Guardian

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