

DECLARATION OF MARC B. HANKIN

I, MARC B. HANKIN, declare:

1. I am the attorney for the Conservator in the above entitled matter.

2. **The delay in getting the Accounting filed is entirely my fault**, and I apologize to the Court for the delay in getting the Accounting filed. The Conservator is not responsible for the delay in any respect. The Conservator was diligent at all times in working on the Accounting.

3. This Conservatorship began in June of 1997, and was an ongoing battle ever since the inception of the Conservatorship, through today.

4. The services that I rendered in this case are represented in the time sheets attached hereto as **Exhibit 6**.

5. **Fees**. Calculated at the rate of \$275.00 per hour, and the rate of \$100.00 per hour for paralegal services, I request the sum of \$62,539.75 as fees for my services through the date of the execution of this petition.

6. **Costs**. I request the sum of \$1,280.03 for costs incurred, as more particularly set forth in the attached time sheets, commencing on page 42 of the time sheets attached hereto as **Exhibit 6**.

General Factual Background

7. I was contacted by Adult Protective Services (“APS”) about a base strong suspicion that elder abuse had been inflicted upon the Conservatee. The APS social worker, Paul Davis, informed me that the Conservatee, a man in his mid-‘70s, was suffering from a dimension of some sort, possibly Alzheimer’s disease.

8. A young woman in her mid-30s, Lee Lane, had moved into the Conservatee’s home, had isolated him from his family members and long standing friends, had obtained a durable power of attorney from him, and was attempting to dissipate his resources. Further, she was purporting to act as his caregiver, while at the same time allowing the Conservatee to live in deplorably filthy

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In Re the Conservatorship of ROBERT FIEST
Case Number: SP 003 455

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1 conditions, which included dead rats or cats or other animals under the rug, with prodigious amounts
2 of animal feces covering the floor in his room. Reportedly, her room and the other rooms in his
3 house which she used, were kept clean.

4 9. The Conservatee was not allowed to speak with his family members or with his
5 almost foster-nephew, Gary Madonna, and was under the complete domination of Ms. Lane.
6 Somehow, the APS worker had obtained permission from Ms. Lane for the Conservatee to meet with
7 his brother at a restaurant, but Ms. Lane imposed a strict condition that no one but the APS worker
8 and the Conservatee's brother should attend that meeting, and that no documents could be signed.

9 10. I met with the Conservatee and the APS worker and the Conservatee's brother at that
10 restaurant, and we persuaded the Conservatee to sign a document requesting that Frumeh Labow be
11 appointed as temporary and general conservator, and that the court determined that the Conservatee
12 lacked the capacity to give informed consent to any form of medical treatment. I later represented to
13 the Probate attorney and to the court that I believed that the Conservatee lacked the capacity to
14 understand the probable consequences of that document, or the risks, benefits and reasonable
15 alternatives involved in the decision to sign that document. I further represented to the court that the
16 very fact that the Conservatee signed that document was good evidence of his incapacity.

17 11. I subsequently filed an ex parte petition for the appointment of Frumeh Labow as
18 temporary conservator and as general conservator. Upon learning that Ms. Lane had a durable power
19 of attorney signed by the Conservatee, we successfully petitioned for an order suspending and/or
20 revoking that durable power of attorney.

21 12. Ms. Lane subsequently took the Conservatee to Las Vegas and married him there.

22 13. She then arranged for the Conservatee to be represented by an attorney who
23 subsequently represented her in these proceedings, without any waiver of conflicts of interest. She
24 also arranged for a former drinking buddy of the Conservatee's, Col. McMahon, to visit and to
25 accept some "financial assistance" from the Conservatee, and to testify against the conservatorship at
26 the hearing thereon before Judge Shimer.

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1 14. Together, the three of them contended that the Conservatee did not suffer from any
2 substantial mental function deficits, and that he was perfectly competent. They brought a substantial
3 crowd of witnesses to the hearing, all of whom contended that the Conservatee was perfectly
4 competent.

5 15. Before the hearing, I made contact with the Conservatee's treating physician, Alan
6 Schneider, M.D., a psychiatrist who is board certified in geropsychiatry, and who is international
7 renowned for his brain chemistry research.

8 16. Dr. Schneider confirmed that the Conservatee was severely demented, and that it was
9 clear beyond a reasonable doubt that the Conservatee was unable to manage his financial affairs, and
10 that it was clear beyond a reasonable doubt that the Conservatee was exceptionally susceptible to the
11 exercise of undue influence and exceptionally susceptible to fraud.

12 17. Anticipating that there would be a lengthy fight from Lee Lane's attorneys, one of
13 whom was representing the Conservatee, I also petitioned the court for a noticed evidentiary^{1/}
14 hearing and a determination that the Conservatee lacked the capacity to hire that lawyer.

15 18. Having written an article on the legal mental capacity to marry, I did not need to do
16 any research on the relevant legal issues concerning the capacity to marry.

17 19. Having written a chapter (in a book published by the State Bar) on the capacity to hire
18 a lawyer and on the duties of a lawyer to a mentally incapacitated client, and having learned from my
19 mistakes in the Conservatorship of Harry Cassel case (wherein Judge Ross cut my fees by
20 approximately \$50,000.00), I did not need to do any research on the relevant issues concerning the
21 capacity to hire a lawyer.

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¹ In the *Cassel* case, the Court of Appeals decision emphasized to the need for a [1] *noticed*
[2] *evidentiary hearing* on the capacity to hire a lawyer.

1 20. I was able to help Dr. Schneider by asking him to address the factual issues (relevant
2 to the capacity to marry) in his declaration in support of the conservatorship. My understanding
3 from the PVP attorney, Irwin Goldring, Esq., is that the psychiatrist hired by the Conservatee's
4 privately hired lawyer, Daniel Plotkin, M.D., agreed with Dr. Schneider's declaration. I was never
5 allowed to see Dr. Plotkin's report.

6 21. We were informed by Lee Lane's former boyfriend (and other people) that Lee Lane
7 had offered to share the Conservatee's estate with him (and with other people).

8 22. This created a reasonable basis for suspicious of financial abuse, and I therefore
9 prepared a petition to compel an accounting, and a set of interrogatories and requests for production
10 under *Probate Code* §2616. Judge Shimer granted our petition to compel an accounting, and he
11 ordered Lee Lane to answer interrogatories and to comply with our requests for production.

12 23. Ms. Lane did **not** [1] answer our interrogatories, or [2] comply with the order for
13 production of documents, or [3] produce an accounting, **despite having been ordered to do so by**
14 **the Court.**

15 24. Eventually, I eventually brought an order to show cause re Contempt, to enforce
16 Judge Shimer's orders.

17 25. During the course of this litigation, the conservator and the PVP attorney formed the
18 opinion that, despite the obvious fiduciary abuse that occurred in this case, Lee Lane could be hired
19 to provide caregiver services to the Conservatee, and Conservatee would benefit from such an
20 arrangement.

21 26. Eventually, we were able to strike a bargain with Lee Lane that the PVP attorney and
22 the conservator believed to be in the Conservatee's best interests.

23 27. After the deal was made:

24 (a) We learned that Ms. Lane was pregnant (and that she had been pregnant and
25 aware of the fact when she was negotiating the deal, and when the deal was presented to the Court),
26 and that she was unable to perform her services as contemplated under the contract.

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1 (b) Ms. Lane failed or refused to sign the petition for dissolution, as required by
2 the settlement agreement, despite her lawyer's frequent assurances that she was about to sign it.

3 (c) Ms. Lane failed or refused to sign the declaration, which are lawyer had
4 promised that she would sign, certifying that of that her baby was not the Conservatee's child.

5 (d) Evaded service of process with respect to the petition for dissolution, and with
6 respect to the subsequently amended petition which also seeks annulment in the alternative.

7 28. During the months between the execution of the settlement agreement and the date of
8 the execution of this fee declaration:

9 (a) I provided counsel to the conservator the contract, and

10 (b) I negotiated with Ms. Lane's various attorneys², and

11 (c) I obtained of the reappointment of the PVP attorney, and

12 (d) At the recommendation of the PVP attorney, I brought an *ex parte* motion for
13 the court to issue orders concerning the care and living arrangements of the Conservatee, pending a
14 resolution of the Conservator's request for an order:

15 (1) Rescinding the settlement agreement, and

16 (2) Directing the Conservator to petition of the Family Court for
17 annulment of the Conservatee's marriage with Ms. Lane.

18 (e) After the Court rejected the *ex parte* motion, I re-filed the motion on the
19 Court's normal calendar.

20 (f) During the last couple of months, we have been working on this accounting
21 and fee petition.

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25 ² I used the plural form "attorneys" because an attorney in Ross Sachs and Glazier requested
26 from me (and I immediately gave him) time to investigate the case, in order to determine whether
27 they would handle the case. Ross Sachs and Glazier did not come into the case.

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1 29. In summary, I performed as little work as I believed that I could do consistent with
2 my fiduciary duties. My hourly rate is low for someone of my skill. The Conservatee's quality of
3 life and standard of living would not be impaired at all if the Court were to order that I be paid for
4 my time at my normal hourly rate.

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6 **California Rule of Professional Conduct 4-200**

7 California Rule of Professional Conduct 4-200 provides that, in determining the
8 conscionability of a fee, it is appropriate to consider the following factors, among others:

- 9 (1) The amount of the fee in proportion to the value of the services performed.
10 (2) The relative sophistication of the member and the client.
11 (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal
12 service properly.
13 (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will
14 preclude other
15 employment by the member.
16 (5) The amount involved and the results obtained.
17 (6) The time limitations imposed by the client or by the circumstances.
18 (7) The nature and length of the professional relationship with the client.
19 (8) The experience, reputation, and ability of the member or members performing the services.
20 (9) Whether the fee is fixed or contingent.
21 (10) The time and labor required.
22 (11) The informed consent of the client to the fee.

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24 **(1) The amount of the fee in proportion to the value of the services performed.**

25 The Conservatee has a net worth in excess of \$one million and the value of my services is
26 substantial in light of the fact that various persons observed Ms. Lane in a drunken state, beating the
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1 Conservatee, and Ms. Lane offered to give to one of her former boyfriends one of the Conservatee's
2 houses.

3 It is reasonable to conclude that Lee Lane's current state of sobriety, which was a condition
4 for our employing her as a caregiver for the Conservatee, was to some extent a product of our
5 petition for the appointment of a conservator. In other words, there is good reason to believe that
6 Ms. Lane's abuse of the Conservatee would have continued unabated if we had not intervened. Our
7 services were therefore valuable.

8 **(2) The relative sophistication of the member and the client.**

9 The Court is well familiar with the level of sophistication of my client, Frumeh Labow, and
10 my qualifications.

11 **(3) The novelty and difficulty of the questions involved and the skill requisite to perform the**
12 **legal service properly.**

13 Although none of the questions involved were particularly novel or difficult in light of my
14 background, I know of only a few lawyers in the Los Angeles area who were familiar (at the time in
15 question) with the relevant case law and statutory law governing the critical issues in this case. This
16 was a case that required someone who specializes in this field. Also, I have written articles and a
17 chapter on the legal mental capacity, and in particular the capacity to marry or hire counsel.

18 **(4) The likelihood, if apparent to the client, that the acceptance of the particular**
19 **employment will preclude other employment by the member.**

20 It was obvious to the client and to the undersigned that my employment in this case would
21 (and did) prevent me from earning money in other cases.

22 **(5) The amount involved and the results obtained.**

23 The Conservatee has a net worth substantially in excess of \$one million, and was being
24 physically and financially abused when we commenced the conservatorship. He is now well treated,
25 and his assets are secured, and the bulk of his estate will go to his family, rather than to Lee Lane.

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1 **(6) The time limitations imposed by the client or by the circumstances.**

2 As is typical in these cases of elder abuse, most things must be done promptly at the
3 commencement of the proceeding, lest the assets disappear, and lest the frail victim expire.

4 **(7) The nature and length of the professional relationship with the client.**

5 Ms. Labow has been my client for the few years now, and should not suffer because of my
6 tardiness in getting her accounting filed.

7 **(8) The experience, reputation, and ability of the member or members performing the**
8 **services.**

9 The Court is well familiar with my experience, reputation and ability.

10 **(9) Whether the fee is fixed or contingent.**

11 Although the fee is contingent in this case, in the sense that no fee would have been awarded
12 if I had not been successful in saving the Conservatee, I have very rarely seen the Court award a
13 lodestar in these cases. However, a lodestar is appropriate in this case, as in many other cases where
14 litigation has been going on for a protracted period of time, and where the fee was as uncertain as it
15 is in this case, and payment is long-delayed.

16 **(10) The time and labor required.**

17 The amount of time that this case required is identified in my time sheets attached hereto as
18 **Exhibit 6**. Unfortunately, time sheets do not adequately tell the story. A relatively uncontested
19 matter can nevertheless requires a lot of time because of miscellaneous difficulties. But, the time
20 and labor required by a relatively uncontested case drains less from a lawyer than a case such as this
21 one.

22 By contrast, in this case, for example, Ms. Lane:

- 23 1. Changed lawyers from time to time (even swapping lawyers with the Conservatee^{3/}),

24 _____
25 ³ For example, Mitch Rosen Esq. represented the Conservatee at the hearing on appointment
26 of conservator (November 21, 1997), and later appeared as attorney for Ms. Lane (_____, 1999)
27 (continued...)

1 both before and after the settlement^{4/}, and

2 2. Repeatedly evaded service of process,

3 3. Erratically impeded the Conservator's access to the Conservatee (for a significant
4 period of time), necessitating the many calls to me from the conservator for advice about how to
5 handle these problems with the Conservatee's "wife" and her various lawyers,

6 4. Erratically refused to take the Conservatee to the doctor for his appointments,

7 5. Refused to comply with Judge Shimer's discovery orders (while contending that she
8 had given all of the documents to Frumeh Labow, and that Ms. Labow had lost them),

9 6. Committed a fraud on the Court and on the Conservator and on the PVP attorney, by
10 not disclosing that she was pregnant, when the parties were negotiating a long term service contract,
11 under which Ms. Lane could not perform according to the intent and terms of the contract, because
12 of her child;

13 7. Failed or refused to sign the petition for dissolution, as required by the settlement
14 agreement;

15 8. Made many conflicting promises through her attorney, including but not limited to a
16 promise (which was never fulfilled) to sign a declaration that the Conservatee is not the father of her
17 child;

18 9. And otherwise did everything she could to make things difficult and labor intensive as
19 possible.

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23 ³(...continued)
24 denying the vigorously under oath that he had ever represented Ms. Lane in the Conservatorship.

25 ⁴ This includes a period of time when Ross, Sacks & Glazier asked for an extension of the
26 time to reply, so that they could investigate the matter in order to determine whether they would
27 come in as Ms. Lane's new attorneys. We gave them the extension they requested.

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1 statements) that they would not take the following hypothetical case, because they do not believe that
2 a judge would award them enough fees to cover their time:

3 Assume that an eminently solvent victimizer (“Perp”) swindles \$80,000.00 from an
4 incompetent person, and that the swindle is very flagrant, very malicious, and very
5 provable. The Perp is very litigious. It will be necessary to first handle a contested
6 petition for the appointment of conservator, before filing the action against the Perp
7 on behalf of the conservator. The Perp has arranged for a lawyer to vigorously
8 represent the proposed conservatee in litigating against a petition for the appointment
9 of conservator, and they will demand a jury trial. The Perp will move his or her assets
10 around a little, but after some litigation, the assets can be found and the judgment can
11 be recovered from those assets. The Perp has a net worth of several million dollars.

12 36. **No** one in the audience would take such a case.

13 (a) Everyone agreed that they would not take such a case because they do not
14 have the confidence that they would be awarded fees under EADACPA, or from the Conservatee’s
15 estate, sufficient to cover their time.

16 (b) Everyone agreed that such cases are generally settled down the river for a
17 song.

18 37. The lawyers’ lack of confidence generates a lack of representation for the victims of
19 elder and dependent adult abuse. It is the undersigned’s believe that most cases of elder abuse are
20 never filed for the simple reason that lawyers are unwilling to take them. I believe that the same
21 problem afflicts professional conservators. I have seen many meritorious cases that no professional
22 conservator would take for lack of confidence that they would be paid for their time.

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1 Summary of Fees and Charges

2 38. I rendered services as set forth in my timesheets attached hereto as **Exhibit 6**, and we
3 request fees for my services in the amount of \$62,539.75, and that we be allowed for the costs I
4 incurred in the amount of \$1,280.03.

5 I declare under the penalties of perjury under the laws of the State of California that the
6 foregoing is true and correct, and that this Declaration was executed this day, December ____, 1999,
7 at Los Angeles, California.

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10 MARC B. HANKIN
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