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CONSERVATORSHIP ACCOUNTINGS: HOW TO GET STARTED AND WHAT TO TELL YOUR CLIENTS TO STAY ON TIME!

By Patricia A. Wenthe*

I. ESTABLISHING THE CONSERVATORSHIP

Initially, an attorney meets a prospective new client, hears the client's story and family history, deciphers facts from fiction, and sifts out important details. The attorney and the attorney's staff then commence collecting information needed to complete a number of Judicial Council forms, and soon thereafter, the client becomes a fiduciary. In that initial process, the attorney should calendar, and inform the client regarding, the requirements and due date for the conservator's accounting.

Often, the establishment of the conservatorship (especially when a matter involves litigation) is so labor-intensive that the long-term administration basics are minimized, overlooked, or set aside for a future agenda. However, advising the conservator about the appropriate manner to handle the conservatee's assets, and the many tasks required of a fiduciary, requires diligence and planning sooner rather than later. These tasks include the need to maintain financial documents, to ensure that the required original financial documents are in hand, and to record transaction details. The attorney can assign these administration tasks to staff members or the account preparer, so the attorney can focus on other aspects of the conservatorship. This article highlights the tasks, activities, misunderstandings and practice issues that arise in conservatorship accountings, and highlights those conservatorship requirements that cause avoidable delays.

II. STATUTORY REQUIREMENTS AND ACCOUNTING PERIODS

A. Additional Statutory Requirements for Conservatorship Accountings

All accountings that are filed with the court must be in the format prescribed by Probate Code sections 1060 through 1064. Conservatorship accountings also must comply with the requirements set forth in Probate Code section 2620. Conservators should be aware that accountings are subject to random full or partial review by the Court¹ and the conservator can be required to provide books, records, and receipts.²

B. First Accounting Period Commencement Date

Generally, a conservator's first accounting must cover the first year of the conservatorship, which begins on the appointment date. Thereafter, accounts are required bi-annually, unless ordered by the court to be more frequent. The commencement date for the first account is *not* the date the order for appointment of a conservator is filed. The "appointment" date is the date letters of temporary conservatorship are issued. If the temporary conservator becomes the probate conservator, the one year period begins with the issuance of temporary letters. If the matter does not include temporary proceedings, the appointment commences when the letters of conservatorship are issued.³

A petition and other pleadings are filed to request the appointment of a conservator, and others are filed after the court grants the petition. The order, bond, and letters may be filed after the hearing on the petition. To simplify this filing and to eliminate confusion of the appointment date (which, as noted, establishes the commencement date of the first accounting), the conservator or the attorney should file the order, bond, and letters simultaneously. Letters cannot be issued until the bond is submitted to the filing clerk, and the conservator will not have any authority to act until letters are issued. Most courts require that the conservator present the bond at the hearing before the judge will sign the order appointing the conservator. If the order is filed after the hearing and the bond and letters are filed on a subsequent date, remember that the commencement date (or appointment date) is the date letters are issued.

C. First Accounting Period Ending Date

Generally, first accountings cover the first year of the conservatorship and are due thereafter not less frequently than every two years, unless otherwise ordered by the court.⁴ In some instances, courts allow conservators to extend the ending date of the accounting period to the end of the month in which it occurs, for the purpose of coordinating with the conservator's end-of-month account statements. The conservator and the attorney must take care to ensure timely filing of all accountings. If an extension of time to file is needed, non-licensed conservators may request an extension from the court under Probate Code section 2620.2(c)(5).

Local rules in some courts require that the first accounting (and all future accountings) be filed no later than three months from the ending date of the accounting period. If not, the accounting must be brought forward to a more current ending period before filing. For example, if the accounting period ends on December 31, the conservator must file her account with the court no later than March 31.⁵



If both a temporary and a probate conservatorship are established, and the same individual is appointed as conservator in both proceedings, the first accounting is continuous from the date of issuance of the letters of temporary conservator without a break or change in the accounting period. If the probate conservator is not the temporary conservator, the ending date for the temporary conservator's authority is generally the date the probate conservator's letters are issued. A short-term temporary conservator must be careful to file a first and final accounting timely (i.e., before three months pass from the date the temporary conservatorship ends).

When a probate conservator is a different individual from the temporary conservator, the temporary conservator is required to account for the time period that he or she acts, unless the court orders otherwise. A temporary conservator who is not appointed as the probate conservator *and* who never has authority to take possession of any assets of the estate is not required to account. Additionally, an accounting is never required for a conservatorship of the person only.⁶

In most cases, the temporary and the probate conservators are the same individual. Counsel and the client should calendar a date ten months from the issuance of temporary letters to prompt them to compile the documents, financial account statements (including originals), and transaction details that will be needed to prepare the accounting, and to prepare that accounting by the filing deadline.

III. ORIGINAL DOCUMENTATION

A. Original Financial Account Statements

Probate Code section 2620(c)(1) requires conservators to file supporting documents, including original account statements, from any "institution" or "financial institution" (as defined in Probate Code section 2890(c)) in which money or other assets of the conservatorship estate are held or deposited. Those supporting documents must cover the beginning period of the first accounting (specifically, the date immediately preceding the date of appointment) through the ending period of the first accounting; the original ending statements must be filed for all accountings after the first accounting. Private professional conservators or licensed conservators must file both the beginning and ending period statements, *plus* each monthly account statement covering the entire period of the accounting.⁷

Probate Code section 2890(c) describes an "institution" as an insurance company, insurance broker, insurance agent, investment company, investment bank, securities broker-dealer, investment adviser, financial planner, or financial

adviser. Probate Code section 2892(b) describes a "financial institution" as being a bank, trust, savings and loan association, savings bank, industrial bank, or credit union.

The conservator and the attorney must understand the difference in statements required for the non-professional conservator versus the private professional or licensed conservator, and file the correct monthly statements. The courts will remind the conservator (usually in the Probate Examiner's notes or tentative rulings) that the court does not want each monthly statement submitted for a non-professional conservator. Filing unnecessary documents with an accounting increases review time and unduly increases the records the court must maintain, creating inefficiency and cost in the court process.

Care also must be taken to file account statements "confidentially" if the conservatee's social security number is shown on the account statement. However, if the social security number is not on the account statements, they need not be lodged confidentially.⁸ Financial institutions rarely use or show the conservatee's social security number on an account statement.

1. What is an "Original Account Statement?"

Original financial statements for the first accounting period are usually the most difficult to obtain because the conservator does not have authority to take possession of the conservatee's money or assets until *after* letters are issued. This means that the *original* statements that must be submitted with the first accounting are for accounts in the conservatee's name.⁹

This inability to take possession or request statements until after issuance of letters can result in confusion and misperceptions as to which financial statements are needed. Providing the conservator with these details early in the process alleviates delay, especially if months have passed since the conservator's appointment and none of the required original statements are on hand. In contrast, the original account statements covering the end of the accounting period are issued in the conservator's name.

Suppose the client prints "original" account statements from a color printer. Such statements do not comply with the statutes. The printed statements from the client's color printer may look authentic, and they were directly printed from the bank's website, but these are not originals. Even though the client may think that this method logically produces an "original bank statement," many courts do not agree. Only a bank statement that the conservator receives in the mail from the financial institution is considered an original.



An original is also not a reprint (photocopy) of a statement, even when obtained in-person at the financial institution, unless the financial institution authenticates the reprint as a true and correct copy of the original account statement. Most financial institutions lack this sort of procedure and leave the client bewildered when other facsimile versions of what they perceive to be original account statements are not accepted for filing. The attorney should keep in mind that the conservator is occupied with caring for the conservatee. Making unnecessary trips to the financial institution can be avoided by providing the conservator with instructions on required original statements early in the representation.

Additionally, requesting reprints of missing account statements from months prior can prove to be difficult. Generally, older account statements (even just a few months old) must be ordered using the financial institution's multi-level protocols or from other off-site statement processing locations. Any missing account statement causes delays in the accounting preparation process.

The courts have accepted, in lieu of an original account statement, a photocopy of an account statement that is accompanied by a declaration in which an official of the rendering financial institution declares under penalty of perjury that the photocopy attached has been verified and is a true and correct copy of the original statement.

2. *The Conservator's First Visit to the Financial Institution*

Virtually all financial institutions prefer to set up new accounts in an all-electronic or online environment in order to avoid the printing and postage costs of mailing statements. Unless instructed otherwise, conservators often find this procedure suitable (since the conservator thinks he can later print each monthly statement at the conservator's convenience, in color, from the conservator's home or office). However, the attorney initially and specifically should instruct the client to use on-line banking services for purposes of viewing account activity, making transfers between accounts, or for printing statement copies, *only if* all original statements will be mailed to the conservator by U.S. mail. The attorney can assist the conservator in not overlooking these instructions. This is especially important to a conservator who is under pressure with his or her new fiduciary responsibilities, and who may be assisting a conservatee in need of substantial care.

B. Original Care Facility Statements

In addition to original financial account statements, if the conservatee lives in a residential care facility or long-term

care facility during any part of the accounting period, Probate Code section 2620(c)(5) (applicable both to professional and non-professional conservators) requires that all original care facility billing statements be filed with the first annual and all subsequent accountings. This requirement does not include invoices or statements for payments to caregivers or other care giving or care management services, which are usually rendered when the conservatee resides in his or her own personal residence or the residence of a family member.

Often, the care facilities will automatically e-mail invoices or statements to the conservator. Since original statements must be filed with each accounting, the attorney should instruct the client at the initial meeting that he or she must receive the original care facility billing statements, either in person from the facility or in the mail, and that the client should discourage the facility from e-mailing statements or invoices.

C. Original Closing Escrow Statement

Court authorization is required to sell a conservatee's real property, including the personal residence of the conservatee and other real property owned by the conservatee held in the estate.¹⁰ When the conservator files an accounting that includes a real property sale, the seller's original closing escrow statement must be included. Escrow companies commonly e-mail closing statements to parties and attorneys; however, an original printed by the escrow company must be provided for the purpose of filing with the conservator's account.

IV. TRANSACTIONS AND MANAGING ACCOUNT STATEMENTS

A. Transaction Details

The attorney should not assume that first-time conservators will properly or sufficiently keep track of all funds coming into, and going out of, a conservatorship estate. Conservators may understand their fiduciary responsibilities, but they may not know the need for transaction details. When the conservator produces records for preparation of the accounting, it is not the appropriate time for the attorney first to inform the conservator of the many important details that are missing. The attorney should discuss the accounting requirements early on to avoid the difficult and time consuming process of documenting and reconciling the history of the conservatorship accounting.

In the initial meetings with the client, an explanation emphasizing the level of detail that is required to be provided to the account preparer, along with suggestions to organize this new onslaught of paperwork and transactions, is essential.



After a few months pass, the attorney should ask the client to submit worksheets or check registers for review by the account preparer to determine that the appropriate level of detail is being maintained. An organized conservator greatly reduces the cost of accounting preparation and bad habits can be identified early on and corrected.

Most accountings fail to meet the requirements for approval at the first review hearing due to the inappropriate manner that receipt and disbursement transactions are shown, omitted descriptions, or altogether missing itemization and categorization of the transactions for credit card accounts. Listed below are suggested organization guidelines that the conservator can follow to achieve a high level of efficiency when the accounting is prepared.

B. Receipts, Disbursements, and Distributions

Probate Code sections 1062(a), (b) and (e) describe the required transaction details that must be shown in the accounting for receipts, disbursements and distributions. A "disbursement" is the payment to another for a service or product. A "distribution" is estate cash or property that is given to the conservatee or beneficiaries.¹¹

The conservator should maintain a check register that includes transaction details for all disbursements and distributions. Such required details are the (1) date of transaction, (2) complete name of payee, and (3) nature or purpose of the transaction and amount. There are no statutory or local rule requirements that check numbers be included when payment is made by this method. However, this additional information can be set forth if doing so *would not* create an additional level of complication or excessive additional time in the overall preparation of the accounting. The Judicial Council form schedules for disbursements and distributions include columns for check numbers. In all events, the conservator should record check numbers for ease of reference.

Disbursement transactions include not only those made by check, but also debit cards, automatic pre-authorized withdrawals, payments by electronic means (usually shown as an "ACH" transaction on the account statement), and all other manners by which debits occur in each account. All of these transactions must be properly recorded and described.

For deposits into accounts, records should be kept of the (1) date of transaction, (2) complete name of payor, and (3) nature or purpose of the transaction and amount. Combined deposits should be avoided (unless properly recorded) because such deposits are shown on the account statement as a lump sum amount on a single date (even though there are numerous

different payors, nature or purposes of the receipts, and differing amounts for each payor). The conservator should photocopy each check before it is deposited and separately record the details of each check included in the group deposit in the register.

For example, the check register should never say: "1/21/15 Deposit \$2,500" when this deposit includes (1) a refund check from AT&T for \$18, (2) a dividend check from Apple, Inc. for \$1,500, and (3) an insurance refund check for a claim payment from State Farm for \$982; instead, these details should be recorded in the register.

After just a few months of group deposits without back-up photocopies of the checks or details in registers, the conservator may have no idea what payors were included in the deposit. The conservator cannot rely upon financial institutions for clarification, as not all institutions maintain deposit copies. The lack of deposit records results in unidentifiable transactions in the accounting, which could take hundreds or thousands of dollars in fees to substantiate in declarations (and, in the worst case scenario, under subpoena). "Miscellaneous" and "unknown" transaction descriptions should be avoided.

Deposits include not only a check that is deposited, but also automatic payments. The most common automatic deposits are for social security benefits, pension payments, and retirement income. Most financial institutions include the payors of these types of deposits on the account statements; however, the conservator should still record all details for each of these payments. A pension payment cannot be shown in the accounting in this form: "1/21/15 pension income \$5,000" because the payor is missing. The correct manner to describe this transaction is: "1/21/15 Lockheed Martin—pension income \$5,000."

Brokerage statements are generally all inclusive and provide the necessary details for securities transactions (purchases, sales, redemptions, dividends, reinvested dividends, stock splits, security name changes, exchanges, corporate actions, and other transactions). The conservator should review the brokerage statements each month and immediately obtain clarification from the securities firm or broker for any transactions that are difficult to understand from the statement itself.

C. Categorization of Transactions

Detailed transaction descriptions assist the account preparer to categorize each receipt, disbursement, and distribution transaction properly in the accounting. Though some courts will accept an accounting for filing in a chronological format,



most require that the transactions be categorized. Categorization allows all accounting recipients (and the court) to see easily the areas in which the conservator has spent funds on behalf of the conservatee. Categorization also efficiently reveals if expenditures are off balance in a certain category, or if funds have been poorly managed. The attorney can then address those issues in the petition for approval of the conservator's account. The Judicial Council schedules for receipts and disbursements provide many appropriate (and preferred) categories for conservators to use in accountings, as summarized on the worksheet GC-400(A)(C). The transactions in each category should be set forth in chronological order, and each category should include a subtotal.

D. Credit Card Transactions

Payments to credit card companies must be shown on the disbursements schedule and include a description similar to all other disbursement transactions (date of payment, payee and amount). Payments on credit card accounts usually include a lump sum for a month's worth of purchases, fees, and credits. The conservator must itemize and categorize all credit card transactions on a separate informational schedule. This schedule is "informational" because it is a non-balancing schedule and the lump sum payment already appears on the disbursements schedule. The informational schedule cannot be included in the balancing schedules because the transactions would be double-counted.

E. Bank Account Statements

If conservatorship bank accounts are opened mid-month, the conservator should request that the bank issue a statement from the date the account was opened to the end of that month, and that all future statements be set up on a calendar month basis. This procedure ensures that each account statement covers the first day of the month and the last day of the month. Monthly account statements greatly assist in succinct accounting period ending dates, as well as statement organization with corresponding back up receipts for each month's transactions.

In contrast, mid-month statements force an extended wait time. If the accounting period ends on December 31st, the conservator will receive the monthly statement in early January and the last day to file (to comply with filing not more than three months from the ending date), will be March 31st. If the statement regularity is mid-month, or ends on December 15th, the conservator will not receive the monthly account statement that includes transactions through to the end of the accounting period, December 31st, until the end of January. The statement

that is for a time period beyond the end of the accounting period is necessary because it shows the balance at the end of that period. Mid-month account statements result in a loss of time to complete the accounting, or a wait time that can be avoided. Mid-month statements also contribute to confusion on the next accounting by forcing the use of the same statement for two different accountings. Mid-month reconciliation is also required, which adds additional accounting preparation time.

F. Other Financial Statements

Financial institutions that provide brokerage accounts and other non-bank or credit union type accounts generally prepare and mail statements on a monthly cycle. The conservator also must file original statements for these types of accounts for the beginning and ending periods of the accounting. Accordingly, the conservator should request all account statements be mailed to comply with this accounting requirement.

V. ORGANIZING THE FINANCIAL STATEMENTS AND SUPPORTING DOCUMENTS

Many different organizing systems can prove to be sufficient, but organizing statements on a monthly basis, with the oldest first, provides optimal function and efficiency. This system is efficient for the account preparer, as the raw data will coordinate with the input of the accounting transactions, which are set forth in a chronological manner within the categories. The conservator is required to maintain books, records and receipts for expenditures.¹²

The attorney should keep in mind that the conservator client will be extremely busy with the countless new duties they take on in caring for the conservatee and managing the conservatorship finances. An explanation of these simple organization methods will assist the conservator in reducing time spent in this area and facilitate an efficient accounting preparation and is generally positively received. The author suggests that the conservator:

- Set up separate file folders (or separate binders) for each account in the conservatorship estate, including bank, credit union, credit card, brokerage, and other accounts. The initial set of folders should mirror the Inventory and Appraisal (for the assets on hand as of the date of appointment). The conservator should set up additional file folders as new accounts are opened and include notations of where funds came from to fund the new accounts.



- Prepare a separate file folder for each parcel of real property that includes deeds and other related ownership and encumbrance documents.
- Prepare a separate file folder for personal property lists, companion appraisals and title and insurance documentation, including jewelry, antiques, collections, vehicles, boats, and other insurable items.
- Organize the account statements with the oldest first (or on top), with all back up documentation, invoices and receipts for each month's transactions behind the monthly statement that includes the transaction. Sheet protectors are helpful to hold statements and their companion back up documentation in a single location. Receipts that are smaller than standard letter size should be taped to a full sheet of paper for easy handling, reference, and copying, and not stuffed into envelopes.

If a detailed check register is maintained (either manually or electronically), the account preparer does not necessarily need to review any of the receipts. However, maintaining both the backup documentation and a handwritten or electronic register will best protect the conservator and keep the conservatorship records organized for possible review by the court or an interested party.

VI. MANDATORY USE OF JUDICIAL COUNCIL FORMS

Most account preparers use an electronic spreadsheet program for preparation of the schedules for an accounting. This format can be used only in limited circumstances, when the conservatorship does not include income-producing real property or an interest in a trade or business, and when the inventory value, exclusive of the conservatee's personal residence, is less than \$500,000. Otherwise, use of the Judicial Council form schedules is mandatory and must be used for all schedules.¹³

In addition, when the electronic spreadsheet format is available, the Summary of Account must be prepared and submitted on the Judicial Council form GC-400(SUM)/GC-405(SUM). An informational Summary of Account can be added to set forth other schedules that are included (non-balancing schedules) because the GC-400 form does not provide for the listing of these informational schedules.

VII. FINANCIAL INSTITUTION REQUIREMENTS FOR NOTICE ON JUDICIAL COUNCIL FORM

Over the last two decades of preparing accountings and assisting with conservatorship administrations, only a handful of the author's conservator clients have indicated that a bank will require a "GC-051" in order to make account changes. A GC-051 is a Judicial Council form titled "Notice of Opening or Changing a Guardianship or Conservatorship Account or Safe Deposit Box." The completion and use of this form is the sole responsibility of the financial institution. Despite the fact that banks do not uniformly require these forms, arming the conservator with several blank GC-051 forms in an initial meeting is helpful. This foresight will enable the conservator to change accounts efficiently, eliminating the need for a call or further visit. The attorney should instruct the conservator to provide the blank form to the financial institution, upon request. The financial institution will then complete the form and file it with the court.

VIII. CONCLUSION

This article highlights common issues in maintaining proper documentation and transaction details to prepare for a conservator's accounting. The attorney has a critical role in identifying these accounting issues for the conservator early in the representation. With this guidance, the conservator can prepare fiduciary accountings in an efficient, organized, and detailed manner that provides courts and interested parties with a clear view of all financial events, reducing potential challenges and delays in court approval.

**Probate & Estate Services, Inc., Antioch, California*

- 1 Prob. Code, section 2620, subd. (d).
- 2 Prob. Code, section 2620, subd. (e).
- 3 Prob. Code, section 2620, subd. (a).
- 4 Prob. Code, section 2620, subd. (a).
- 5 See Contra Costa County Superior Court, Local Rule 7.425, subd. (c).
- 6 Prob. Code, section 2600.
- 7 Prob. Code, section 2620, subd. (c)(3).
- 8 Prob. Code, section 2620, subd. (c)(7).
- 9 Account statements that include the date of appointment are also required for preparation of the Inventory & Appraisal.
- 10 Prob. Code, section 2591, subd. (c)(1)-(2).
- 11 Gifts are prohibited without court order. See Probate Code, section 1870, *et seq.*
- 12 Prob. Code, section 2620, subd. (e).
- 13 California Rules of Court, Rule 7.575.