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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF CLACKAMAS

6 Department of Probate

7 In the Matter of the Guardianship and
8 Conservatorship of

9 WAYNE ALMON FAULK,
10 a Protected Person.

Case No. 16PR00796

**OBJECTION OF WAYNE ALMON
FAULK TO CONSERVATOR'S AND
TRUSTEE'S FIRST ANNUAL
ACCOUNTING AND PETITION FOR
ORDER AND LIMITED JUDGMENT
AWARDING FIDUCIARY FEES AND
COSTS, ATTORNEY FEES AND
COSTS AND ADJUSTING BOND**

13 Wayne Almon Faulk ("Faulk), by and through his attorneys, Williams Kastner Greene &
14 Markley, hereby objects to Conservator's and Trustee's First Annual Accounting and Petition for
15 Order and Limited Judgment Awarding Fiduciary Fees and Costs, Attorney Fees and Costs and
16 Adjusting Bond.

17 A more complete statement of Mr. Faulk's objections will follow in subsequent petitions
18 to remove or replace his conservator and guardian, and to change the trustee.

19 The current professionals are dissipating Mr. Faulk's assets at an alarming rate, and are
20 failing to fulfill the primary purposes of the trust and these proceedings: (1) to allow Mr. Faulk to
21 continue the rural life that is extremely important to his well-being and that he had followed,
22 without a conservator or guardian, for over ten years, and (2) to keep Mr. Faulk on his farm.
23 These objectives are crucial to his well-being, and, without change, will be denied to Mr. Faulk.

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1 As to the current petitions and accountings, Mr. Faulk objects as follows:

2 **1. The Attorney Fees are Block Billed.**

3 The invoices attached to the Declaration of Nathan Rudolph all contain block billings.
4 They contain multiple tasks without time entries for each task. Further, the tasks and billings are
5 not associated by description with any subject matter.

6 By design, block billing makes it nearly impossible for clients to determine whether they
7 are being fairly billed, which prompted the United States Court of Appeals to express "a concern
8 about the use of block billing..." since "billing practices that camouflage the work a lawyer does
9 naturally and quite correctly raise suspicions about whether all of the work claimed was actually
10 accomplished or whether it was necessary." *Robinson v. City of Edmund*, 160 F.3d 1275 (10th
11 Cir. 1998).

12 According to the California State Bar, block billing causes lawyers to inflate the total
13 hours billed to the client by 10-30 percent. See California State Bar Committee on Mandatory
14 Fee Arbitration, Detecting Attorney Bill Padding, Arbitration Advisory 2003-01 (Jan. 29, 2003);
15 see also *Darling Int'l., Inc. v. Baywood Partners, Inc.*, 2007 WL 4532233 at * 9 (N.D. Cal. 2007)
16 (as a percentage penalty for block billing, most courts make a reduction ranging from 5% to
17 30%, consistent with the California State Bar committee's findings). In fact, many courts believe
18 that block billing inflation is actually much worse, and will slash lawyers' block-billed time by
19 more than half. *See, e.g., Ceglia v. Zuckerberg & Facebook* (W.D.N.Y. 2012) Case No. No. 10-
20 CV-00569A(F); *Kirsch v. Fleet Street, Ltd.*, 148 F.3d 149, 173 (2d Cir. 1998).

21 Here, for example, Mr. Rudolph's bill seeks \$1,144 for ordinary services, but \$8,792 for
22 "extraordinary services." But there is no way to determine from the bill which services relate to
23 which of the categories of "extraordinary services" as identified in the declaration.

24 For example: Medicaid. Medicaid application is a straight forward and common
25 occurrence that many people go through. Further, given that the guardian/conservator is an
26 avowed professional in this field of Elder care and elder law, it is unclear why she needed a

1 “significant” amount of legal support for this area, especially when she already claims a
2 significant amount of fees for her own time spent on this task. The provides no aide in
3 understanding or justifying what work was done, much less what work was required.

4 It is similarly mysterious as to why the guardian/conservator needed her attorney to spend
5 a “significant amount of time” communicating with family members and community members.
6 While it would make sense that her attorney would speak to the attorney for community
7 members, the guardian/conservator is a professional communicator who should be able to
8 communicate directly with non-lawyers at her own high rate without adding her attorney’s time
9 to that communication. The bills do not indicate how much of the extraordinary fees make-up
10 this unwarranted time.

11 Nor does the statement comply with the rules. “For extraordinary activities, the
12 statement must also concisely address the following issues to be resolved **and the process and**
13 **time spent on each.**” SLR 9.091(b) (emphasis added). Identification of the time spent on each
14 extraordinary activity allows the court to evaluate the reasonableness of time spent, instead, just
15 like the time cards, the time spent on all extraordinary activities is lumped together, making it
16 impossible to determine whether the time spent on any one of the activities was justified.

17 Mr. Faulk requests that the court reduce the amount of the fee statement by 50%.

18 **2. The Conservator/Guardian Fees are Excessive**

19 *a. The Conservator/Guardian Seeks 90% of Mr. Faulk’s Limited Income*
20 *(Government Disability Payments) and this Should Not Be Approved.*

21 The conservator/guardian seeks fees for her work of nearly \$1,700 per month. This is
22 approximately 90% of the protected person’s income. This is excessive, and such an award is
23 not in the protected person’s best interest.

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1 *b. The Use of Mr. Faulk’s Limited Income for Very Expensive and Unnecessary*
2 *Alternative Living Arrangement and Extra Care Should Not Be Approved.*

3 The conservator/guardian seeks approval of the use of \$23,350 of Mr. Faulk’s income for
4 purchasing space in assisted living for seven months, and \$5,300 for personal caregivers during
5 those same months, even though he was already in assisted living. These expenses were
6 unnecessary: Mr. Faulk had a place to live rent free during this entire time.

7 The conservator/guardian represented to this court that numerous repairs were to be made
8 to the property, in order to upgrade its condition. But the court visitor noted that his home,
9 although the “level of cleanliness” in the home was not “optimal” the home was safe to enough
10 for Mr. Faulk to continue to reside in. Visitor’s Report, p.5. Further, most of the supposedly
11 necessary repairs were not performed, and there is no explanation as to why the repairs that were
12 performed were not performed more expeditiously.

13 The conservator/guardian first represented to the court that the lack of electricity was a
14 factor in the move. Yet the electricity was back on within a week: the accounting shows that
15 electric bills continued to be paid. The conservator/guardian then told the court that repairs
16 needed to be made in seven areas: a new ramp, landscaping improvements due to livestock
17 damage, new insulation, re-wiring, mold remediation, bathroom improvements, and a new
18 washing machine. But it appears from the expense reports that the only three of these areas were
19 addressed: re-wiring, bathroom improvements, and a new washing machine. The bathroom
20 improvements appear to have been begun in February but not completed until April, with no
21 explanation as to the delay. There is no explanation why the electrical repairs were not made
22 until after Mr. Faulk moved back into his residence.

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1 Not only was this a waste of Mr. Faulk’s funds, but it was in derogation of his well-being.
2 The court visitor specifically acknowledged the sub-optimal living conditions, but nonetheless
3 concluded that:

4 “I believe that removing the respondent from his home is an action that should be
5 taken only if he is no longer safe or healthy there, a condition that does not
6 currently exist

7 [Mr. Faulk] has managed extremely well for many years by himself and with the
8 help of community members and neighbors. . . .

9 I believe that every effort must be made by the guardian and conservator to
10 maintain his residence in the place he now lives. **To do otherwise will certainly
be devastating to the well-being of the respondent.”**

11 Visitor’s Report, P. 5 (emphasis added)

12 While the Court previously determined that it was not a violation of the limited judgment
13 appointing the Conservator/Guardian to move Mr. Faulk to a facility due to the representations
14 made to it, this Court never has determined that the vast drain on Mr. Faulk’s meagre savings
15 and disability income for this purpose was appropriate. It was not. Those expenses should not
16 be approved.

17 *c. The Fiduciary Fee Petition Does Not Comply with SLR 9.091(4)*

18 The local rules require that “all requests for fiduciary fees (except those from a Personal
19 Representative) shall be supported by an affidavit which details the services provided, the
20 purpose of the services rendered, the results (if applicable), the hourly rate charged by the
21 fiduciary, **and the reasons that hourly rate is deemed fair and reasonable.**” SLR 9.091(4).
22 This fiduciary apparently charges \$60.00 per hour for Sheila Lusby who does administrative case
23 management, \$60.00 per hour for Ms. Lusby and Jessica Edholm to do clerical work, \$85.00 per
24 hour for Ms. Edholm to do financial administrative work, and \$115.00 for Ann Yela to do
25 professional work. But, there is no way to tell if these rates are fair or reasonable, because the
26 petition does not comply with the local rule. As such, the rates should be determined to be not

1 reasonable, and the petition should be denied.

2 **3. The Trustee Is Dissipating Assets**

3 Mr. Faulk is currently being provided fourteen (14) hours of in-home care per day. The
4 State of Oregon, through its Medicaid program, determined, however that Mr. Faulk only needs
5 four hours per day. The Trustee is dissipating several thousands of dollars every month to
6 provide extra, unnecessary care. As the court visitor reported, Mr. Faulk is able to perform “his
7 activities of daily living to a marginally adequate degree.” Visitor’s Report, p.2. The State of
8 Oregon apparently agreed with this determination. There is no evidence in the record supporting
9 a contrary determination; certainly no evidence supporting the large expenditures for care-givers
10 which the Trustee is making.

11 While the Trustee has discretion, her discretion should defer to the medical determination
12 made by the Medicaid program, especially where, as here, the additional expenditures undermine
13 the single material purpose of the trust: keeping Mr. Faulk on the farm for the remainder of his
14 natural life.

15 **4. Where is the Report?**

16 Despite repeated requests, the Trustee/Guardian/Conservator has yet to produce a copy of
17 the report of her investigations into the financial activities of the prior trustee and representative
18 payee, Linda Faulk. This task was specifically ordered by the court and is, in fact, the main
19 purpose of the conservatorship. A report was produced regarding Rose Henley and Jack Dunn.
20 But no report has been produced regarding the activities of Linda Faulk, despite the court’s
21 express Judgment commanding such a report. Thus, because the Conservator failed to achieve
22 the express purpose of the conservatorship, she should be denied any fees at all.

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1 **CONCLUSION**

2 The court should not approve the accounting nor the requested fees. The fees should be
3 reduced drastically: the basic purposes of the guardianship/conservatorship have not been
4 fulfilled, yet astronomical professional fees are being charged to the protected person.

5 DATED this 1st day of February, 2018.

6 **WILLIAMS KASTNER GREENE & MARKLEY**

7 By s/ Steven F. Cade

8 Steven F. Cade, OSB # 106466

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CERTIFICATE OF SERVICE

I certify that I served the foregoing OBJECTION OF WAYNE ALMON FAULK TO CONSERVATOR’S AND TRUSTEE’S FIRST ANNUAL ACCOUNTING AND PETITION FOR ORDER AND LIMITED JUDGMENT AWARDING FIDUCIARY FEES AND COSTS, ATTORNEY FEES AND COSTS AND ADJUSTING BOND on the following attorneys by the method indicated below on the 1st day of February, 2018:

Nathan A. Rudolph, Esq.
Smith McDonald & Vaught LLP
1100 SW 6th Avenue , Suite 1400
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Attorney for Yela Fiduciary Services, LLC

- Via First Class Mail
- Via Federal Express
- Via Facsimile
- Via Hand-Delivery
- Via E-Mail
- Via Electronic Service by the court’s E-filing system at the party’s email address as recorded on the date of serve in the E-filing system.

Linda Faulk
28073 Buckskin Drive
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- Via First Class Mail
- Via Federal Express
- Via Facsimile
- Via Hand-Delivery
- Via E-Mail
- Via Electronic Service by the court’s E-filing system at the party’s email address as recorded on the date of serve in the E-filing system.

s/ Steven F. Cade
Steven F. Cade, OSB #106466
Attorneys for Wayne Almon Faulk