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STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE No. 46	CONFIDENTIAL ANSWER TO NOTICE OF FORMAL PROCEEDINGS

I.

Jurisdictional Objection

California Rule of Court 904(b) requires that, prior to institution of formal proceedings against a judge, the Commission "shall" notify the judge of the nature of the charges brought against him and afford the judge a "reasonable opportunity in the course of the preliminary investigation to present such matters as he may choose." In its letter dated May 29, 1979, notifying me of its preliminary investigation, the Commission identified six charges that all related to the Conservatorship of McCune, San Diego Superior Court No. 99967. I responded to those charges at length in my letter to the Commission, dated July 19, 1979, and thereafter further cooperated in discovery proceedings by the Commission regarding those charges.

The Notice of Formal Proceedings in this matter, however, has expanded the charges against me to include charges relating to the Guardianship of the four minor McCune children (San Diego Superior Court No. 97803) and "other cases consolidated therewith and related thereto."

I object to the Commission's expansion of the charges set out in its notice to me of the preliminary investigation, without affording me a reasonable opportunity to reply thereto prior to commencement of formal proceedings against me on those expanded charges.

Without waiving the foregoing objection, I will respond in good faith to the broad allegations in the formal proceeding now pending, at least insofar as I am able to discern that a charge relates to a specific matter that I supervised.

II

General Denial

Except as specifically admitted and affirmatively alleged below, I deny each and every allegation of judicial impropriety, misconduct, incompetence and imprudence made against me in the Notice of Formal Proceedings, dated September 22, 1980.

III

Specific Responses

Set forth below are my specific responses to the 29 charges made in the enumerated and lettered paragraphs and subparagraphs of the Notice of Formal Proceedings, dated September 22, 1980. Attached hereto and incorporated herein by reference is my more detailed response to the Commission's original notice of its preliminary investigation, from which I have removed my comments

relating to charges not renewed in these formal proceedings.

1. From February 18, 1972, to November 9, 1978, I supervised the conservatorship of Carole McCune. Since February 18, 1972, I have continuously been supervising the guardianship of the minor McCune children.

On May 12, 1971, Judge Bonsall Noon of the San Diego Superior Court approved the petition of Carole McCune for the imposition of a guardianship of her children's estates. On February 2, 1972, Judge Noon appointed Ms. Jean Moltier as temporary guardian of the persons of the minors. After I took charge of the guardianship, I vacated Ms. Moltier's appointment, made the children dependants of the Juvenile Court, and appointed Mrs. Carol McLean as their custodian. On March 9, 1973, I granted the petition of the guardian of their estates to continue Mrs. McLean as the personal guardian of the minors and also terminated the juvenile dependency proceeding. The only petitions ever presented to me to terminate the guardianship have concerned the two wards who have attained their majority, and I granted those petitions.

The conservatorship also began before I became involved. On February 2, 1972, Judge Noon ordered the appointment of a temporary conservator of the person and estate of Carole McCune, on the ex parte application of attorney Charles Beardsley, who was the guardian of the estates of the McCune children. On February 18, 1972, I vacated the temporary conservatorship of Carole McCune's person and declined to appoint a permanent conservator of her person. On April 7, 1972, I appointed a permanent conservator of her estate because the evidence showed that Carole McCune had been unable to

manage her affairs without professional and legal assistance and that such a conservatorship was necessary and appropriate to preserve the known assets of her estate, to recover property she had dissipated or disposed of, and to establish her interests in the estate of her deceased husband.

At no time have I ever known of a "scheme" by "various attorneys" to deprive Carole McCune of control over her assets and to convert those assets into attorney fees.

2. In ruling on the McCune matters presented to me, I exercised my best legal and practical judgments in accordance with the letter and spirit of the law. To the extent any of my decisions were erroneous, the parties were free to obtain appellate judicial review of my decisions. In fact, the conservatee commenced 13 appellate proceedings, none of which have been successful and most of which have been dismissed, abandoned or decided adversely to her.

During the period of my supervision, the net values of both the guardianship estates of the four McCune children and the conservatorship estate of Carole McCune increased. The precise manner in which these increases occurred is a matter of record, as shown in the formal accountings for the guardianship and conservatorship estates, which I will file with the Commission for its review.

In general, in February 1972, Carole McCune's estate was in a negative position, her liabilities for taxes and past debts and her personal living expenses far outweighing her known assets and income. During my supervision and through the favorable efforts of the attorneys in the Arizona probate proceedings, the Pittsburgh trust

litigation, the search for and recapture of certain jewelry and real property, and the reduction by settlement, payment and provision for payment of tax liens, costs and attorney fees, the net McCune estate moved from a negative position to a positive one, valued at about $1 million.

2(a). On April 7, 1972, I signed a formal order appointing Southern California First National Bank as the conservator of the estate of Carole McCune and, by supplemental order of June 5, 1972, continued Mr. Emmett Morava as co-conservator. A partial inventory was filed with the Court October 11, 1972, and later supplemented, as required by law.

2(b). The petition of attorney Charles Beardsley for the appointment of a conservator of the estate of Carole McCune was properly filed with the Court on February 2, 1972. Notice of the first hearing on February 18, 1972, was given as required and all interested parties, including Carole McCune, and their attorneys appeared at that hearing. The hearing was conducted in several sessions on various dates in March 1972 for the taking of evidence. On April 5, 1972, when I had heard all of the evidence and announced my intended decision to appoint the bank as permanent conservator, Carole McCune was not present in court. I was informed by her attorneys that she knew of the hearing date and had decided to attend to other personal business on that date. Appointment of the permanent conservator was fully justified by the evidence presented to me. No written findings were requested by counsel and thus none were required by law. However, in my formal order of April 7, 1972, I made the following specific finding:

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> [T]he Court finds that . . . the facts alleged in the petition respecting the need for a Conservator of the estate are true . . . .

Finally, regarding the "conditional nomination" of the bank as conservator, the conditions were those implied by law and the excised portions of the nomination were unrelated to the nomination itself or any of its attendant conditions. I am informed and believe that the excised portions of the document related to the guardianship of the persons and estates of the minors, which matters the conservatee's attorneys chose not to raise at that time.

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2(c). After lengthy discussion with counsel and some formal argument on the record, I made the referenced order in an effort to find a creative resolution of these conflicting interests: (1) the minors required security for their inchoate interests in their father's estate, arising under his will and as affected by the settlement of the Arizona will contest favorably to Carole McCune; (2) Carole McCune needed a mechanism to provide her with lifetime income and to preserve as much of the corpus of her estate as possible; and (3) the minors faced the real possibility that the future support of Carole might become a charge upon their separate estates, as a result of her demonstrated ability to dissipate vast amounts of money. On petition by the conservator, I approved the trust and my order was appealed. Except for advances from the minors' estates to effectuate the settlement in the Arizona will proceedings and except for such interest as remaindermen that those minors gave up in that settlement, none of the minors' assets, whether actual or inchoate, became part of the corpus of the referenced trust estate.

2(d). While under the disability of the conservatorship, Carole McCune commenced the referenced action without the knowledge or approval of the conservator. Defendants in the case included attorneys Beardsley and Gluecksman. When I learned of the conservatee's pending action, I determined that the action should be prosecuted by the conservator as the proper plaintiff, if the action were meritorious. Because of the potential conflict between the conservator and its special counsel (Gluecksman) regarding the merit of the action, I appointed attorney Paul Engstrand as guardian ad litem for the conservatee to analyze and report to the

Court on the merits of the case. Engstrand reported that the case was not meritorious and that to prosecute it would be detrimental to the estate of Carole McCune. However, I agreed to permit a search for an attorney willing to prosecute the action on a contingent fee basis. After no attorney was found willing to undertake the employment on that basis, I ordered the action dismissed because I concurred in Engstrand's independent evaluation that the action was not well-founded and not potentially profitable to the McCune estate.

2(e). I never ordered the conservatee to vacate her residence. I am informed and believe that she voluntarily removed herself from the Rancho Santa Fe residence because of a conflict relating to the control of her children. Eventually, the Rancho Santa Fe residence was sold. The children's estate purchased a home appropriate to them; the conservator purchased a residence, chosen by Carole McCune, for her use. I issued no orders regarding where Carole McCune should reside.

2(f). In May 1971, prior to imposition of the conservatorship, Carole McCune and Charles Beardsley, as guardian of the children's estates, filed the referenced action. She was initially represented by Gluecksman. As the trial date approached, the plaintiffs were the conservator (California First Bank) and the successor guardian for the children's estates (Security Pacific Bank), Beardsley and Gluecksman having died in the interim. A mandatory settlement conference before Judge Mario Clinco in the Santa Monica division of the Los Angeles Superior Court resulted in a proposed settlement that was presented to me for instructions. Settlement seemed advisable for several reasons: one crucial

witness and the two original attorneys had died; the attorneys for the plaintiffs believed another critical witness was unreliable; and the proposed settlement offer, to be financed by Sackin's insurance carrier, was in jeopardy due to problems with the statute of limitations. With the knowledge of all counsel, I discussed the settlement package with Judge Clinco who advised me that the plaintiffs might well lose on their claim and Sackin prevail on his cross-claim. Upon my demand, the settlement proceeds to the plaintiffs were increased by $10,000. Whereupon, I approved the settlement.

2(g). At the time I awarded the referenced attorney fees, Carole McCune's estate was, in my opinion, an undeclared bankrupt because her right to share in the wealth of Walker McCune depended on the future success of her difficult legal battles concerning the Pittsburgh trusts, the Arizona will probate and enormous tax liabilities. However, without the continued efforts of Bonn and Gluecksman whose expertise and knowledge were crucial to her ultimate success, Carole McCune's estate would have received no substantial assets and been forced to pay taxes and other liabilities of $4 to $5 million. Accordingly, current payment of those attorneys was essential to preserve and capture all possible assets of Carole McCune's estate. These same considerations supported the continued employment of Joseph Wyatt, her previously retained tax counsel. My award of those fees specifically reserved the jurisdictional question for appeal connected with payment of fees accrued prior to the conservatorship.

2(h). I awarded attorney fees, costs and expenses of administration from the conservatorship estate based on accurate

accountings and based on evidence, sometimes conflicting, of the "true worth of the assets of the estate." Certain knowledge regarding the "true worth" of many of the assets of the estate could be learned only after sale of those assets.

2(i). Attorney fees were awarded from the conservatorship estate as shown in the accountings. The fees awarded were reasonable based on the recognized standards for such awards: the competency and reputation of counsel; the time expended; the risks involved; the extent of the estate; and the complexity of the issues. The reasonableness of each award of attorney fees was subject to appeal and I believe virtually all such awards were appealed.

2(j). I am unaware of any nonlegal or administrative work which was compensated by awards as attorney fees.

2(k). The awards of attorney fees alleged are inaccurate: $190,000 was allowed to attorney Bonn and $175,000 to attorney Gluecksman. These attorneys originally sought $600,000. The awards, made on September 14, 1973, were based on petitions that had been pending for about 10 months, extensive discovery that had undertaken by Carole McCune's attorney relative to the services rendered by Bonn and Gluecksman, and the known value of the estate's assets. The accuracy of the accounting for the attorneys' work and for the value of the estate's assets was based on credible evidence submitted to me as the trier-of-fact. The order allowing additional compensation to Bonn and Gluecksman was appealable and was, in fact, appealed.

2(l). Gluecksman's requests for fees were submitted to the conservator for its examination, rejection or tentative approval.

Thereafter, formal petitions for attorney fees were regularly noticed and supported by appropriate declarations or affidavits. Where contested, the fees were awarded after evidence was received at the hearing. All attorney fees I allowed I deemed reasonable and in the best interests of the conservatorship estate.

2(m). Beardsley was awarded fees from the estates of the McCune children for his services as guardian; Wyatt was awarded fees from the estates of both Carole McCune and the minor children for his tax and probate services rendered to both estates. As stated above, all fees were allowed upon duly noticed petition and after evidentiary hearings, if contested.

2(n). I appointed the guardian ad litem to represent the conservatee where a possible or actual conflict of interest might arise, such as with the McCune v. Vista Hill Hospital case, described in Paragraph 2(d) above. My order approving the settlement of McCune v. Sackin was appealable and was, in fact, appealed by Carole McCune. I informed the guardian ad litem that he had no standing to represent Carole McCune in the McCune v. Sackin matter and that either the conservator or Carole was the proper party to file an appeal in that matter. In no way did I prevent review of my order by the conservator or Carole McCune.

3. My orders and determinations relating to the management and supervision of the conservatorship and guardianship estates were not "patently unreasonable in the light of all the circumstances."

4. I did not appoint Gluecksman as special counsel for the conservatorship estate; rather, the conservator appointed Gluecksman as special counsel and that appointment was approved by

me without any knowledge of a conflict or hostility between Gluecksman and the conservatee or her interests and estate. At all times, I was unaware of any conflict of interest, or any unprofessional or unethical conduct by Gluecksman towards the conservatee and the conservatorship estate. At no time did I ever hear Gluecksman express or imply any hostility towards Carole McCune or her interests.

4(a). At the time of Beardsley's petition for a conservatorship of Carole McCune's person and estate, the evidence adduced at the hearings on the petition showed that Carole McCune was incompetent to handle her financial affairs, was jeopardizing a favorable settlement of the Arizona will contest, and had already squandered or been bilked of a considerable portion of her distribution from a trust in 1971. Gluecksman undertook to represent the temporary conservator so as to preserve Carole McCune's estate. There was no evidence that Gluecksman undertook that employment without promise of compensation for his services.

4(b). I was informed and believed that Gluecksman and his secretary entered the McCune residence with the temporary conservator and in the presence of deputy sheriffs of San Diego County in search of assets of the McCune estate. I was not aware or otherwise informed that the entry was forcible. Carole McCune was not committed to the hospital at Gluecksman's instance, but rather upon the petition of Beardsley, guardian of the McCune children's estates, upon order of Judge Bonsall Noon, the regularly assigned Probate Judge.

4(c). Beardsley petitioned Judge Bonsall Noon for appointment of Jean Moltier as temporary guardian of the conserva-

tee's minor children. Ms. Moltier was not Gluecksman's mother-in-law. I did not sanction Ms. Moltier's appointment and I later vacated that appointment and instituted juvenile court dependency proceedings.

4(d). I did not appoint Gluecksman as special counsel to the permanent conservator. Neither I nor the permanent conservator deemed that Gluecksman's outstanding claims for legal fees against the conservatee created a conflict of interest.

4(e). I did not and do not purport to know Gluecksman's motivations, although I discerned that he had strong opinions about the prudent and proper management of the conservatee's affairs. I further knew that the conservatee did not agree with his legal advice, but I considered the conservatee incompetent to manage her own affairs and in need of a conservator. Such a conservator needed competent legal counsel, conversant with the complexities of her legal difficulties. I approved of the conservator's decision to retain Gluecksman as special counsel.

5. I acknowledge my long-standing friendship with attorney Joseph Wyatt, which dated from about 1952. I had similar friendships with all of the attorneys appearing in the early months of the cases, including the following: attorney Harry Hargreaves, who was general counsel for the conservator and a former law partner of mine; William Schall and Paul Kennerson, attorneys for Carole McCune; Charles Beardsley, since the early 1960's; Crandall Condra, attorney for Patricia Hamill; and James Hervey, attorney for John Raikos and Thomas Redmond. Further, I was a friend of Joseph Gluecksman from about 1968; I continued to see Gluecksman socially from that time until shortly before his death and

thereafter I visited his family. None of these friendships afforded grounds for my disqualification. All of the attorneys who initially appeared in these cases knew of my friendships with the foregoing attorneys.

6. I deny each and every allegation in this paragraph.

7. The referenced affidavit was entirely true and found to be so by the Honorable Raymond Thompson, who heard Carole McCune's motion to disqualify me. My acknowledged friendships do not and did not constitute grounds for disqualification under Code of Civil Procedure §170.

8. At no time during the pendency of any of the McCune matters before me did I receive any ex parte communications from any attorney, including Gluecksman, regarding the merits of any matter pending before me for decision.

9. The assets of the estate of Carole McCune were managed and controlled by the temporary conservator and later the permanent conservator, as officers of the Court. Similarly, the guardians (Beardsley and Security Pacific Bank) managed and controlled the assets and estates of the McCune minor children. The management and decisions of those respective fiduciaries were subject to my supervision when I was sitting as the designated Probate Court with jurisdiction over the matters. I disqualified myself from further handling of the conservatorship when the conservatee petitioned for termination of the conservatorship. I have continued to supervise the guardianship of the two McCune children who are still minors.

10. In connection with all of the McCune matters, I have carried out my judicial responsibilities and exercised my discretion reasonably, competently and prudently.

IV

Conclusion

I do not purport to have handled the McCune matters perfectly and without legal error. I evaluated the circumstances and rendered my decisions, based on the evidence presented to me, my legal knowledge and my powers of reasoning. All of my decisions in these cases were, at an appropriate stage, reviewable by our appellate courts. I believe I handled these complex and difficult matters with compassion, intelligence and creativity.

The issue of the reasonableness or correctness of my judicial decision in the McCune matters is not before this Commission. Those were matters for appellate review. This Commission must determine whether any of my actions or decisions displayed an inability to perform my judicial duties or tended to prejudice the administration of justice.

I respectfully contend that all of the charges against me are without merit.

DATED: November 17, 1980

Respectfully submitted,

HUGO FISHER

Reviewed By

JAMES EDGAR HERVEY, INC.

By: James Edgar Hervey
James Edgar Hervey
Attorneys for Judge HUGO FISHER

VERIFICATION

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am the judge in Inquiry No. 46 in the above entitled action; I have read the foregoing CONFIDENTIAL ANSWER TO NOTICE OF FORMAL PROCEEDINGS and know the contents thereof; and I certify that the same is true of my own knowledge, except as to those matters which are therein stated upon my information or belief, and as to those matters I believe it to be true.

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on November 17, 1980, at San Diego, California.

HUGO FISHER

CONFIDENTIAL

STATE OF CALIFORNIA

BEFORE THE COMMISSION ON JUDICIAL PERFORMANCE

INQUIRY CONCERNING A JUDGE No. 46	ATTACHMENT TO CONFIDENTIAL ANSWER TO NOTICE OF FORMAL PROCEEDINGS

JAMES EDGAR HERVEY, INC.
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Attorneys for Respondent
Judge

CONFIDENTIAL

The Superior Court
OF THE
State of California
COURTHOUSE - SAN DIEGO 92101

CHAMBERS OF
HUGO FISHER
JUDGE OF THE SUPERIOR COURT

July 19, 1979

Commission on Judicial Performance
3180 State Building
San Francisco, California 94102

Attention: Mr. Jack E. Frankel
Executive Officer

Gentlemen:

In order to give perspective to the responses as they relate specifically to Assertions 1, 2 and to some extent 3, an understanding of the events preceding and leading up to the filing of the petition for a conservatorship should be helpful. I have set out, therefore, in some detail those events which should be considered as supplementary as far as applicable to the specific responses in the latter part of this letter.

Carole McCune was married to Walker McCune on October 11, 1957. Thereafter they adopted four minor children as to whom neither was the natural parent. The names of the children in descending order of age are: Michele, Lance, Brent and Paige. At all times germane to your question to the adopted children they were minors.

Walker McCune was an heir of a well-to-do family in Pittsburgh, Pennsylvania. At the time of his marriage to Carole, he had substantial assets of his own and was a lifetime beneficiary under three trusts created by his mother, Janet Walker McCune. These were created in 1926, 1936 and 1942. As to Walker McCune, they were spendthrift trusts. The last was testamentary, the others inter-vivos. As to the first, he had the power of appointment which he gave up as a condition of taking under the 1942 trust. The 1942 trust was the largest. Others of the McCune relatives were also beneficiaries of those trusts.

In 1966 Walker and Carole McCune apparently were living beyond their means; Walker having invested his separate funds in a number of ventures in Arizona and possibly New Mexico which proved to be unsound. He and Carole had expended a reputed 5.4 million dollars building an enormous mansion (hereafter "40th Street") in the City of Paradise Valley on the outskirts of Phoenix,

which they had been unable to complete. Today it remains uncompleted, unsold, and the largest asset of the conservatorship. They also owned a substantial home on 18 acres in Rancho Santa Fe in San Diego County.

In order to protect their estate and income, Walker and Carole engaged a Los Angeles lawyer, Louis A. Sackin, who drafted a purported spendthrift trust (hereafter "Sackin Trust") into which all of the McCunes' holdings were to be placed, both real and personal. The trustees were to be Louis A. Sackin and United California Bank. Carole failed to place certain of her assets in the trust, principally, real property and shares in two corporations, "Nollim" and "Issel-Ibsen". Carole owned all of the shares in both corporations excepting nominal shares in one owned by a Patricia Hamill. "Nollim" was the owner of the property in Glendale, Arizona, leased as the Post Office. "Issel-Ibsen" owned two unimproved lots in Scottsdale, Arizona.

In addition, she owned about 65 acres in Apache Junction. None of the above were placed in the Sackin trust, nor was her interest in a ranch and lots which the parties owned in Payson, Arizona.

Sometime in the fall of 1969, Walker and Carole McCune separated, she remained in the Rancho Santa Fe home, Walker returned to Phoenix, Arizona, and lived in the guest home adjoining the unfinished mansion. Carole filed for divorce in San Diego County on December 19, 1969; Walker filed for divorce in Maricopa County, Arizona on December 1, 1969.

As to the Sackin trust, though United California Bank declined to undertake the trust, Sackin, nonetheless, took title to all properties except those ennumerated above and purported to administer them as trustee. At about the time of the separation, Carole filed an action against Walker and Louis A. Sackin, alleging violation of the trust agreement by the trustee and her husband. That action was filed in the Santa Monica Division of the Los Angeles Superior Court, Action No. WEC-18143.

Walker McCune died April 13, 1971 in Maricopa County, Arizona. He left a purported Will which left Carole McCune $100.00. The principal beneficiaries under that Will were certain Arizona charitable hospital corporations which were to receive an aggregate 1.5 million dollars after certain other specific bequests, including the $100.00 to Carole. The children were to take the remainder under a complicated trust arrangement which probably violated the rule against perpetuities. The named executor under the Will, Valley National Bank of Arizona, declined to act and

executed an irrevocable refusal to serve as executor, guardian or trustee under that Last Will and Testament of Walker McCune. The Bank had been named in the Will as executor of the estate, the guardian of the children, and the trustee of the trusts of which they were beneficiaries.

On May 10, 1971, Carole McCune, represented by other counsel, retained the firm of Irwin, Gluecksman and Lasker out of Los Angeles, to represent her in the suit she had filed against Louis A. Sackin and Walker McCune, Los Angeles Superior Court Action WEC-18143, and also in the pending divorce action, San Diego Superior Court No. D-40761. The contract indicated that she had certain other existing legal problems on which she wished that firm to represent her. By that same contract, she employed the firm of Bonn, Vlassis and Bain, to represent certain of her interests in Arizona. Paul Bonn was a partner in the last named firm. Gluecksman had done some preliminary work on the Sackin suit in Los Angeles and Bonn had been representing her relative to divorce proceedings in Arizona and possibly other related matters. Her letter of employment stated:

> "It is understood that the following legal proceedings are presently under consideration:
>
> (a) A contest of the Last Will of Walker McCune.
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> (b) The obtaining of an accounting from, and the possible surcharge of, Louis Sackin to enforce my rights under the inter-vivos trust, the seeking of his removal from such trusteeship, and the institution, if possible, by the trust of actions to enforce the trusts' rights against the Pittsburgh trusts and against the Estate of Walker McCune.
>
> (c) The obtaining of a family allowance for me from the Estate of Walker McCune and the obtaining of payments for me from the inter-vivos trust, as well as the collection by me of allowances made for the support of my children by any source whatsoever.
>
> (d) The enforcement of my contractual rights to receive from my late husband, or his

estate, $60,000 per year for the balance of my life."

"The foregoing matters are not necessarily exclusive and other matters may arise in the future related thereto. However, it is clearly understood that any legal representation which I may request, not directly connected with the foregoing listed matters, shall be negotiated independently with you apart from the terms of this agreement; you are under no obligation to undertake such."

The letter recited the fact that she had that date nominated Charles Beardsley, Esq., to act as guardian ad litem of the four minor children in the Los Angeles action against Louis A. Sackin and further announced her intention to request Mr. Beardsley to act as general guardian of the children's estates where such protection was warranted then or in the future. Beardsley shortly thereafter qualified as guardian of the children's estates in San Diego County Action No. 97803. At about the same time, Carole engaged Joseph Wyatt, of Cooper, Wyatt, Tepper and Plant, relative to a wide variety of property, gift and income tax problems, federal, state and local, dating as far back as 1961.

Following the declination of the named executor, Valley National Bank, the principal hospital trust proposed Walker McCune's purported Last Will and Codicil in the Maricopa County action in Arizona, P-86534, Paul Bonn filed a contest to the probate of that Will in behalf of Carole McCune. Gluecksman, in behalf of Carole, and Beardsley, in behalf of his wards, sought to establish their rights under the three Pittsburgh trusts. This was handled as to the 1926 trust in Action No. 2-71-R-2740, Court of Common Pleas of Allegheny County, Pittsburgh Orphans Court Division.

The trust resisted that distribution on the grounds that Carole had been twice previously married and there was inadequate record of either a divorce from or death of either of the previous husbands.

As to the children, the trusts provided for distribution to the "issue" of Walker's marriage, the contention being that having been adopted by both parents they were not in fact the issue.

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* There was no such contract.

In due course, the distribution of Walker McCune's portion of the 1926 trust obtained. Carole received approximately $411,000, and the children collectively double that amount. Before Carole's share could be distributed to her, her lawyers had to negotiate a release of the federal liens for unpaid income and gift taxes. The distribution was of the trust assets in kind, many of them being securities with a tax basis dating back to 1926.

In the summer of 1971, Carole began discussions with John D. Raikos, an Indianapolis attorney, about the development of the 65 acres which she owned in Apache Junction under the name "Carole Donne". She sought its development as a mobile home park. Raikos brought into those discussions Thomas Redmon, a mortgage broker from Anderson, Indiana, who was to obtain financing.

In an apparent attempt to conceal this asset from her numerous creditors, private and public, she agreed to the incorporation of the enterprise. She was to receive 60% of the shares of an Indiana corporation, Apache Acres, Inc., for her land and Raikos 40% for his legal work, advice and financial management. After an informal feasibility study, however, the mobile home park concept was abandoned in favor of a condominium project.

The new concept required greater capitalization. Redmon then transferred to Apache Acres, Inc., the beneficial interest of his wife and children in an Illinois land trust with a claimed net value of about $500,000. Carole deeded the 65 acres to Raikos, who later deeded them to Apache Acres, Inc. Carole then purported to dissolve Nollim and Issel-Ibsen and transfer their real properties to Apache Acres, Inc. Shares were then issued: 150 shares to Mrs. Redmon; 160 shares to Carole; 3 shares to Patricia Hamill; 90 shares to Raikos. In addition, she deposited $25,000 to Raikos' account in his Indiana bank business account. By telegram she sought to place conditions upon its use but he declined the conditions and used the money to his own account. There the Apache Acres matter stood in mid-January 1972.

During the fall and winter months of 1971 and January 1972, Gluecksman and Bonn pursued the Arizona Will contest based primarily upon lack of testamentary capacity but also on several other grounds. Carole's position was complicated by the fact that there were several previous Wills disposing of her in like manner. Beardsley did not appear in the contest because of the in terrorem clause in each. However, he actively favored its resolution favorable to her because of the financial impact on the children's estates. As he urgently expressed it on March 23, 1972:

> "We are trying to do what we can for Mrs. McCune and incidentally for the children, and we need to do it now . . . . I will put on the record here what I think I have not said in the courtroom but have said in chambers and to each of counsel with whom I have discussed this case. My concern moneywise for the children is one step removed from the concern of those who represent Mrs. McCune directly and it is this: If I can be of assistance to Mr. Gluecksman and Mr. Schall and Mr. Kennerson in recovering for Mrs. McCune substantial sums of money, for example, $2,000,00, if that could be accomplished, then I believe Mrs. McCune would be obligated under the law to support the four minor children and their estates would not be assessed for their support. If, on the contrary, I have to sit back and see opportunities to get for her what she is rightfully entitled to go down the drain and if she ends with nothing, and if I then go ahead and succeed and get for my children the income on $6,000,000, which they have if the Will goes through -- now, I may be inaccurate, but when you are talking about that much money, a million dollars more or less is the sort of error one may make. But anyhow, the income on a very large amount of money they will have all the rest of their life. If Carole McCune has nothing because she has been unable to get back the various assets that have been taken away from her, I believe that the ward, my wards, probably have a legal obligation to support their mother out of their estate.
>
> "Now, my job is to preserve their estates, every nickel that I can, no matter how much income they have. If it can be arranged so that they don't have to support their mother, she has ample money to support herself, I have an interest in that.
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> "I have an even greater interest if we can help her get enough money so that she can support these children without going into their own income estates."

After intense negotiation, the hospital charities agreed in late 1971 to a settlement by which for an immediate consideration they would withdraw as proponents. (Taking under the Will would substantially defer receipt of funds with the total amount in doubt because of the tangled affairs of Walker and Carole.) The funding of the settlement depended in some substantial part on Carole's distributive share of the 1926 trust which she had received in November 1971.

Without advising her attorneys, but upon the advice of Raikos that she could and should sell, without tax consequences, the securities from the 1926 trust, she did so in December 1971. From this she apparently paid Raikos $25,000 and also purchased a series of cashier's checks, one of which ($57,000) has never surfaced.

During the fall of 1971, Carole was apparently kept abreast of Will contest negotiations which came to fruition, I believe, in December 1971. In December 1971 and January 1972, Carole first declined to make a decision relating to the settlement of the Will contest and eventually held herself incommunicado in relation to communications with Gluecksman, Beardsley or Paul Bonn. Because of lack of decision the charities threatened in the first months of 1972 to force trial on the Will contest and to abandon the proposed settlement.

On several occasions in December 1971 and January 1972, Beardsley went from Los Angeles to Rancho Santa Fe to see the children and to discover the state of the negotiations or settlement of the Will contest. He found the house to be in deplorable condition and Carole claiming to be without funds. I believe that it was he that discovered that she had sold her securities and apparently disbursed most of the proceeds, including the purchase of cashier's checks made out to other names. He may also have discovered the Raikos-Redmon-Apache Acres transactions.

In any event Beardsley, after consultation with Raikos, Wyatt (tax counsel), Gluecksman and others, prepared a petition for the appointment of a conservator of the person and estate of Carole McCune and a petition for a temporary conservator of the estate and person.

When the petition for temporary conservatorship was presented to the then probate judge of this Court, Honorable Bonsall Noon, he granted the same and thereafter, nunc pro tunc, amended the order to provide additional powers to the temporary conservator. Under that order Carole was hospitalized in Vista Hills Hospital Psychiatric Facility. The temporary conservator immediately took charge of the house in Rancho Santa Fe and began to inventory the contents thereof and to marshal the accounts. To that purpose, he filed an action against Patricia Hamill. Apache Acres, Inc., John D. Raikos, Thomas Redmon, Sidney Salzman, John Lomenzo (the last two are New York attorneys), Southern California First National Bank, Security Pacific Bank, and Bank of America. The banks were sued because of the purchased cashier's checks in various names from those banks and the conservator sought to freeze the funds.

There were also pending before the Federal Internal Revenue Service, County of San Diego, County of Maricopa, Franchise Tax Board of California, and the Arizona Tax Commission, proceedings for the enforcement of unpaid and overdue taxes well in excess of four million dollars. The largest of these was an undeclared and unpaid gift tax, something in the order of 3.4 million dollars, arising out of the transfer without consideration by Carole and Walker of their assets into the Sackin trust. There were in addition private creditors' suits pending in Arizona and California.

While the above recitation does not give a detail of the account of Carole's situation on February 2, 1972, I hope it gives the Commission the flavor of the enormous problems undertaken by the conservator and various lawyers involved in untangling the McCune affairs. I think it is fair to say that she was on that day an undeclared bankrupt.

Carole engaged Paul Kennerson of the San Diego Bar, at the suggestion of Salzman. Kennerson filed a motion (1) to vacate the temporary conservatorship of the person and estate, and (2) in opposition to the appointment of a permanent conservator of the person and estate. He also filed a challenge to further proceedings before the regular probate judge, Bonsall Noon. The matter was transferred to my department along with the pending case of the temporary conservator against Patricia Hamill, the banks, Raikos, Redmon, et al.

Subsequently, the still pending divorce case of Carole McCune v. Walker McCune, San Diego Superior Court No. D-40761, was assigned to my court to try title to the Rancho Santa Fe property and the Estate of Walker McCune, San Diego Superior Court No. P-101324 for the same purpose. Additionally, Juvenile Court cases Nos. 83061, 83062, 83063, and 83064, were also before me on dependency proceedings relating to the McCune children.

In addition to the case directly before my court, the prosecution, defense or settlement of numerous state and federal cases in California and elsewhere depended upon rulings, decisions or instructions arising in the proceedings before me. They also depended on the financial resources of the McCune conservatorship as well, on many occasions, on those of the guardianships of the children.

I am sending under separate cover as Exhibit "A" to this letter response what I believe to be a complete list of all cases with which counsel for the conservator had to deal. Some were pending on February 2, 1972 and others were filed during the pendency of the conservatorship.

I am also sending as Exhibit "B" a complete set of minutes from the McCune conservatorship file. It does not include the juvenile minutes and may not include some on ancillary proceedings, though a common set of minutes was customarily prepared for all files.

In due course, the Rancho Santa Fe house was sold, a substantial part of the 1926 trust proceeds were recovered, jewelry held by Salzman in New York was recovered and disposed of, a new home was purchased in LaCosta for Carole, all of her private creditors were satisfied by payment or compromise, most of the tax claims were settled and paid usually on a compromise basis, tax liens for her remaining liabilities were transferred to property in the hands of a certain "Trust for Creditors" (of which more later) arising out of the Arizona probate proceedings, her attorneys' fees arising before the conservatorship have been determined, compromised and (except for Salzman and Lomenzo) paid in full, her current taxes of every nature have been paid since February 2, 1972, and Carole has received, until the summer of 1978, $60,000 per year living expenses.

In late 1972 and early 1973, the Will contest in Arizona was settled favorably to Carole. That settlement required the payment to the charities of about 1-1/4 million dollars, the setting up of a "Trust for Creditors" covering both real and personal property and certain choses in action standing in the name of Sackin as Trustee, and the payment of the special bequests amounting to $10,000 to $15,000. I am sending under separate cover as Exhibit "C" the closing book documenting that settlement. The McCune conservatorship is the remainder beneficiary upon the payment of all creditors of the Walker McCune estate in Arizona. The remaining creditors are essentially the federal and Arizona governments for still unpaid taxes.

The principal asset of the "Trust for Creditors" is the 40th Street house, the sale of which is essential before trust can be terminated and before the conservatorship would have an adequate income producing base.

In December 1972, Carole McCune discharged Schall and Kennerson and engaged new counsel, Sands, Schaffer, Pachter, Kaplan & Gold. She was thereafter usually represented in court by Leonard Sands and Arnold Gold, sometimes together and sometimes with the assistance of a new associate, Joseph Colbert. The new firm proceeded to challenge all attorney fees requests, all accountings and most of the major rulings from that time forward. They prosecuted some twelve or more appeals to the Court of Appeals and to the Supreme Court. There ensued a six-year period of "internal"

litigation by the conservatee against the conservator, its attorneys and the guardian, consumed enormous amounts of time, effort and expense.

It was not until early summer of 1978, when Carole again changed personal counsel, that she sought termination of the conservatorship. As a result of a settlement between herself and the children the conservatorship is in the process of winding up, at which time the assets will go into a trust for the benefit of Carole for her lifetime and the remainder to the children.

While these last two paragraphs are substantial oversimplifications they are sufficient to launch us into the specific responses.

1. FAILED TO SUPERVISE THE ADMINISTRATION OF THE CONSERVATORSHIP ESTATE IN THE BEST INTEREST OF THE CONSERVATEE. SPECIFICALLY, THE ESTATE HAS DIMINISHED FROM AN EXCESS OF FOUR MILLION DOLLARS IN 1973 TO APPROXIMATELY ONE AND ONE-HALF MILLION DOLLARS AT PRESENT (NOT INCLUDING CONTINGENT LIABILITIES).

I am sending under separate cover as Exhibit "D", the First and Final Account of the temporary conservator, Emmett Morava, as well as each of the current accounts of the permanent conservator, California First Bank (which has had two name changes during the course of administration). I have also included in "D" an informal statement of the conservator of the estate's condition in December 1978.

At its inception, the conservatorship estate was virtually without income and to date remains without sufficient liquid capital to generate a self-sustaining income. The corpus has necessarily been invaded for every demand on the estate from taxes, payment of creditors, payment of the enormous litigation costs to Carole's own personal support payments. It has also had to bear the expense of the "internal" litigation of Carole's instigation.

Full hearings have occurred for each account. At each, the guardian has appeared to assure that no expenditure was approved to the detriment of the children's expectancies. Carole's personal attorneys, though without standing to do so, have been permitted to and did comment and raise questions on each such accounting.

I am satisfied that both the conservators carefully and conscientiously administered the estate competently and I know of no improper expenditure or improper investment over the years and none has been pointed out.

2. AWARDED UNREASONABLE ATTORNEY FEES IN EXCESS OF $1,600,000 (NOT INCLUDING COSTS).

I am sending under separate cover Exhibit "E" which includes a statement of all attorneys' fees allowed, paid and those allowed but not yet paid. The exhibit also includes all petitions for attorneys' fees and, I believe, the supporting material filed with the petitions.

All petitions were subjected to full hearings with testimony. Though not properly before the Court, Carole's counsel were permitted to participate in all such hearings to make her views fully known.

I was then satisfied that the allowances were justified in light of the complexity of the endeavors, the talents and time expended and the results obtained. Most of the orders allowing attorneys' fees were subjected to appeals by Carole, save one. That one exception is discussed in conjunction with the latter discussion of the final settlement. Those appeals have since been abandoned as a consequence of the settlement mentioned on page 19. I can only add that a substantial part of the fees incurred in later years was occasioned by Carole's "internal" litigation.

3. APPOINTED JOSEPH GLUECKSMAN AS SPECIAL COUNSEL FOR THE CONSERVATOR KNOWING OF HIS CONFLICT WITH AND HOSTILITY TOWARD THE CONSERVATEE AND HER ESTATE.

When the guardian of the children's estate, Charles Beardsley, of Beardsley, Hufstedler & Kemble, petitioned for the appointment of a temporary conservator of the person and estate and for a permanent conservator of her person and estate, Judge Noon, of the Probate Department, appointed Emmett B. P. Morava as temporary conservator. Mr. Morava then employed Gluecksman as his attorney and he continued to act as such from February 2, 1972 until Mr. Morava's eventual discharge as temporary conservator. As Mr. Morava's attorney, Mr. Gluecksman filed a lawsuit, McCune v. Hamill, et al, San Diego Superior Court No. 331154.

Upon the challenge filed against Judge Noon, the further conservatorship proceedings were transferred to my court in Superior Court Action No. 99967, as was the pending lawsuit McCune v. Hamill and as were the estate guardianships of the McCune children, No. 97803, and in March 1972, the temporary conservator petitioned to have instructions relating to Mr. Gluecksman's

continued representation in the various lawsuits pending in other courts. He likewise petitioned for instructions to have Mr. Bonn continue to represent him in the pending lawsuits in Arizona and asked instructions that Mr. Wyatt continue to perform his services relating to all of the pending tax matters.

On April 5, 1972, there was pending before me a number of petitions for instructions as well as petitions by the temporary conservator for the payment of outstanding bills for attorneys' fees and costs and work done by Gluecksman, Joseph Wyatt and Sheldon Cohen of Washington, D.C., who had also been involved in tax aspects of pending litigation. The petitions related to work done before the establishment of the conservatorship, but reported that those services were continued after the establishment of the conservatorship.

On that day I was advised by Mrs. McCune's then attorneys, William Schall and Paul Kennerson, that reserving jurisdictional question as to whether or not the probate court could approve attorneys' fees which had accrued prior to the conservatorship there was to be no objection to the establishment of a corporate permanent conservator. There was extensive discussion in chambers by all counsel, including Mrs. McCune's personal counsel, shortly before 3:00 p.m. and until after 4:00 p.m. On resuming the bench, I recited the tenor of the discussions in chambers. I then stated my intention of appointing the Southern California First National Bank as permanent conservator upon Mr. Morava's completing certain transactions. I have included, as an enclosure, a transcript of the proceedings of April 5, 1972. The first 25 or 26 pages includes testimony which gives reasonably complete statements of the status of Mrs. McCune's affairs as of that date. On pages 27 through 40, it deals with attorneys' fees and the jurisdictional question above-referred to; pages 40 through 48 deal with attorneys' fees and further enumeration of Mrs. McCune's then state of affairs; beginning on line 14 of page 49 is my summarization of the discussion in chambers and the order intending to provide for orderly transfer of the conservatorship functions from Mr. Morava to the bank.

Beginning at the end of page 53, I expressed my desire to have the permanent conservator review the pending requests for payment of attorneys' fees and on page 55 I ordered the appointment of Southern California First National Bank as the permanent conservator and authorized them to continue the employment undertaken by the temporary conservator of Mr. Bonn and Mr. Gluecksman for the purpose of pursuing pending litigation on behalf of Mrs. McCune's interests and permitted the permanent conservator to retain those two lawyers and their law firms on those matters already undertaken on behalf of the temporary conservator.

The bank in fact determined to retain those two lawyers as well as Mr. Wyatt. I did approve of those employments and never saw reason to disapprove of their continued work in behalf of the conservator. On April 5, 1972, Mr. Schall did advise me Carole McCune did not approve of Mr. Gluecksman. In due course, she disapproved of all lawyers who were involved in the case, save and except apparently her last personal lawyer.

The ultimate decision, of course, was that of the conservator to retain these attorneys. Regardless of Carole's personal predelictions, I think the conservator's judgment without fault given the state of affairs when it undertook the administration. It could well have been faulted upon failure to continue those employments. Certainly it would have been an abuse of discretion of my part to have overridden its choice could I have done so.

4. MET WITH ATTORNEY GLUECKSMAN ON VARIOUS OCCASIONS AT LUBACHS RESTAURANT IN SAN DIEGO FOLLOWING COURT HEARINGS WITH KNOWLEDGE THAT THE CONSERVATEE, WITH COUNSEL, HAD OBJECTED TO ATTORNEY GLUECKSMAN'S REPRESENTATION AND HAD OBJECTED TO THE AWARD OF ATTORNEY FEES TO GLUECKSMAN AND OTHER ATTORNEYS IN THE CASE.

Lubachs is one of the distinguished restaurants in San Diego. It is situated some ten or twelve blocks from the courthouse halfway on the direct route to the airport. It is one of the gathering places for drinks of many lawyers and a number of State and Federal Judges in the afternoon following work. It is also a favorite dining place of judges and lawyers. It is true that I was there with J. D. Gluecksman on a number of occasions and though there may be an exception, my recollection is that on all such occasions one or more attorneys and other attorneys in the McCune proceeding were also present. Since there were often many out-of-town counsel at the various McCune hearings in my court and sessions went into the late afternoon and on occasion into the evening, I made it a fairly constant practice to give those who needed transportation rides to the airport. Quite often, those who were being taken to the airport who would otherwise have had to wait at the airport stopped with me at Lubachs on the way and waited with me for plane time. I do not recall on any occasion discussing the merits of the McCune cases then before me.

It is a fact that I was a friend of Joe Gluecksman as far back as the middle or latter part of 1968. I continued to see Mr. Gluecksman socially from that time until shortly before the date of his death and his family thereafter.

Gluecksman, however, was but one of several personal friends who have appeared in these several proceedings. I have been a close friend of Joseph Wyatt since late 1952 to this date and have seen him socially periodically over all of those years. I have been a personal friend of Harry Hargreaves and Alec Cory, both of whom represent the conservator bank. One or the other have appeared regularly in this case. I have known both since the late '40s or early '50s and was a partner in their firm from 1959 or 1960 until early 1963. The fact of that partnership was fully disclosed at the very earliest time they appeared, not on behalf of the conservator but on behalf of the bank which had been sued by the temporary conservator. I have also met socially with Woodrow Irwin on several occasions in Los Angeles prior to his assignment to this case although I was not then aware of his partnership with Joe Gluecksman and never made that connection until after he made some appearances in this case.

5. ORDERED THE CONSERVATEE ON DECEMBER 4, 1972, NOT TO DISCUSS THE CONSERVATORSHIP AND SPECIFICALLY ATTORNEY FEES, EITHER DIRECTLY OR INDIRECTLY, WITH ANYONE INCLUDING HER OWN FAMILY.

As of December 1, 1972, the conservator, for the purpose of taking control of certain Arizona real property, requested an order that Mrs. McCune grant properties in Arizona held in her name to Nollim Enterprises, Inc., of which she was the sole shareholder, her shares of stock being part of the conservatorship estate. That device was used so that a California bank might deal with them through the corporation since it may not hold title to foreign real property directly. The conservator requested an order as to that, which I granted.

The conservator at the same time was negotiating with the Union Bank of Pittsburgh, in which members of Walker's family had a substantial interest. A McCune was the principal officer of that bank, which bank was the trustee of three trusts established by Walker's mother, Janet Walker McCune, in 1926 (inter-vivos); 1935 (inter-vivos); and 1942 (testamentary). Walker's interest in the first trust had been distributed to Carole and to the children in November 1972. As of December 1, 1972, the conservator was negotiating with the trustee seeking to establish Carole's rights in the 1935 and 1942 trusts.

Walker and Carole had become estranged from the Pennsylvania McCunes and much difficulty was being had in negotiations.

Harry Hargreaves, general counsel for the conservator, at page 2298 of the trial transcript made the following request:

> "The one other is of general nature and, I think, we are at the threshold now of hopefully concluding this matter in way early 1973 which will bring for the benefit of Carole McCune a good amount of money. We have in mind the distribution of the Pittsburgh trusts, and we are fearful that something might be done to upset our calendar; and therefore we would ask the court to instruct and direct Carole McCune and her counsel and any partner connected with them or acting for them not in any way to make any communication concerning any of the properties or expectancies of Carole McCune; and particularly not in any way to communicate with the Pittsburgh authorities who have control over these trusts. We believe that this is essential to permit the bank to continue in the early administration of these estates and we do not want anything done now which would jeopardize the advances we have made at this time."

I understand this request was made in light of a number of intrusions made by Carole McCune or her counsel in delicate negotiations as to other matters. Addressing other pending questions, I made the following order to Mrs. McCune who was then present:

> "I instruct you, Mrs. McCune, not to communicate directly or indirectly with the trustee of the Pittsburgh Trust at the Union Bank of Pittsburgh or any of its officers or agents including also the attorneys for such bank and from communicating directly or indirectly by any of these means or by any other means with the Orphans Court of Allegheny County relating to any matters pending in that court or this court, except that you have upon proper motion through your attorney made proper application to make such communication to this court for a modification of those orders in that regard."

Mr. Gluecksman then asked for an expansion of that order:

> "May that also apply to the Internal Revenue Service, at Mr. Wyatt's request, and the Arizona taxing authorities?"

I then addressed myself to Mrs. McCune in the following language:

> "Your tax matters, Mrs. McCune, are in the hands of the conservator and they are required to deal in your behalf with the taxing authorities, both in this state and Arizona, and with the Federal Government.
>
> That order just made about communication about any matters pending or which may be on the horizon, so to speak -- you are to make no communication directly or indirectly with any of those taxing authorities without the prior order of this court."

There was some considerable further clarification of the order and then after inquiry of Mrs. McCune if she would be present the following morning, December 4, 1972, I stated:

> "If I am inclined to modify the order after reflection I will do it at that time."

And then after further clarification, the Court adjourned at 5:24 p.m.

The Court continued hearings on December 4, dealing principally with the contentions of the Attorney General in Arizona, who appeared specially through his deputy Ian McPherson, as it related to their assertion of an interest in the McCune property in Rancho Santa Fe in San Diego County. Those proceedings were held contemporaneously with the estate proceedings and occurred in the divorce proceedings of McCune v. McCune, D-40761. After concluding those matters, we then addressed the pending petitions for fees filed by J. D. Gluecksman and Paul V. Bonn. Mr. Sands, on behalf of the conservatee, sought a continuance of those matters. There was a great deal of discussion about attorney's fees which went on into the early evening hours of that day, and as to the pending petitions for attorneys' fees, Mr. Hargreaves, representing the conservator, stated at page 2461 of the trial transcript:

> "I am inclined to agree with Mr. Sands that while we have been some far off place in connection with the petition for fees, I do not see any prejudice to anyone to have that matter go to December 15th; and I might also point out to your Honor that I am an avid football fan and we have Monday night football that starts at 6 o'clock."

The petitions for attorneys' fees were then continued after taking of some brief testimony.

Then, at page 2463, the following colloquy occurred:

"MR. SANDS: There is one, your Honor, I believe your Honor stated at the close of the Friday session that you would reflect upon your order respecting Mrs. McCune's correspondence on nonbusiness related matters to her family.

"THE COURT: Yes. I have concluded that's too broad, but I am quite adamant, Mrs. McCune, that you are not to directly or indirectly mention these proceedings or the proceedings back there or the proceedings pending or already terminated in Arizona. Anything which is related to those proceedings you are not to discuss in any way, shape, or form with any family member, but you may communicate with them on other matters.

"MR. GLUECKSMAN: Did the Court mean Pittsburgh?

"THE COURT: I was referring -- I went over the Pittsburgh matter with you. You understood that?

"MRS. McCUNE: Yes, but I would like to ask you: Should the question be put up to me from Pittsburgh --

"THE COURT: Refer them to the Conservator. Any matters which they address a question to you, you refer that to the person who is handling it, the Bank which is handling your affairs.

"MRS. McCUNE: May I state that I am under orders to do that, your Honor?

"THE COURT: It is a matter of law that they have to handle those matters. I don't want you communicating about your orders or anything else. You merely refer them on any of those questions to the Conservator who is handling those affairs.

"MRS. McCUNE: Thank you, your Honor.

"MR. GLUECKSMAN: The Court ruled on the demand for jury trial, your Honor, in connection with the Brown, Vlassis & Bain petitions. Would the same ruling and order apply to the Irwin, Gluecksman & Lasker petition?

"THE COURT: It will.

"MR. GLUECKSMAN: Thank you, your Honor.

"THE COURT: Now, let's take a short recess and see what are the proceedings in the back room. Maybe we will have something to decide on the record."

We then took a short recess and continued hearings t 7:10 p.m. and eventually adjourned at 7:37 p.m.

The matters actually covered by the expressed words of my order should be clear from the context in which the order was made. It would appear that my clerk misconstrued the order in light of the extensive discussion of attorney's fees that preceded the modification of my December 1, 1972 order on December 4, 1972.

I am enclosing portions of the trial transcript of those two days for your guidance.

In December of 1972 Carole discharged Schall and Kennerson as her attorneys and substituted in the firm of Sands, Schaffer, Pachter, Kaplan & Gold. Beginning immediately and upon a number of subsequent occasions motions were made by Leonard Sands to disqualify me as the sitting judge. All were disallowed, most on the grounds of lack of timeliness. Most were oral motions but the last was in writing formal and accompanied by extensive declarations. That motion was eventually tried before the Honorable Raymond Thompson a retired Judge of Orange County on assignment by then Chief Justice Wright.

A full hearing was had before him on April 24, 1974. Several specific matters such as my acquaintanceship with Gluecksman, former association with the conservator's general counsel, Procopio, Cory, Hargreaves & Savitch, as well as my handling of the case in general, was, I understand (I was represented by County Counsel but did not personally appear), given a full hearing before Judge Thompson. I can only conclude that many of the matters contained in the assertions, had they merit, were or would have been, fully aired before him. He disallowed the disqualification in a written opinion which I enclose under separate cover as Exhibit "F" to this response.

On January 14, 1979 after extensive negotiations between the guardian of the remaining minor children's estates, the conservator, and two other children, Michelle and Lance (who had attained majority), the guardian ad litem, and Carole McCune all being represented by separate counsel, a settlement of all but a few ancillary matters was arrived at between the parties. That settlement was presided over by another judge, Honorable Gilbert Harelson. The negotiations began which led to the final settlement after Carole discharged the firm of Sands, Schaffer Pachter, Kaplan & Gold and her subsequent representation by the firm of Varn, Fraser, Hartwell & McNichols.

The last named attorneys filed a motion for the termination of the conservatorship and demanded a jury trial for that hearing. I disqualified myself from the trial of that matter and it was assigned to Judge Harelson for trial.

As a result of the settlement, all appeals were dismissed, save one. These included the numerous appeals in which the question of the amount of attorneys' fees had been an issue except fees of Gluecksman & Irwin as they related to the settlement of McCune v. Sackin, WEC 18143 in the Los Angeles Superior Court. For the latter part of 1972 I approved in principal the eventual deposit of the conservatorship trust assets into a trust with Carole as the lifetime beneficiary and the children to receive the remainder upon her death. The reason behind the trust was to protect the interests of the children in the remainder of Carole's estate upon any future termination of the conservatorship. This was occasioned in major part by the fact that the children's estates did not oppose the Will in Arizona, or contest the eventual finding of intestacy there in that action, and the further fact that the children's estate made substantial advances to the conservatorship estate for the purpose of funding the Will contest settlement.

The general settlement contemplates that upon the sale of the 40th Street property, the settlement of all the claims still outstanding against the "Trust for Creditors" the remaining assets will be transferred directly into the conservatorship estate and the discharge of obligations standing against the conservatorship. The conservator will then render a final account and the remainder will be placed into a trust, the terms of which were agreed to by all parties and approved by Judge Harelson. In the settlement, Carole reserves the right to raise all issues not otherwise settled and regularly triable upon a final accounting. Any such proceedings are presently contemplated to be held before Judge Harelson.

I am sending under separate cover as Exhibit "G" the settlement papers and the order approving the same.

An incidental result of the settlement of the Will contest in Arizona is that the proceeds of the 1935 and 1942 trusts eventually became available for distribution. The total corpus of this was approximately 2.4 million as a result of the final settlement

and I understand that the corpus has been distributed directly: two-thirds to the McCune children and one-third to Carole.

I have attempted by all of my recitations to answer the general allegations relative to assertions 1 and 2. Because of the lack of specificity as to any items in question I have not attempted a detailed review of every item making up the totals in the assertions. If, however, after a review of these matters you have questions as to specific items or need further clarification on any other matters set forth in this letter, I would be most happy to address myself to them.

Yours very truly,

HUGO FISHER

HF:rml/pap