

1 -Marc B. Hankin, Esq., SBN 09645  
Law Offices of Marc B. Hankin, Inc.  
P.O. Box 3668  
2 [NOT for Mail Exc.Pers.Deliveries: 509 S. Bev. Dr.]  
Beverly Hills, CA 90212 Tel. 310-552-3005  
Fax: 310-382-2416 marc@marchankin.com  
3 -Nisan Steinberg, Esq., SBN 198227  
Law Offices of Nisan Steinberg  
4 PO Box 35388, Los Angeles, CA 90035  
Tel. (310) 866-7817 Fax: (310) 943-3172  
5 nisan@nisansteinberg.com

**CONFORMED COPY  
ORIGINAL FILED**  
Superior Court of California  
County of Los Angeles

**NOV 24 2015**

Sherri R. Carter, Executive Officer/Clerk  
By: William Adamo, Deputy

6 Attorneys for Michelle Frenkel, Petitioner

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

10  
11 In Re the Conservatorship of

CASE NO. BP168417

Assigned to the Honorable Judge Clifford L.  
Klein for all purposes.

12  
13  
14  
15 Ellen Frenkel

**DECLARATION OF MICHELLE FRENKEL  
CORRECTING ERRORS IN THE PETITION  
FOR APPOINTMENT OF TEMPORARY  
CONSERVATOR FILED NOVEMBER 20, 2015  
— CORRECTED COPY OF PETITION  
ATTACHED AS EXHIBIT TO  
SUPPLEMENT/REPLACE ORIGINAL PETITION**

16  
17  
18 DATE: November 30, 2015  
TIME: 10:30  
DEPT: 9

**By Fax**

19  
20 Proposed Conservatee.

21 I, Michelle Frenkel, declare:

- 22 1. On November 20, 2015, my attorney (Marc B. Hankin, Esq.) filed conservatorship  
23 petitions on my behalf.  
24 2. We were rushing to get the Petition for Appointment of Temporary Conservator filed, so  
25 that it could be heard before I have to return to Australia.  
26 3. It was only after the petitions (for probate conservator and for temporary conservator)  
27 had been filed that I noticed numerous errors, which my attorney had made in the  
28 attachments to both petitions.

1 4. The Judicial Council forms were filled out correctly. The errors were only in the  
2 attachments.

3 5. The purpose of this declaration is to file (as Exhibit A, attached hereto and incorporated  
4 herein by reference) the corrected version of the attachments to the Petition for Appointment of  
5 Temporary Conservator.

6 6. The attachments cannot be understood without being attached to the Judicial Council  
7 form Petition for Appointment of Temporary Conservator. Hence, I have included a copy of  
8 the conformed Judicial Council forms at the top of Exhibit A.

9 7. I request that the Court deem stricken the original attachments, since (by reason of my  
10 attorney's errors therein) the original attachments do not represent my true petition.

11 8. All of the facts alleged in Exhibit A are true.

12 The matters stated in the foregoing document and in Exhibit A are true of my own  
13 knowledge except as to those matters, which are stated on information and belief, and to those  
14 matters I believe them to be true. I declare under the penalties of perjury under the laws of the  
15 State of California, that the foregoing is true and correct, and that this declaration was executed  
16 today, November 23, 2015, at [City] Santa Clara, California.

17  
18 Signed: \_\_\_\_\_

See signature on  
subsequent page

Michelle Frenkel  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 4. The Judicial Council forms were filled out correctly. The errors were only in the  
2 attachments.


3 5. The purpose of this declaration is to file (as Exhibit A, attached hereto and incorporated  
4 herein by reference) the corrected version of the attachments to the Petition for Appointment of  
5 Temporary Conservator.

6 6. The attachments cannot be understood without being attached to the Judicial Council  
7 form Petition for Appointment of Temporary Conservator. Hence, I have included a copy of  
8 the conformed Judicial Council forms at the top of Exhibit A.

9 7. I request that the Court deem stricken the original attachments, since (by reason of my  
10 attorney's errors therein) the original attachments do not represent my true petition.

11 8. All of the facts alleged in Exhibit A are true.

12 The matters stated in the foregoing document and in Exhibit A are true of my own  
13 knowledge except as to those matters, which are stated on information and belief, and to those  
14 matters I believe them to be true. I declare under the penalties of perjury under the laws of the  
15 State of California, that the foregoing is true and correct, and that this declaration was executed  
16 today, November 23, 2015, at [City] Santa Clara, California.

17  
18 Signed:   
19 Michelle Frenkel  
20  
21  
22  
23  
24  
25  
26  
27  
28


**Exhibit A**

**Exhibit A**

**Exhibit A**

The attachments attached to this Judicial Council form are **NOT** the error laden attachments, which were attached to the Original Petition filed on Nov. 20, 2015.

Instead, the attachments (attached to this Judicial Council form) are corrected attachments intended to **replace** the original error laden attachments.

FAX: (310) 943-3172, nisan@nisansteinberg.com ATTORNEY FOR (Name): Michelle Frenkel		County of Los Angeles <b>NOV 20 2015</b> Sherri R. Carter, Executive Officer/Clerk By: William Adamo, Deputy	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Los Angeles STREET ADDRESS: 111 North Hill Street MAILING ADDRESS: 111 North Hill Street CITY AND ZIP CODE: Los Angeles 90212 BRANCH NAME: Central			
TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel CONSERVATEE		CASE NUMBER: <b>BP168417</b>	
PETITION FOR APPOINTMENT OF TEMPORARY CONSERVATOR <input type="checkbox"/> Person <input type="checkbox"/> Estate <input checked="" type="checkbox"/> Person and Estate		HEARING DATE: 11/30/15 DEPT.: 9 TIME: 10:30 AM	

1. Petitioner (name each):

Michelle Frenkel

- a. (Name): See Attachment 1, incorporated herein by reference  
(Address and telephone number):

be appointed temporary conservator of the PERSON of the proposed conservatee and Letters issue upon qualification.

- b. (Name): See Attachment 1, incorporated herein by reference  
(Address and telephone number):

be appointed temporary conservator of the ESTATE of the proposed conservatee and Letters issue upon qualification.

- c. (1) ☐ bond not be required because petition is for a temporary conservatorship of the person only.  
(2) ☐ bond not be required for the reasons stated in attachment 1c.  
(3) ☒ \$ 10,000.00 bond be fixed. It will be furnished by an admitted surety insurer or as otherwise provided by law.  
(Specify reasons in attachment 1c if the amount is different from maximum required by Probate Code section 2320 and Cal. Rules of Court, rule 7.207(c).)  
(4) ☐ \$ in deposits in a blocked account be allowed. Receipts will be filed.  
(Specify institution and location):

- d. ☐ a request for an exception to notice of the hearing on this petition for good cause is filed with this petition.  
e. ☐ the powers specified in Attachment 1e be granted in addition to the powers provided by law.  
f. ☒ other orders be granted (specify in attachment 1f).

2. The proposed conservatee is (name): Ellen Frenkel

Current address:

179 Comanche, Topanga, CA 90290 (home of dtr, Miriam Fehring)

Current telephone no.:

Miriam's tel: (818) 884-6686

3. The proposed conservatee requires a temporary conservator to ☒ provide for temporary care, maintenance, and support  
☒ protect property from loss or injury because (facts are ☒ specified in attachment 3 ☐ as follows):

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel <div style="text-align: right;">CONSERVATEE</div>	CASE NUMBER:
--	--------------

**4. Temporary conservatorship is required**

- a. ☒ pending the hearing on the petition for appointment of a general conservator.  
 b. ☐ pending the appeal under Probate Code section 1301.  
 c. ☐ during the suspension of powers of the conservator.

**5. ☒ Character and estimated value of the property of the estate** (complete if a temporary conservatorship of the estate or the person and estate is requested):

- a. Personal property: \$ No idea.  
 b. Annual gross income from all sources, including real and personal property, wages, pensions, and public benefits: \$ 0  
 c. Additional amount for cost of recovery on the bond, calculated as required under Cal. Rules of Court, rule 7.207(c): \$ 0  
 d. **Total:** \$ 0

**6. ☒ Petitioner requests authority to change the proposed conservatee's residence during the temporary conservatorship**

- a. ☒ Petitioner proposes to change the residence of the proposed conservatee to (address):  
 Ellen Frenkel's home: 47 Deakin Street, East Bentleigh Vic 3165 Australia

The proposed conservatee will suffer irreparable harm if his or her residence is not changed as requested and no means less restrictive of the proposed conservatee's liberty will suffice to prevent the harm because (reasons are

☐ specified in attachment 6a ☒ as follows):

- b. ☐ The proposed conservatee must be removed from the State of California to permit the performance of the following nonpsychiatric medical treatment essential to the proposed conservatee's physical survival. The proposed conservatee consents to this medical treatment. (Facts and place of treatment are ☐ specified in attachment 6b ☐ as follows):

**7. ☐ Petitioner is a professional fiduciary**

- a. Petitioner holds license no. (specify): from the Professional Fiduciaries Bureau of the Department of Consumer Affairs issued or last renewed on (specify later date of initial issuance or renewal):  
 b. Petitioner was requested to file this petition by (name):  
 c. The circumstances leading to petitioner's engagement to file this petition are described in attachment 7c.  
 d. Petitioner had: (1) ☐ No relationship to the proposed conservatee, his or her family, or his or her friends before engagement to file this petition.  
 (2) ☐ A relationship to the proposed conservatee, his or her family, or his or her friends before engagement to file this petition. That relationship is described in ☐ attachment 7d. ☐ the Petition for Appointment of Probate Conservator (form GC-310) filed with this petition or an attachment to that petition (specify attachment to general petition):

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel  CONSERVATEE	CASE NUMBER:
--	--------------

**8. Petitioner's contact with persons named in *Petition for Appointment of Probate Conservator***

- a. ☐ Petitioner is the proposed conservatee. (If this item is selected, go to item 9.)
- b. ☒ Petitioner is not the proposed conservatee. All persons other than the proposed conservatee named in the *Petition for Appointment of Probate Conservator* filed with this petition:
- (1) ☒ Have been found and contacted. All will be given notice of the hearing on this petition.
- (2) ☐ Have not been found or have not been contacted. Efforts to find the persons who have not been found and the reasons why any person cannot be contacted are described in one or more declarations under penalty of perjury attached to this petition as attachment 8b. (Attachment 8b is not a request for a good cause exception to notice. See Prob. Code, § 2250(e) and rule 7.1062 of the Cal. Rules of Court.)
- c. ☒ Petitioner is not the proposed conservatee. Facts showing the preferences of the proposed conservatee concerning the appointment of any temporary conservator, and the appointment of the temporary conservator proposed in this petition, or why it was not feasible to ascertain those preferences, are specified in one or more declarations attached to this petition as attachment 8c.

**9. Petitioner is informed and believes that the proposed conservatee**

- a. ☐ will attend the hearing.
- b. ☒ is able but unwilling to attend the hearing, does not wish to contest the establishment of a conservatorship, does not object to the proposed conservator, and does not prefer that another person act as conservator.
- c. ☐ is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as attachment 9c.
- d. ☐ is not the petitioner, is out of state, and will not attend the hearing.
10. ☒ Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).
11. All attachments to this form are incorporated by this reference as though placed here in this form. There are \_\_\_\_\_ pages attached to this form.

Date: November 18, 2015

\* (Signature of all petitioners also required (Prob. Code, § 1020).)

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

Date: November 18, 2015

Michelle Frenkel

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

(SIGNATURE OF ATTORNEY\*)

(SIGNATURE OF PETITIONER)

(SIGNATURE OF PETITIONER)

GC-111

TEMPORARY CONSERVATORSHIP OF (Name): Ellen Frenkel	CASE NUMBER:
CONSERVATEE	

8. Petitioner's contact with persons named in *Petition for Appointment of Probate Conservator*

- a. ☐ Petitioner is the proposed conservatee. (If this item is selected, go to item 9.)
- b. ☒ Petitioner is not the proposed conservatee. All persons other than the proposed conservatee named in the *Petition for Appointment of Probate Conservator* filed with this petition:
- (1) ☒ Have been found and contacted. All will be given notice of the hearing on this petition.
- (2) ☐ Have not been found or have not been contacted. Efforts to find the persons who have not been found and the reasons why any person cannot be contacted are described in one or more declarations under penalty of perjury attached to this petition as attachment 8b. (Attachment 8b is not a request for a good cause exception to notice. See Prob. Code, § 2250(e) and rule 7.1062 of the Cal. Rules of Court.)
- c. ☒ Petitioner is not the proposed conservatee. Facts showing the preferences of the proposed conservatee concerning the appointment of any temporary conservator, and the appointment of the temporary conservator proposed in this petition, or why it was not feasible to ascertain those preferences, are specified in one or more declarations attached to this petition as attachment 8c.

## 9. Petitioner is informed and believes that the proposed conservatee

- a. ☐ will attend the hearing.
- b. ☒ is able but unwilling to attend the hearing, does not wish to contest the establishment of a conservatorship, does not object to the proposed conservator, and does not prefer that another person act as conservator.
- c. ☐ is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as attachment 9c.
- d. ☐ is not the petitioner, is out of state, and will not attend the hearing.

10. ☒ Filed with this petition is a proposed *Order Appointing Court Investigator* (form GC-330).

11. All attachments to this form are incorporated by this reference as though placed here in this form. There are \_\_\_\_\_ pages attached to this form.

Date: November 18, 2015

\* (Signature of all petitioners also required (Prob. Code, § 1020).)

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

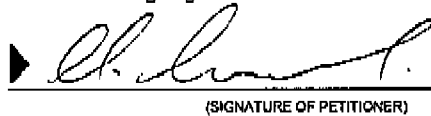
Date: November 18, 2015

Michelle Frenkel

(TYPE OR PRINT NAME)

(TYPE OR PRINT NAME)

►   
(SIGNATURE OF ATTORNEY\*)

►   
(SIGNATURE OF PETITIONER)

► \_\_\_\_\_  
(SIGNATURE OF PETITIONER)





GC-210(A-PF)/GC-310(A-PF)

GUARDIANSHIP OR CONSERVATORSHIP OF (Name):

Ellen Frenkel

CASE NUMBER:

MINOR OR CONSERVATEE

**PROFESSIONAL FIDUCIARY ATTACHMENT TO  
PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR**

*(A professional fiduciary petitioning for appointment or proposed for appointment on the petition of another must complete page 1 of this form, and the form must be attached to (1) a Petition for Appointment of Guardian of Minor (form GC-210) if the professional is proposed for appointment as guardian of a minor (see paragraph 4d of form GC-210); or (2) a Petition for Appointment of Probate Conservator (form GC-310) if the professional is proposed for appointment as conservator (see paragraph 3c(7) of form GC-310). If the professional fiduciary is licensed and is petitioning for appointment as conservator, he or she must also complete page 2 of this form (see paragraph 3d of form GC-310). The professional fiduciary must date and sign this form on page 2 in all cases.)*

*(Name of professional fiduciary):* Monique Cain

**Attachment to form (GC-210 or GC-310):** GC-310

1. ☒ I am a proposed ☐ guardian ☒ conservator in this matter. I am a professional fiduciary, as defined in Business and Professions Code section 6501(f). I am:
- a. ☒ Licensed by the Professional Fiduciaries Bureau, license no. (specify): 451, issued or last renewed on (specify later date of issuance or last renewal): 3-31-15
- b. ☐ Exempt from the license requirements of the Professional Fiduciaries Act as an attorney licensed under the State Bar Act, State Bar number (specify):
- c. ☐ Exempt from the license requirements of the Professional Fiduciaries Act while acting within the scope of practice of my profession as:
- (1) ☐ A Certified Public Accountant licensed by the California State Board of Accountancy, license no. (specify): current expiration date (specify):
- (2) ☐ An enrolled agent authorized to practice before the Internal Revenue Service under federal regulations (31 C.F.R. § 10), expiration date of current enrollment period (specify):
- (3) My actions as guardian or conservator would be within the scope of practice of my profession by reason of the following facts (explain):

☐ The explanation cannot be completed in this space. It is contained in \_\_\_\_\_ attached pages.

Page 1 of 2

GC-210(A-PF)/GC-310(A-PF)

GUARDIANSHIP OR CONSERVATORSHIP OF (Name): Ellen Frenkel	CASE NUMBER:
MINOR OR CONSERVATEE	

**PROFESSIONAL FIDUCIARY ATTACHMENT TO  
PETITION FOR APPOINTMENT OF GUARDIAN OR CONSERVATOR**

**Attachment to form GC-310**

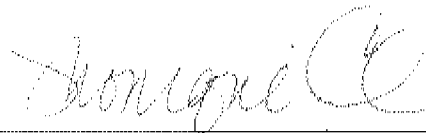
2. ☐ I am a petitioner for the appointment of a conservator in this matter. (Select a. or b.):
- a. ☐ I was engaged to petition for this appointment by (name): Marc B. Hankin, Esq., atty for Michelle Frenkel
- b. ☐ The circumstances and manner of my engagement to file the petition for appointment of a conservator are (specify):
- c. Before my engagement in this matter, I had ☒ no prior relationship ☐ the prior relationship described below with the proposed conservatee, his or her family, or his or her friends (describe):

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

Date: November 18, 2015

Monica Cain

(NAME OF PROFESSIONAL FIDUCIARY)



(SIGNATURE OF PROFESSIONAL FIDUCIARY)

**Attachment 1: Proposed Conservator**

Petitioner, Michelle Frenkel, requests that Michelle Frenkel (the proposed conservatee's granddaughter, who resides in Australia) be appointed as the temporary and probate conservator of the proposed conservatee's person and estate.

In the alternative, if the Court declines to appoint Michelle Frenkel as the temporary and probate conservator of the proposed conservatee's person and estate, then petitioner requests that Monique Cain be appointed as temporary conservator and as probate conservator of the proposed conservatee's person and estate.

Michelle Frenkel's address and telephone number are as follows: Michelle Lisa Frenkel, 75 Waranga Drive Kialla Vic 3631 Australia. 602-918-6232

Monique Cain's address and telephone number are as follows: Monique Cain, Cain Fiduciary Services, 4429 E. Village Rd., #209 Long Beach, CA 90808 310-500-7937

**Attachment 11 – Persons Entitled To Notice (Service List)**

**Proposed Conservatee:**

Ellen Frenkel, 47 Deakin Street, East Bentleigh Vic 3165 Australia  
Currently located at in Miriam's home: 179 Comanche, Topanga, CA 90290

**Children:**

David Immanuel Frenkel, 155 Grapevine Road Wenham MA 01984  
Miriam Erica Claire Frenkel-Fehring, Aka Miriam Claire Aka Miriam Stuart/Stewart Aka  
Miriam Frenkel, 179 Comanche, Topanga, CA 90290

**Grandchildren:**

Michelle Lisa Frenkel, 75 Waranga Drive Kialla Vic 3631 Australia  
Benjamin Adam Frenkel, 550 Moreland Way #4316, Santa Clara, CA 95054  
Ruth Ann Frenkel, 8 Vernon Street Apt 4, Waltham MA 02453  
Lucas Henry Julius Fehring, 179 Comanche, Topanga, CA 90290

**Enduring (Durable) Power of Attorney Agents:**

David Frenkel (see above)  
Peter Felder, 10 Fairview Avenue, Wheeler's Hill, Victoria 3150, Australia  
//  
//

**Attachment 1f**  
**Additional Orders**  
**(Petition for the Appointment of a Temporary Conservator)**  
**And**  
**Attachment 1L to Petition to Appoint Probate Conservator**

Petitioner requests the following orders:

1. **An order pursuant to Probate Code § 2616 et seq.** directing the clerk of the court to issue a **citation directing Miriam Fehring**, (“Miriam”) to appear in this court on November 30, 2015 and to give any legal reason why Miriam should not be ordered to appear on a **subsequent date** (convenient to the court and counsel):
  - a. **To answer questions under oath** (in an attorney conference room at the courthouse where her testimony shall be transcribed by a CSR) pertaining to Miriam’s and other persons’ disposition of The Proposed Conservatee’s (Ellen Frenkel’s) assets since January 1, 2011,
  - b. **To answer interrogatories** which Petitioner shall propose, pursuant to Probate Code § 2617, in a supplement to this petition, and
  - c. **To produce** at that hearing (subject to such orders that the Court may make under Probate Code § 2586 to safeguard the right of Ellen Frenkel, the Proposed Conservatee (hereinafter “Ellen”) to confidentiality):
    - i. **Any and all “writings” (as defined in California Evidence Code §250) or records in Miriam’s possession or control reflecting or mentioning Ellen’s assets** or any portion thereof, including but not limited to Ellen’s own records, and/or any **estate plan documents** including but not limited to any durable powers of attorney, advance health care directives, living trusts, testamentary trusts, wills and/or codicils, deeds, checks, and emails and video recordings (e.g., video recordings of Miriam training Ellen to say to mental health experts in Australia and to Australian health care providers that she (Ellen) wanted to move to the USA to live with Miriam), and
    - ii. **Any and all of Ellen’s medical records** (including neurological

and/or psychological evaluations) subject to the possession or control of Miriam.

2. **An order pursuant to Probate Code § 2616** authorizing Petitioner to **videocam the oral examination** of Miriam and all attorneys and/or any other persons attending the oral examination to reduce the likelihood of any disputes about disruptive behavior at the examination by any party or the party's attorney;
3. **An order appointing an independent forensic medical expert ("IME") to examine Ellen and Ellen's medical records**, and to acquire such collateral source information (e.g., oral statements or written statements from health care providers, health care examiners, fiduciaries, caregivers, friends, relatives, etc.) as the IME may deem appropriate, consistent with generally accepted medical protocols for the assessment of a geriatric patient who has dementia, and to render a report to the court:
  - a. About Ellen's care, competence and susceptibility to the exercise of undue influence during the five (5) years preceding the filing of this petition, and
  - b. Reporting on Ellen's competence during the past year to execute any agreement(s), deed(s) and/or estate planning documents including but not limited to a will and/or trust), and including but not limited to Ellen's "decision" to move to the United States and apply for permanent residency (or citizenship?) in the USA, and
  - c. Making treatment/care recommendations, which may include a recommendation about where Ellen should reside.
4. **An order (i) directing Miriam to allow Ellen to meet with Ellen's son, David Frenkel and granddaughter Michelle Frenkel, outside of Miriam's home and outside of the presence of Miriam and/or Miriam's son or husband, for a three (3) hour visit as soon, as possible so that Michelle may return home to Australia , and (ii) to appoint Monique Cain (or another professional conservator) as a "monitor" of the visit, to ensure that David and Michelle do not harm Ellen (which is what Miriam might claim they would do if unsupervised), and/or to assist Ellen in addressing any hygiene**

needs during the three (3) hour visit (since Miriam has claimed that Ellen is incontinent, and that both Michelle and David are not appropriately “trained” to assist Ellen in addressing incontinence issues).

5. **An order authorizing Petitioner and/or whoever is appointed temporary conservator, to request that Ellen’s Australian attorney produce all of Ellen’s financial documents** to the Probate Volunteer Panel (“PVP attorney”) attorney, to the temporary conservator, and to the Court’s confidential conservatorship file, for in camera review with counsel, subject to an order pursuant to Probate Code § 2586, to not reveal anything to anyone, except as the Court may direct. This would include durable powers of attorney, advance health care directives, living documents, testamentary instruments (i.e., Wills and codicils), regardless whether superseded or revoked or not, and would include any notes, drafts, correspondence, and would include any document acquired directly or indirectly from Ellen. The term document would have the same meaning as the term “writing” as employed in Evidence Code §250.

6. **An order, inter alia, pursuant to Probate Code §§ 2580 et seq. authorizing the Temporary Conservator to execute a new Will having the same terms as the terms of Ellen’s Will as last amended before the lack of capacity and any exercise of undue influence by Miriam or anyone else.** In other words, the Temporary Conservator and/or Probate Conservator would execute a Will having the same terms as last Will of Ellen when she had the capacity to execute a Will and did so free of undue influence;

7. **An order at a hearing after November 30, 2015, inter alia pursuant to Probate Code § 1873, ordering that Ellen lacks the capacity to sign a testamentary instrument, and/or to exercise any power of appointment,** so that no person will have any incentive hereafter to importune upon Ellen for financial gain.

8. **A Temporary Restraining Order (“TRO”)** prohibiting Miriam Frenkel and/or any

person acting in concert with Miriam, from alienating or hypothecating any item of real or personal property (tangible or otherwise) in which Ellen has any interest, and any property which is the fruit (in whole or in part) of property in which Ellen had an interest within the six (6) years preceding the filing of this petition;

9. **An order suspending all (durable or non-durable) powers of attorney** appointing Miriam, which Miriam may have procured after Australia's Victorian VCAT tribunal issued an order in July 2014 REVOKING the enduring (durable) power of attorney Ellen gave Miriam;

10. **An order suspending any health care power of attorney (a.k.a. Advance Health Care Directive)** which Miriam may have procured appointing Miriam;

11. **An order instructing all interested persons (i.e., people identified in Attachment 11 to the petition for appointment of conservator, and all of Ellen's caregivers, and any neighbors who visit with Ellen, to the extent that such persons are subject to this Court's jurisdiction) to not disparage** other interested persons or any aspect of the conservatorship proceedings in Ellen's presence, directly or indirectly; and an order directing that the conservator make arrangements so that any person visiting with Ellen is given a copy of this order before visiting with Ellen, and is asked to read it;

12. **An order determining that Ellen lacked the capacity, and at all times relevant lacked the capacity to move to the United States.** [Petitioner requests that this issue be addressed after the November 30, 2015 hearing.]

When Ellen was moved to the United States on July 12, 2015, her MMSE was probably **lower** than the 17/30 that Dr. Sutcliffe recorded over a year earlier (during a May 20, 2014 examination), because Alzheimer's disease is a progressive disease. Hence, neuroscience tells us that it is highly unlikely that Ellen had the requisite mental function integrity to be competent to decide to change her place of residence from Australia to the



1 United States. Petitioner believes that, under United States law, Ellen lacked and  
2 continues to lack the legal mental capacity to change her residence from Australia to the  
3 United States — where Petitioner believes Ellen does not have the health care coverage  
4 that Ellen has in Australia, and where Ellen is cut off from her Australian family and  
5 devoted circle of friends. [Mitchell v. United States, 88 U.S. 350, 352-353](#); Whart.  
6 Conflict of Laws, 55, and authorities cited; [Sheehan v. Scott, 145 Cal. 684, 690-691](#).

7  
8 Under California law, to change one's residence, a person must be "mentally alert" and  
9 have "sufficient understanding and mental capacity to make an intelligent choice" of  
10 residence. [Estate of Phillips \(1969\) 269 Cal. App. 2d 656, 665](#). Any psychiatrist who is  
11 board-certified in geriatric psychiatry will inform the Court that, to a **medical certainty**,  
12 a person whose May 20, 2014 MMSE score was 17/30 (but almost certainly lower in  
13 July and August 2015) cannot have "sufficient understanding and mental capacity to  
14 make an **intelligent** choice" of residence.

15  
16 Ellen has been adjudicated by an Australian court to be incompetent to make any  
17 financial commitments. Therefore, she lacks the legal capacity to make any of the  
18 financial commitments that are required by U.S. immigration applications. Mrs.  
19 Fehring's authority to act as Ellen's agent under a power of attorney has been revoked  
20 by an Australian court order. Hence, Mrs. Fehring does not have the authority to act on  
21 behalf of Ellen in executing any legal instrument, e.g., a financial commitment.

22  
23 Both Mrs. Fehring and her husband Richard Henry Fehring are currently undischarged  
24 Chapter 13 bankrupts, and are currently in financial distress. Therefore, neither of them  
25 has the financial wherewithal for a financial commitment to provide support for Ellen, as  
26 may be required for immigration purposes.

27  
28 Mrs. Fehring is keeping Ellen in her home, without sufficient (in Petitioner's opinion)

health care coverage, and is preventing Ellen from communicating freely with her family in the United States and/or with Ellen's family and friends in Australia. Mrs. Fehring insists on monitoring all family telephone contact, and has terminated Ellen's calls whenever the discussion addressed Ellen's wishes regarding where to live. For example, Mrs. Fehring abruptly cut off Ellen's July 26, 2015 telephone call with her son **when Ellen said that she wanted to return home to Melbourne, Australia.** A copy of the digital recording of the telephone call will be provided upon request.

13. **An order directing the temporary and probate conservator to make reasonable efforts to keep Ellen's family involved in Ellen's life** to the extent that the Conservator can facilitate the family's involvement, without violating any fiduciary duties;

14. **An order directing the temporary and probate conservator to honor the Conservatee's wishes** unless and to the extent that doing so, in the Conservator's opinion, would violate the Conservator's fiduciary duties, or be impractical and unduly burdensome for the conservator; and

15. **An order appointing an attorney from the court's Probate Volunteer Panel ("PVP attorney")** to represent Ellen.

16. **An order instructing the PVP attorney that the PVP attorney's duty to provide effective assistance of counsel in the probate court includes a duty similar to a criminal defense attorney's duty under Penal Code §1367 et seq.** (to act in Ellen's best interests, and not as a "zealous advocate" or "blind advocate") such that:

- a. **IF** the PVP attorney comes into possession of knowledge that would lead a reasonable attorney to firmly believe that it is more likely than not that:
  - i. Ellen is in serious and substantial danger; and
  - ii. Ellen lacks the ability:

- 1                   1. Under the circumstances (which may include stressors such as undue
- 2                   influence, which can impair mental functioning in a situation specific
- 3                   context)
- 4                   2. To understand and appreciate the probable consequences of decisions
- 5                   relevant to (i) Ellen's estate planning documents and/or gifts, and
- 6                   (ii) relating to the establishment of the conservatorship, and the risks,
- 7                   benefits and reasonable alternatives pertaining thereto; and
- 8                   3. To plan, organize and carry out reasonable actions in Ellen's own
- 9                   interest under the circumstances; . . .

10                   **THEN...**

- 11               b. The PVP attorney should document in his or her records the observations/facts
- 12               which support the PVP attorney's beliefs about:
- 13               i. The incapacity of Ellen, and
- 14               ii. The decisions or beliefs which the PVP attorney suspects are the product of
- 15               undue influence<sup>1</sup>, fraud, menace or duress; and
- 16               c. The PVP attorney should inform the court that the PVP attorney has substantial
- 17               questions about the lawyer's client's capacity to instruct the PVP attorney and/or
- 18               to enter into any settlement agreement concerning a conservatorship; and
- 19               d. The PVP attorney should request that the Court appoint an independent expert to
- 20               assess the client's capacity and report thereon to the Court.

21

22               Under Drope v. Missouri (1975) 420 U.S. 162, 171, and Dusky v. United States (1960)

23               362 U.S. 402, and Subdivision (c) of ABA Criminal Justice Section Standard 7-4.2,

24               "Responsibility for raising the issue of incompetence to stand trial":

---

25

26               <sup>1</sup> Undue influence may reasonably be viewed as a decision-specific incapacity (to understand and appreciate...), wherein

27               external stressors impair the influenced person's (1) ability to understand and appreciate relevant information, and

28               (2) executive functioning (i.e., the ability to plan, organize and carry out actions in one's own rational self-interest).

(c) Defense counsel should move for evaluation of the defendant's competence to stand trial whenever the defense counsel has a good faith doubt as to the defendant's competence. If the client objects to such a motion being made, counsel may move for evaluation over the client's objection. In any event, counsel should make known to the court and to the prosecutor those facts known to counsel which raise the good faith doubt of competence.

The purpose of that duty is to protect the lawyer's client from the harm of a conviction. There is no justification for a PVP attorney to have a lesser duty to protect his/her client from harm (that the client cannot understand and appreciate, or protect herself against) than a criminal defense lawyer has.

Petitioner's counsel (Marc B. Hankin) maintains that the "zealous advocate" view of a lawyer's duties, which Mr. Hankin calls the "blind advocate" (instead of "zealous" advocate) viewpoint:

1. Directs a lawyer to blind himself/herself to obvious incompetence and/or undue influence (when those phenomena present themselves), and
2. Rewards zealous advocacy which the lawyer knows to a certainty will lead (if successful) to an incompetent client's foreseeable and avoidable death.

The "blind advocate" approach constrains the conservatee's lawyer to:

1. Consciously blind himself/herself to the conservatee's incompetence (even when the incompetence is objectively obvious and unmistakable to the lawyer); and
2. Consciously and willfully blind himself/herself to undue influence by predators (even when the undue influence and total domination of the conservatee is objectively obvious and unmistakable to the lawyer); and
3. Disingenuously violate the lawyer's duty of candor to the court by pretending that the

1 incompetent “client” can make reasonable judgments about choices and information  
2 which the lawyer sets before the client — even though the lawyer knows that the client  
3 cannot fulfill the duties of a client (e.g., (i) where the client is incapable of being  
4 “reasonably informed” within the meaning of CRPC 3-500, and (ii) where the client  
5 cannot understand and appreciate (as required by Probate Code § 812) — and make  
6 competent decisions about — settlement offers that CRPC 3-510 requires the lawyer to  
7 communicate to the client);

8 4. Present unjustified claims or defenses in litigation, despite the fact that the claim or  
9 defense is prohibited under CRPC 3-200(B), where the claim or defense is not warranted  
10 under existing law (*based on facts known to the lawyer*, who knows the client is  
11 incompetent), because the claim or defense can not be supported by a *good faith*  
12 argument, and

13 5. Obey instructions muttered by the “client” which the lawyer knows to a certainty:

14 A. Are instructions that the client could not understand and appreciate (i.e., the  
15 risks, benefits, and reasonable alternatives involved in the decisions, as required  
16 by Probate Code § 812);

17 B. Are instructions which create a high probability of severe harm to the client  
18 (where the lawyer knows that the client is mentally blind to the danger which  
19 obedience of the instructions would create);

20 C. Are instructions which a predator put into the mouth of the client.

21 In other words, the “blind advocate” approach would constrain a conservatee’s lawyer to  
22 act as the lawyer for the predator, contrary to the ruling in Conservatorship of Chilton  
23 (1970) 8 Cal.App.3d 34, 43. taking instructions from a predator (through the conservatee’s  
24 mouth) to the known detriment of the lawyer’s client — contrary to the mandate of Flatt v.  
25 Superior Court (1994) 9 Cal.4th 275, to act in the client’s best interests.

26 There are many cases, including for example the following cases, which say that a lawyer  
27 should not do that, effectively churning the client’s case to the lawyer’s enrichment and  
28 the client’s detriment:

Conservatorship of Chilton (1970) 8 Cal.App.3d 34, 43;  
Flatt v. Superior Court (1994) 9 Cal.4th 275,  
Sullivan v. Dunne (1926) 198 Cal. 183, 192  
Drope v. Missouri (1975) 420 U.S. 162, 171, and  
Dusky v. United States (1960) 362 U.S. 402.

The “blind advocacy” approach can cause serious financial, emotional and physical harm to the Proposed Conservatee by inter alia dragging out the proceedings unnecessarily. By dragging out the proceedings unnecessarily, the fees and costs can increase substantially.

More importantly, the toll of stress and depression that often result from protracted and expensive legal proceedings can substantially shorten the life expectancy of frail elderly people. There is abundant medical research showing that elderly people who are depressed are several times more likely to die of any particular ailment — and impoverishment is a well known major cause of depression. The stress of protracted and unnecessary litigation can be a mortal blow against the lawyer’s client.

Lastly, just as the Court lacks the authority to determine by its order the absolute value of pi, the mere fact that a Court appoints a lawyer to act as counsel for a person cannot establish an attorney client relationship, if the ostensible client lacks the capacity to have an attorney-client relationship. *See*, Sullivan v. Dunne (1926) 198 Cal. 183, 192.

**17. An order granting such other relief as the court may deem proper.**

//

//

### Attachment 3

#### (Petition for Appointment of Temporary Conservator)

Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) reported on May 26, 2014 that Ellen suffers from a dementia “probably of the Alzheimer type.” Dr. Sutcliffe also stated on May 26 that during a May 20, 2014 examination, Ellen’s Mini-Mental State Examination (“MMSE”) score was 17/30. An MMSE score of [17/30 is severe dementia](#). [← hyperlinked text in the PDF provided to the PVP and anyone who requests a digital copy]

It is common knowledge of that Alzheimer’s disease is a progressive disease. Hence, Ellen’s MMSE score **must** be **lower** today, November 20, 2015, than her MMSE score on May 20, 2014.

Miriam Fehring (“Miriam”), who had sought bankruptcy protection here in the United States, went to Australia in December 2011, ostensibly to assist Ellen whose dementia and a urinary tract infection had caused a brief hospitalization in late 2010. Miriam visited Ellen for approximately 3-4 weeks in 2010, after the emergency hospitalization. Miriam then returned to the USA, and did not return to Australia until December 2011, after Miriam had lost her job and filed for bankruptcy protection.

When Miriam returned in December 2011, Miriam hid her most recent bankruptcy from her only sibling, David Frenkel, and the family in Australia, claiming that she (Miriam) had come solely out of altruistic motives, to help Ellen.

Petitioner claims that Miriam came to Australia to take possession of Ellen and to get for herself (Miriam) as much of Ellen’s estate is possible, and to move Ellen to the United States, where Miriam could partially support herself on money from Ellen’s Australian estate, provided extensively for Miriam as a caregiver for Ellen.

Miriam also tried to get Ellen to change her will, which previously left her estate equally to her 2 children, Miriam and David Frenkel. An earlier Will of Ellen left a 3<sup>rd</sup> of her estate to petitioner Michelle Frenkel. But Ellen told Michelle when she, Ellen was changing the will to

1 leave one half to each child, that she (Ellen) was doing the change because she thought it was  
2 the right thing to do, even though she loved Michelle as a daughter --- since Ellen had helped  
3 raise Michelle after David Frenkel obtained a divorce from his first wife (Michelle's mother,  
4 Marlene Frenkel), and moved to the United States.

5 After arriving in Australia in December 2011, Miriam proceeded:

- 6 1. To ask (the Australian family and Ellen's friends) to become Ellen's sole caregiver — a  
7 request that was granted, because the family was happy that Miriam (whom they  
8 regarded as the “prodigal daughter”) had decided to help her mother, Ellen.
- 9 2. To become Ellen's sole de facto money manager (even though David Frenkel and Peter  
10 Felder continued for a period of time to have the authority to act as money managers,  
11 under Ellen's “enduring” (aka Durable) power of attorney).
- 12 3. To isolate Ellen from her son, David Frenkel, and petitioner Michelle, and the rest of  
13 Ellen's family and friends in Australia — eventually no longer allowing David Frenkel,  
14 Michelle Frenkel and various other people (not in Miriam's camp) to visit with Ellen  
15 unless Miriam was present to supervise all contact and limit conversation about anything  
16 that might possibly reveal:
  - 17 a. Miriam's neglect of Ellen's medical care, which caused a hospitalization in  
18 Australia,
  - 19 b. Financial thefts and embezzlement from Ellen exceeding AU\$120,000, and
  - 20 c. Whether Ellen was competent to decide to the USA, or really wanted to move to  
21 the USA — where Miriam will be able to siphon money from Ellen by getting  
22 money from the Australian State Trustee that was appointed in 2015 because of  
23 Miriam's embezzlements, and because Peter Felder and David Frenkel asserted to  
24 VCAT that Miriam would continue to embezzle from her mother, Ellen.
- 25 4. To train Ellen to say that she wanted to move to the United States to live with Miriam.  
26 Petitioner believes that Miriam conducted secret training sessions, before having Ellen  
27 examined by friendly mental health experts (who were hired by Miriam), who were  
28 supposed to provide an independent medical determination whether Ellen really wanted



1 to move to the United States, and whether Ellen had the capacity to make the decision to  
2 move to the United States. Petitioner believes that Miriam video recorded those training  
3 sessions, and that Miriam should be required to produce those training sessions, which  
4 show that Miriam conducted a premeditated fraud on the mental health experts whom  
5 she hired to produce the expert reports that supported Miriam's position that Ellen had  
6 the capacity to decide to move to the United States despite having an MMSE score of  
7 only 17/30, severe dementia.

- 8 5. To prevent Ellen's family from having any further access to Ellen's health care  
9 providers and or any medical records, despite Ellen's previous pattern of allowing her  
10 granddaughter, petitioner Michelle Frenkel, to get information from health care  
11 providers freely.

12  
13 David Frenkel, Ellen's son, initiated proceedings in Australia analogous to conservatorship  
14 proceedings here in the United States (hereinafter "VCAT proceedings"), except that the  
15 Australian VCAT proceedings do not provide anything similar to what we consider due process  
16 here in the United States.

17 David was lucky enough to get VCAT to REVOKE Miriam's enduring power of attorney  
18 (analogous to a durable power of attorney).

19 Ellen had appointed Miriam, David Frenkel and Ellen's nephew, Peter Felder, as joint  
20 powerholders, each with the authority to act on his or her own. Due to his legal naïveté, David  
21 Frenkel told the VCAT Tribunal he and Peter Felder did not want to continue to be power  
22 holders, under Ellen's enduring (durable) power of attorney, if Ellen were to move to the USA,  
23 due to their certainty that Miriam would continue to financially abuse Ellen. The tribunal  
24 responded by temporarily suspending David's and Peter's powers.

25 David also succeeded in protecting his mother, Ellen, by getting an investigation started  
26 which led VCAT to appoint the Victorian State Trustee, which is ostensibly supposed to act in  
27 a manner similar to a California conservator. A true and correct copy of the Victorian State  
28 Trustee's report to VCAT about Miriam's embezzlements is attached hereto as Exhibit 1.

1 VCAT issued an order (in excess of its jurisdiction under Australian law) determining that  
2 Ellen lacked testamentary capacity — but somehow did have the capacity to make an  
3 “intelligent” decision to move to the USA to live with Miriam, who embezzled large amounts  
4 of money and who had isolated Ellen from many people Ellen knew.

5 Despite Miriam’s embezzlements, the State Trustee naïvely believed that Miriam was  
6 providing good care to Ellen, despite Miriam’s isolation of Ellen from Ellen’s entire family and  
7 social network, and despite a hospitalization that was caused by Miriam’s neglect.

8 Petitioner is informed and believes that the Victorian State Trustee has been providing funds  
9 liberally to Miriam, as Ellen’s caregiver, without demanding receipts for various large amounts  
10 of cash. A true and correct copy of David Frenkel’s September 12, 2015 letter to the Victorian  
11 State Trustee, objecting to the State Trustee’s breach of the State Trustee’s fiduciary duties, is  
12 attached hereto as Exhibit 2.

13 The funds given to Miriam by the Victorian State Trustee for providing care to Ellen belong  
14 to Ellen’s California conservatorship estate, once the funds come into California,.

15 Petitioner is informed and believes and thereon alleges that the VCAT Tribunal expects that  
16 conservatorship proceedings will be initiated in the United States by the Frenkel family, and  
17 that once a California conservator of the person and estate is appointed, VCAT would transfer  
18 the control of the conservatee’s estate to the California proceeding.

19 Petitioner believes that Miriam is providing suboptimal care to Ellen.  
20 Petitioner is informed and believes that Ellen does not have appropriate or sufficient medical  
21 insurance here in the United States — whereas Ellen has full coverage at no cost in Australia.

22 Petitioner is informed and believes that Miriam procured a traveler’s insurance policy  
23 for emergency medical care for Ellen, when Miriam moved Ellen to the United States in July,  
24 2015, by perpetrating a fraud on the insurance company, and that the insurance company will  
25 stop providing any care when and if it learns of the fraud.

26 Miriam perpetrated a fraud on the VCAT proceeding, which rendered a ruling, over the  
27 objections of Michelle Frenkel, David Frenkel and others, that Ellen had the capacity to decide  
28 to move to the United States, despite having an MMSE score of [17/30, severe dementia](#). In the

1 VCAT proceeding, the tribunal deprived David of due process, as we understand due process in  
2 the United States, inter alia by depriving David of any medical discovery, and by prohibiting  
3 him from effectively contesting the hearsay declarations which Miriam submitted, some of  
4 which were submitted at the last minute, and which (Petitioner believes) did not comply with  
5 the minimum standard of care for a mental evaluation of dementia.

6 All her life, Ellen has said that she wanted to spend the rest of her life in Australia and  
7 did not want to move to the United States, nor to be dependent on Miriam whom Ellen believed  
8 to be living a profligate lifestyle, beyond Miriam's means.

9 Miriam is isolating Ellen from the rest of the family, not allowing them telephone access  
10 unless Miriam supervises each telephone call, nor to meet with Ellen, unless Miriam is  
11 physically present to interrupt the visit (just as she interrupts telephone calls) if the conversation  
12 does not please Miriam.

13  
14 Ellen is suffering from Alzheimer's disease, fatty liver, hypothyroidism, hearing loss, morbid  
15 obesity, back problems and diverticulitis.

16 Ellen's orientation is erratically/often impaired with respect to  
17 time, place, person and situation.

18 For example, Ellen is often, if not generally, unaware of where Ellen is.

19 Ellen's memory is erratically/often impaired, as demonstrated by the fact that Ellen  
20 erratically/often does not recognize people whom Ellen has known quite well.

21 Ellen erratically/often cannot recall having met someone earlier in the day, or within the last  
22 week, or even within the hour.

23 In recent telephone calls, Ellen has been confused and at times believed that she was in  
24 Australia.

25 Ellen erratically/often is very confused.

26 Ellen is unable to find, purchase or otherwise acquire or prepare food.

27 Ellen is unable to clothe herself or to care for Ellen's clothing.

28 Ellen erratically/often is incontinent and unable to care for Ellen's hygiene or other acts of daily

1 living without help. She needs someone to make sure that she is clean after bowel movements.  
2 Otherwise, Miriam has reported to me that Ellen will have feces on her clothing, etc. Other  
3 family members, whom Miriam has allowed to visit with Ellen, say that Miriam's contention is  
4 false.

5 Ellen lives with her daughter, Miriam Frenkel in Los Angeles County, and requires full time  
6 custodial care for health and safety.

7 Ellen needs a wheelchair for outings.

8  
9 Ellen cannot reason logically.

10 Ellen is incapable of understanding simple money matters now, due to the Alzheimer's disease.

11 Ellen gives no sign of being aware any longer of what money, bills or property are.

12 Ellen seems generally unaware of the nature or extent of Ellen's bounty.

13 Ellen's short term memory is very spotty and unreliable.

14 Ellen suffers from paranoid delusions concerning property.

15 Ellen tends to hallucinate or remember events that did not occur.

16 Ellen tends to forget important recent events that did occur.

17 Ellen could easily be deceived by someone and made to sign documents transferring away  
18 property.

19 Ellen is being financially abused by her daughter, Miriam Frenkel. A true and correct  
20 copy of the Victorian State Trustee's report to VCAT about Miriam's embezzlements is  
21 attached hereto as Exhibit 1.

22 //  
23  
24  
25  
26  
27  
28

The Registrar  
V.C.A.T Guardianship List  
5th Level William Cooper Justice Centre  
223 William St  
MELBOURNE VIC 3000

4709047-542-YO USSM  
YOUR REFERENCE

G71783/1

CONTACT

Melissa Youssef

TELEPHONE

9667 6879

DATE

20 February 2015

### Section 61 Report

<b>Hearing date &amp; time</b>	26 February, 2015, 10:30am
<b>Hearing Venue</b>	William Cooper Justice Centre, 223 William Street, Melbourne
<b>Name Of Client</b>	<b>Ellen Frenkel</b>
<b>Date of Birth</b>	18 October, 1926
<b>Date of STL Authority</b>	6 November, 2014
<b>Current Residential Address</b>	47 Deakin St BENTLEIGH EAST VIC 3165
<b>Contact Phone Number</b>	9579 3932
<b>Type Of Accommodation</b>	Owner Occupied
<b>Marital Status</b>	Widow
<b>Has client made a Will</b>	Yes
<b>Contact with Represented Person</b>	State Trustees met with Ellen and her daughter, Miriam Frenkel-Fehring on 19/11/2014 at Ellen's home. We have had frequent contact via telephone and email with Miriam and Ellen's son, David Frenkel since our appointment.
<b>Comment on Financial Independence</b>	Participation in the Financial Independence Program is not recommended.
<b>Financial Plan</b>	Should State Trustees be reappointed, a Financial Plan will be implemented for Ellen.
<b>Comment on statement</b>	The attached statement dated to 19/02/2015 shows a negative balance of \$859.24 (debit) in Ellen's State Trustees Cash Common Fund.

---

State Trustees have confirmed four Westpac accounts in Ellen's name.

To date we have redeemed \$3,191.61 from one account and have requested a further redemption of \$10,000.00 from another Westpac account in order to cover Ellen's expenses.

Should we be reappointed, we will redeem the balance of the funds.

Ellen is in receipt of the War Widows pension from DVA, she receives \$868.00 fortnightly. State Trustees have received \$2,604.00 to date.

Please note that our statement will not reflect the following sources of income, as these have not yet been receipted into State Trustees:

1. Foreign pension - from Austria – between \$1,300.00 and \$1,800.00 paid quarterly
2. AMP - \$11,772.98 – paid every 6 months

We have instructed AMP to send next payment (due approx 29/04/2015) into State Trustees.

The foreign pension has not been redirected yet due to this rehearing and the difficulty in reversing the request should we be revoked.

To date, State Trustees have paid the following accounts for Ellen:

1. Motor vehicle insurance and service
2. Home help and personal care
3. Council rates
4. Medical and chemist accounts
5. Solicitors account
6. Title search fees

**Comment on Budget**

The budget provided with this report is based on current income and expenditure as it is today.

**Contact/Communication with client or other interested parties**

State Trustees have had frequent contact with Miriam via telephone and email. Contact has mainly been regarding reimbursement of expenses payment to Miriam and access to funds.

It was agreed at the initial meeting with Ellen and Miriam to continue the arrangement that was in place prior to our appointment whereby Ellen would receive \$500.00 per week for Ellen's living expenses. A further \$500.00 per monthly was agreed to be paid to meet any additional personal expenses.

---

Prior to our appointment, \$500.00 weekly was transferred from one of Ellen's accounts to an account which Miriam had access to.

State Trustees liaised with Westpac and ensured this transfer continued until we began to receive income for Ellen, we then began making weekly payments directly into the account that Miriam can access.

In addition to the \$500.00 weekly transfer, State Trustees allowed Miriam to withdraw funds for the following expenses:

1. \$380.00 for Motor vehicle registration;
2. \$1,000.00 for cost of extending Miriam's airfare back to USA and purchase of shoes for Ellen;
3. \$3,000.00 for airfare for Miriam's son to visit Australia;
4. \$400.00 for television purchase;

State Trustees liaised with Qantas to receive a credit of \$894.17 that was due back to Ellen.

Miriam has requested to be reimbursed for the following expenses she has advised she incurred prior to State Trustees appointment:

1. \$5,181.00 for various personal expenses
2. \$100.00 for private carers Miriam paid cash to
3. \$269.00 for her son Lucas - unclear what this is for
4. \$180.00 for Miriam to see an orthopaedist for an injury she sustained whilst on an outing with Ellen (this request was during our appointment)

Decision to pay reimbursement(s) to Miriam has been suspended at this point in time, pending outcome of investigation into allegations of misappropriation.

Miriam has also advised approximately \$4,000.00-6,000.00 is required for property repairs.

State Trustees have approved for repairs to toilet only at this stage (approximately \$250.00) and requested plumber to forward account to us. Should we be reappointed, we will review Miriam's request for property repairs.

---

**Update on matters from  
previous VCAT review.  
Issues resolved  
& positive outcomes**

State Trustees have investigated Ellen's current finances in order to determine if she can afford to move overseas to the USA to reside in the home of her daughter Miriam.

Current Cash Common Fund balance - \$859.24 (in debit)

Current Westpac accounts balance - \$78,338.22

Current balance of debts -

CBA credit card \$4,901.81

BOM credit card \$11,553.58

ANZ credit card \$11,393.64

Reimbursement to Miriam \$5,181.00

TOTAL of Current Debts = \$33,030.03

Ellen's total cash holdings after current debts had been paid in full will be \$44,448.95.

All debts may not have been confirmed to date due to the short administration period, we would allow for a further \$5,000.00 in debts.

State Trustees engaged our panel agent to provide an estimate of what Ellen's property would sell and rent for in the current market.

It was their opinion the property would sell for (in the range of) \$850,000.00 to \$900,00.00

It was their opinion the property would rent for (in the range of) \$420.00 to \$450.00 per week.

Ellen would continue to receive the following income streams if she moved to the USA:

1. DVA War Widows pension \$853.80 per fortnight.  
(She will not be eligible to receive the Energy Supplement of \$14.20 if she moves overseas).
2. AMP annuity of \$11,772.98 every 6 months.  
(This is payable for Ellen's Lifetime)
3. Foreign pension every quarter of approximately \$1,300.00-  
\$1,800.00.
4. \*\*Gross rental income of \$420.00 weekly.
5. Total fortnightly income would be \$2,836.00.



**Current matters of  
interest/concern**

---

**\*\*please note rental income quoted is gross only, expenses such as rental agent commission, insurance, rates & property maintenance expenses have not been deducted from this figure.**

Miriam has provided a Budget of projected expenses totalling \$69,308.00 yearly / \$2,665.69 fortnightly based on the circumstance of Ellen renting out her property here in Australia and moving to the USA to live with her daughter Miriam.

As noted earlier, Ellen's cash holding after current known debts are paid would be approximately \$44,448.98.

These savings are all the client would have to cover any future costs such as emergency care needs for Ellen, or property related expenses.

As the Tribunal is aware, at the time of State Trustees' appointment numerous allegations have been raised regarding Miriam's management of her mother's funds.

It appeared that these allegations dated back to when Miriam relocated to Australia in December 2011.

All of the allegations raised against Miriam have come from her brother David who has provided comprehensive details (itemised lists including dates and amounts) which we understand the Tribunal also has copies of. The volume of material provided is significant.

We preface the following observations by stating that as the Administration Order made 06 November 2014 was to be reassessed by no later than 28 February 2015, State Trustees' investigations, while thorough, have not advanced beyond an investigative stage to the point of taking any action on what has been uncovered to date.

While the investigation and work undertaken by David was helpful, State Trustees took steps to substantiate the allegations. We requested bank statements from the various financial institutions Ellen held account at between December 2011 (when Miriam commenced living in Australia) and the date of State Trustees' appointment in 28 February 2015.

Bank statements were received from NAB and CBA. Westpac requested a fee of \$180 for the reproduction of bank statements, which State Trustees opted to not pay considering the NAB & CBA statements provided sufficient evidence to substantiate some of David's allegations against Miriam.

---

The bank statements clearly demonstrate that the accounts have been used for expenses that do not belong to Ellen. For the purpose of this report, we do not propose to outline these expenses, but do confirm these charges (from what we have uncovered to date) go into many tens-of-thousands of dollars.

State Trustees has spoken with Miriam on various occasions about these expenses. Miriam does not deny having accessed her mother's funds, while operating under Power of Attorney, for her own benefit (and for the benefit of her immediate family). Miriam freely acknowledged using her mother's funds for her own benefit and justified this by stating it was always her mother's wish to financially support Miriam (and Miriam's extended family) and that there was a clear and well documented history of this financial support that pre-dates her mother's loss of capacity. We refer to Jane Kempler's written submission to the Tribunal for the hearing on 6 & 7 November 2014 which includes a schedule of payments titled "SUPPORTIVE FUNDS TO MIRIAM & THEN ALSO TO LUCAS PRE POA – FROM 1978 TO 26/10/2012".

It was pointed out by State Trustees that by Miriam gifting herself funds while operating as an Attorney under Power would be legally construed as a breach of her fiduciary obligations at. Miriam explained she was unaware of this and was advised otherwise. Furthermore, and despite being requested to cease accessing her mother's funds, Miriam appears to have continued to apply her mother's funds for her own benefit since State Trustees' appointment on 06 November 2014. As Miriam is the carer for her mother and to some degree is responsible for the daily day-to-day expenses of the household, State Trustees is unable to limit or observe Miriam's use of the funds deposited by State Trustees into the Westpac account which is used to pay for general household and day to day expenses for Ellen (by Miriam).

The following expenses were identified on Ellen's Westpac bank account. We wrote to Miriam and requested clarification on the expenses. Various receipts have been provided but State Trustees are not satisfied with the explanations provided as there is a strong suggestion some of the purchases made were for people other than Ellen:

11 November 2014:	\$110.89	EFTPOS transaction-
Leopold Salon Armadale		
02 December 2014:	\$41.96	Debit Card Purchase-
Post Office, Bentleigh East		
02 December 2014:	\$66.60	Debit Card Purchase-
Post Office, Bentleigh East		

---

09 December 2014:	\$72.46	Debit Card Purchase-
Post Office, Bentleigh East		
15 December 2014:	\$16.14	Debit Card Purchase-
Post Office, Bentleigh East		
15 December 2014:	\$28.30	Debit Card Purchase-
Post Office, Bentleigh East		
05 January 2015:	\$145.73	JB HiFi Brighton
05 January 2015:	\$79.99	ABC Shop
20 January 2015:	\$24.48	Debit Card Purchase-
Tullamarine Airport		
20 January 2015:	\$58.00	Debit Card Purchase-
National Gallery of Victoria		
20 January 2015:	\$69.80	Debit Card Purchase-
National Gallery of Victoria		
20 January 2015:	\$84.98	EFTPOS transaction-
Abu Nahain- Tullamarine Airport		
21 January 2015:	\$90.40	EFTPOS transaction-
Newslink- Tullamarine Airport		
21 January 2015:	\$14.50	EFTPOS transaction-
Airport Retail- Tullamarine Airport		

#### **SPEEDING FINES**

David brought it to State Trustees' attention that he had initiated an investigation with the Victoria Police relating to three speeding fines incurred by Miriam, in the name of her mother.

We obtained the details of the Detective who was investigating David's allegations. The following text is the Detective's written response to David's allegations. It is important to note that these allegations and investigations were raised by David to Victoria Police and State Trustees has no involvement as it is not State Trustees' practice to involve Police in such matters as this is generally outside the scope of the responsibilities as an administrator.

*"I attended the Traffic Camera Office today and viewed the images of the traffic offences. Your mother is pictured clearly as a passenger in 3 of the photos; however your sister is not clear as the driver except I'm sure she was. The problem is this:-*

*No **false** nomination forms have been submitted by your sister stating that she **wasn't** the driver. The fines are being paid with your mother's funds as being the actual driver. Although unethical it is not criminal.*

*I will attempt to have the fines and points reversed onto your sister's licence through the driver licensing area given that your mother's licence was cancelled in May 2012.*

---

*Is your mother capable of providing a statement to the effect that she wasn't the driver and your sister was ?*

*In any event I will ensure your sister is made to understand that the police are aware of her driving and the accumulated fines and demerit points being incurred by her mother".*

We wrote to the Detective to ask that he clarify the scope of their investigation. The Detective asked whether or not State Trustees intended to seek punitive damages from Miriam relating to these fines. We explained that we would not seek punitive damages and instead asked that Victoria Police keep State Trustees updated regarding their proposal to reverse the fines as if not successful, we would seek that Miriam compensates her mother for the amount of the fines.

#### **POLICE INVOLVEMENT (FRAUD)**

David also initiated a fraud allegation with Victoria Police against Miriam. This matter seems to hinge on Miriam operating under a Power of Attorney while a bankrupt in America.

It is unclear as to whether David seeks to pursue criminal charges against Miriam, or whether the fraud claim was required as part of David's attempts to have financial institutions either assign debts in Ellen's name to Miriam, or wholly forgive the debts. These debts arose from credit cards opened by Miriam in her mother's name while operating as Power of Attorney.

We have not become involved with the Police regarding this matter, however we note that David provided State Trustees with unsigned correspondence dated 14 January 2015 from ANZ which notes the following:

*"ANZ has concluded our investigation of your case of ID Theft in relation to the disputed account. This case has now been finalised with the below action:*

*ANZ has requested the removal of the ANZ enquiry dated 25/07/2013 from your VEDA Credit Report on 14/01/2015, and instructed the removal of the Credit default listing associated with this account. ANZ has also ceased all collections/Agent activity relating to this account and have confirmed the debt as fraud".*

---

#### **MIRIAM AS A BANKRUPT**

It has been reported (by David) that Miriam is subject to bankruptcy proceedings in the United States of America and documents have been provided (again, by David) which purport to confirm this. State Trustees has not taken steps to confirm with the relevant authorities as there is the question of judicial, and time, limitations.

For the purpose of this report, and considering Miriam's own free admission made to State Trustees, we consider Miriam to be a personal bankrupt in the United States of America.

The question then becomes whether or not Miriam's bankruptcy in the United States of America extends to define Miriam as a bankrupt pursuant to Australian law.

We have been provided with copy of correspondence from Michael Sharp Legal to Miriam Fehring dated 16 May 2014. Michael Sharp Legal were engaged by "...David Frenkel and Peter Felder as attorney for Mrs Ellen Frenkel.". The correspondence states:

*"We advise you that the Instrument Act 1958 (Vic) provides at section 1250 that:*

*"[i]f an attorney under an enduring power of attorney becomes insolvent, the power of attorney is revoked to the extent that it confers power on the attorney"*

*The meaning of the word "insolvent" contained in section 1250, set out above, is defined in section 114 of the same act as meaning "insolvent under administration".*

*Furthermore "insolvent under administration" is defined in the Interpretation of Legislation Act 1984 (Vic) as including a person who is an undischarged bankrupt within the meaning of the Bankruptcy Act 1966 of the Commonwealth (or the corresponding provisions of the law of another jurisdiction".*

Whilst we have not engaged solicitors on behalf of Ellen at this point, we consider Michael Sharp Law's interpretation of the relevant legislation to be accurate and, as such, Miriam's Powers pursuant to the Power of Attorney were void.

As to whether any compensatory or pecuniary action could, or even should, arise from Miriam's conduct is not yet clear.

Placing aside the possibility that Miriam's capacity as Attorney under Power, technically, may have been invalidated on account of her bankruptcy in America, consideration needs to be applied towards Ellen's wishes and former conduct which could be argued are

---

evidenced in the funds alleged to have been provided to Miriam and her family as far back as 1978.

Further complicating the matter of whether or not any steps out to be taken against Miriam is the fact that she is a bankrupt. Any successful action would be hollow as recovery of funds does not appear possible. Importantly, consideration also needs to be applied towards the relationship between Miriam and her mother, which could become fractured if any action was taken by State Trustees.

**Recommendation**

If the Tribunal sees fit, State Trustees would be pleased to continue the management of the affairs of Ellen Frenkel.

**Attendance**

Consultant Melissa Youssef and Senior Consultant Justin Molik will be in attendance at the hearing.



Melissa Youssef  
Personal Financial Consultant

**Ellen Frenkel (Plenary) - 4709047**  
**Asset and Liability Statement as at 19 February 2015**

DETAILS	VALUATION DATE	UNITS	LIABILITIES	ASSETS	BALANCE
<b>INTEREST BEARING HOLDING</b>					
Bank Account Holding					
WBC 033-034 **5528				26.85	
	22-DEC-14				
WBC 033-034 **0379				77,748.87	
	22-DEC-14				
WBC 733-126 **9242				512.50	
	22-DEC-14				
WBC 733-305 **8707				50.00	78,338.22
	03-FEB-15				
<b>REALTY</b>					
House and Land Holding					
47 Deakin St BENTLEIGH EAST VIC 3165				705,000.00	705,000.00
	10-DEC-14				
<b>STATE TRUSTEES - COMMON FUNDS</b>					
Cash Common Fund Total					
Common Fund			859.24		859.24Dr
	19-FEB-15				
<b>Totals</b>			<b>\$859.24</b>	<b>\$783,338.22</b>	<b>\$782,478.98</b>



**Ellen Frenkel (Plenary) - 4709047**  
**Statement of Account for the period 06 November 2014 to 19 February 2015**

DETAILS	DEBITS	CREDITS	BALANCE
<b>RECEIPTS</b>			
Interest On Common Fund No 2		.86	.86
Pension - Department Veteran's Affairs		2,604.00	2,604.00
<b>Totals</b>		<b>\$2,604.86</b>	<b>\$2,604.86</b>
<b>CAPITAL RECEIPTS</b>			
Refund of Overpaid Account		894.17	894.17
Bank Accounts (Cheque & Savings etc.) WBC 733-305 **8707 09/02/15		3,191.61	3,191.61
<b>Totals</b>		<b>\$6,690.64</b>	<b>\$6,690.64</b>
<b>EXPENSES</b>			
Insurance - Motor Vehicle	801.67		801.67
Repairs And Maintenance - Motor Vehicle	983.95		983.95
Running Costs - Motor Vehicle	18.98		18.98
State Trustees Income Commission	78.17		78.17
State Trustees Capital Commission	204.29		204.29
State Trustees Management Fee	.34		.34
Legal Fees - External	514.25		514.25
Chemist (Medical)	1,017.79		1,017.79
Medical Fees - Non Deductable	372.00		372.00
Living Expenses	2,000.00		2,000.00
Home Help/Meals On Wheels Expenses	943.20		943.20
Infringement Notices	28.14		28.14
Council Rates	522.15		522.15
Title Search Fees	36.68		36.68
GST Expense on STL Fees	28.27		28.27





State Trustees Limited  
ABN 68 064 593 148  
www.statetrustees.com.au

1 McNab Avenue  
Footscray, VIC 3011  
GPO Box 1461  
Melbourne, VIC 3001  
T 03 9667 6444  
F 03 9667 6410

Ellen Frenkel (Plenary) - 4709047  
Statement of Account for the period 06 November 2014 to 19 February 2015

DETAILS	DEBITS	CREDITS	BALANCE
EXPENSES			
Totals	\$7,549.88	\$6,690.64	\$859.24Dr

## Proposed Client Budget - As at 23 February 2015

Client Name: Ellen Frenkel

Reference No: 4709047

### INCOME

<b>Pension, Annuities, Allowances</b>	
Pension - Department Veteran's Affairs	\$868.00
<b>Investment Income</b>	
Cash Common Fund 2	-\$0.50
<b>Other Income</b>	
AMP Annuity	\$902.51

### EXPENSES

<b>Personal Expenses</b>	
Chemist (Medical)	\$150.00
Living Expenses	\$1,230.77
Home Help/meals On wheels Expenses	\$140.00
<b>Property Expenses</b>	
Council Rates	\$35.00
Property insurance	\$40.00
Water expenses	\$20.00
Electricity expenses	\$45.00
Telephone expenses	\$80.00
<b>Other Expense</b>	
Insurance - Motor Vehicle	\$30.00
Repairs And Maintenance - Motor Vehicle	\$30.00
Registration - Motor vehicle	\$15.00
<b>Fees and Commissions</b>	
VCAT Annual Administration Fee	\$4.58
State Trustees Income Commission	\$14.03
State Trustees Management Fee	\$0.05
GST Expense on STL Fees	\$4.15

**Total fortnightly income** **\$1,770.21**

**Total fortnightly expense** **\$1,838.58**

Income VS Expenses: -\$68.37

**Funds decreasing by: \$68.37 per fortnight**

**Notes:**

Ellen receives \$868.00 fortnightly from DVA.

AMP Annuity \$11,772.98 is received every 6 months - next payment due 29/4/15

Foreign pension of \$1300-1800 quarterly has not been redirected as yet.

State Trustees send Ellen \$500.00 weekly and an extra \$500.00 once per month.

\*Please note once foreign pension is redirected, budget will not be in deficit.

LAW OFFICES OF  
**MARC B. HANKIN**  
A PROFESSIONAL CORPORATION

POST OFFICE BOX 3668, BEVERLY HILLS, CALIFORNIA 90212

[NOT for Mail: 509 South Beverly Drive]

**BEVERLY HILLS, CALIFORNIA 90212**

TELEPHONE (310) 552-3005

FAX (310) 382-2416

Website: marchankin.com

Marc B. Hankin

EMAIL: marc@marchankin.com

September 12, 2015

**VIA EMAIL (David.Straughair@StateTrustees.com.au)**

David Straughair  
Personal Financial Consultant  
State Trustees Limited  
1 McNab Avenue  
Footscray VIC 3011

Re: Refusal of State Trustees, Ltd. to answer any questions about the  
Administration of the estate of Ellen Frenkel; VCAT Ref no: G71783/03

Dear Mr. Straughair:

On August 29 2015, my client, David Frenkel, sent an email to Anthony Hughes, Client Concerns Manager in the office of the State Trustees Ltd ("STL"). David's email posed a few simple questions so that David would know that his mother, Mrs. Ellen Frenkel is safe.

Mr. Hughes' reply by email on September 1 2015 did not answer a single one of the questions David posed in his August 29, 2015 email to Mr. Hughes. Instead Mr. Hughes' announced:

[W]e have assured ourselves that the travel, visa and insurance plans that are in place are appropriate.

Appropriate disclosures have been made in relation to existing conditions, and there are plans in place should these arise. \* \* \*

Your mothers (sic) safety is important to us ...

[W]e will act within our authority to assist as we can

Mr. Hughes' self-serving claim that STL is doing a bang-up job, and is devoted to protecting Mrs. Frenkel's safety is not persuasive or helpful in any respect.

In the balance of this letter, I will attempt to demonstrate that David has more than a reasonable basis for posing questions to Mr. Hughes. At the conclusion of this letter, I will restate for your convenience the questions David posed to Mr. Hughes so that you may answer them.

Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) reported on May 26, 2014 that Mrs. Frenkel suffers from a dementia "probably of the Alzheimer type." Dr. Sutcliffe also stated on

Letter to David Straughair

September 12, 2015

Page 2

May 26 that during a May 20, 2014 examination, Mrs. Frenkel's Mini-Mental State Examination ("MMSE") score was 17/30. An MMSE score of [17/30 is severe dementia](#). [← hyperlinked text] As you know, Alzheimer's disease is a progressive disease. Hence, Mrs. Frenkel's MMSE score **must** be lower today, September 2, 2015, than her MMSE score on May 20, 2014.

Deputy President Nihil's June 25, 2015 order included the following text, which indicates that Deputy President Nihil was cognizant of the progressive nature of Alzheimer's disease, and the fact that Mrs. Frenkel was destined to lose the capacity to make decisions about (i) where to live, (ii) with whom to live, and (iii) whether the quality of the care she is getting has become neglectful and abusive.

78 Ms Frenkel-Fehring gave evidence that the ticket to the USA will be a return ticket, that she intends to **ensure that the place at *Emmy Monash will remain available* to Mrs Frenkel *if she wishes to return*** or needs to return to Melbourne, and that Mrs Frenkel's care needs can be amply met in the USA. State Trustees Limited, Mrs Frenkel's administrator, considers that Mrs Frenkel's financial needs can be met. While acknowledging that there may be some potential communication difficulties, State Trustees Limited indicated willingness and ability to manage Mrs Frenkel's financial affairs from Victoria, for the time that she is living in the USA, if that is what occurs. According to her administrator, Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home. ...

79 ... The decision for the Tribunal can only be as already set out, that is - am I satisfied that now, at this time, Mrs Frenkel lacks the capacity to make a reasonable judgement about where she lives and with whom? I am not.

82 There will sometimes be circumstances in which a person who has a disability, and because of that disability is unable to make reasonable judgements about their affairs, is able to express his or her wishes in a clearly ascertainable way. These wishes may be contrary to their best interests. S4(2) of the Act requires the Tribunal to consider the person's best interests as well as their wishes. In the present case, if I were satisfied "that Mrs Frenkel lacked capacity at this time" to make the decision about where to live and with whom, I would need to consider her wishes, and her best interests, and the least restrictive means by which her interests could be supported.

Deputy President Nihil appointed State Trustees Limited ("STL") as administrator, and delegated various fiduciary duties to STL because Mrs. Frenkel had a 17/30 MMSE level of mental function integrity and Alzheimer's disease, and because STL reported to VCAT that Mrs. Miriam Fehring was self-dealing in violation of her duties as Mrs. Frenkel's attorney-in-fact under a financial Enduring Power of Attorney.

Letter to David Straughair

September 12, 2015

Page 3

Among STL's duties as administrator is the duty to ensure that the funds STL transmits to Miriam Fehring ("Miriam") are being used for Mrs. Frenkel's best interests, i.e., that STL is getting fair market value for those funds.

David's unease was exacerbated by Mr. Hughes' claim that the "the quality of services delivered [by Miriam] are lifestyle considerations" for Mrs. Frenkel" to evaluate. Mrs. Frenkel, who had an MMSE score of 17/30 due to Alzheimer's disease almost a year and a half ago<sup>1</sup>, has a very low level of overall mental function integrity, and is ipso facto incapable of assuming the responsibility of evaluating the quality of Miriam's "services", as STL should know. Mr. Hughes' assertion that STL will continue to pay Miriam for her "services" without monitoring the quality of those services indicates an abdication of STL's duty as administrator to ensure that Mrs. Frenkel's funds are being spent for her benefit, and the duty to not waste Mrs. Frenkel's funds by subsidizing neglectful or otherwise abusive care.

We believe STL has these two duties:

1. A duty to take reasonable steps **to know whether Mrs. Frenkel has lost the capacity to evaluate the quality** of the care she gets.
2. If Mrs. Frenkel has lost that capacity, STL has a duty to take reasonable steps to ensure that **STL is not subsidizing neglectful and abusive care**, instead of using Mrs. Frenkel's funds for her benefit. Consider the following hypothetical scenario. Assume, merely for the purposes of discussion, a hypothetical scenario in which Miriam is providing neglectful custodial care, depriving Mrs. Frenkel of appropriate medical care, and preventing Mrs. Frenkel from communicating her wishes freely to her non-California based family and friends. Would STL be within its rights to idly ignore Mrs. Frenkel's plight and to continue subsidizing Miriam's abuse of Mrs. Frenkel? Obviously not.

Mr. Hughes' claim that the "the quality of services delivered [by Miriam] are lifestyle considerations for Mrs. Frenkel" (a severely demented woman) to evaluate, is evidence strongly suggesting that STL is not even **attempting** to fulfill either of the foregoing two duties.

My client and I believe that STL also has another legal duty, to wit, the duty to take reasonable steps (from time to time) to ascertain whether Mrs. Frenkel "wishes to return or needs to return to Melbourne,"<sup>2</sup> as Judge Davis indicated. Deputy President Nihil determined on June 25 2015 that Mrs. Frenkel still had the capacity to make those decisions.

Mr. Hughes' September 1, 2015 email conveyed the message that STL does not have a duty to ascertain and spend Mrs. Frenkel's money to implement Mrs. Frenkel's current life-style choice.

---

<sup>1</sup> Glenn J. Sutcliffe, M.D. (a Melbourne geriatric psychiatrist) recorded a 17/30 MMSE score during a May 20, 2014 examination he performed.

<sup>2</sup> Quotation from Paragraph 78 of Deputy President Nihil's June 25, 2015 order.

C:\Apps\Dropbox\Frenkel David\Word\Frenkel David\LT2 David Straughair, State Trustee's Ofc\_2015-09-11.docx

Letter to David Straughair

September 12, 2015

Page 4

Mr. Hughes did not explain why STL may ignore and flout Mrs. Frenkel's current "wishes to return or needs to return to Melbourne." On August 13 2015, David sent an email to Mr. Hughes telling Mr. Hughes that he (David) had had a telephone conversation on July 26 2015 with his mother, Mrs. Frenkel, in which Mrs. Frenkel said she wanted to return right away to Australia. David substantiated his assertion by attaching to his email: (i) a digital recording of the conversation (in Apple Mac format), and (ii) a transcript of the July 26 conversation (in Microsoft Word format). The transcript includes the following text:

DAVID FRENKEL: But I spoke to [Mich?] this morning -- she still sounded a bit upset that she didn't get to say goodbye before you left. I -- she was really kind of in tears and having a rough time of it.

ELLEN FRENKEL: Ohh.

DAVID FRENKEL: Yeah.

ELLEN FRENKEL: Well, give her hugs and kisses from me.

DAVID FRENKEL: I will.

ELLEN FRENKEL: And tell her I love her like mad. And [stammering] and I don't know how that happened.

DAVID FRENKEL: No. No, I'm not sure how it happened either, love. But here you are. You know, do -- what are your thoughts about coming back eventually to 47 Deacon (sic) Street, to your home? What --

ELLEN FRENKEL: Oh, well, that's, that's -- that [would be?] good. That would, would be, would be very good.

DAVID FRENKEL: Yeah. Any time you want to you can, you know. I, I would fly over and happily fly you back to Melbourne, when -- when you want to. Only when you want to.

ELLEN FRENKEL: **Oh, David, can, can you come now?**

DAVID FRENKEL: (laughter) Would you like me to **come right now?**

ELLEN FRENKEL: **Yes.**

On August 24, 2015, Mr. Hughes (STL's Client Concerns Manager) sent David a short email indicating that:

1. **Mr. Hughes could not open the** "attached ... recording of a FaceTime call with Mum on July 26th" David sent on August 21, in which **Mrs. Frenkel "express[ed her] wish to return to her home** of this past 60 years" — even though David's August 21 email had explained: "You can play it most easily on an Apple iPad, as it is an Apple format."
2. Mr. Hughes **could not be bothered** either to get access to some Apple device to hear Mrs. Frenkel's wishes on July 26, nor even to tell David which audio file formats he (Mr. Hughes) could open, and ask David to send the recording again in one of those formats.
3. Mr. Hughes either:

Letter to David Straughair

September 12, 2015

Page 5

- a. Elected to **ignore the request** in David's email asking Mr. Hughes **to read** the attached Microsoft Word **transcript** of the July 26 telephone call, in which Mrs. Frenkel expressed the wish to return to Australia "right now"; or
  - b. Read the transcript, and then elected to **ignore Mrs. Frenkel's wishes**, which are reflected **unambiguously** in the transcript.
4. Mr. Hughes **rebuked David** for asking STL to pay for repatriating his mother to Australia, as per **his mother's request** on July 26 to return "right now", which is **unambiguously** reflected in the transcript.
5. Mr. Hughes then proceeded to instruct David that:
  - a. "Whether or not your mother chooses to return to Australia is correctly a life-style choice."  
[Fascinating, but useless information.]
  - b. "A legally appointed Administrator is precluded by legislation from **imposing** life-style choices upon a person."  
[David's email asked STL to implement the life-style **choice Mrs. Frenkel unambiguously expressed** on July 26, and did **not** ask STL to "impose" a life-style choice on Mrs. Frenkel.]
  - c. "All we can do is comment on whether or not your mother can afford to travel back to Australia – we cannot comment on the wisdom or otherwise of such choice."  
[David did not ask, and does not need STL to comment on:
    - i. Whether or not his mother can afford to travel back to Australia, nor
    - ii. The wisdom the choice Mrs. Frenkel unambiguously expressed on July 26, as reflected in the transcript.]

It is difficult to reconcile Mr. Hughes' refusal to consider Mrs. Frenkel's unambiguous July 26 expression of her wish to return home to Australia with Mr. Hughes' numerous pious pronouncements affirming Mrs. Frenkel's right to self-determination and her right to make "lifestyle choices", including her right to decide where she lives. Indeed Mr. Hughes' seemingly willful blindness and feigned ignorance of Mrs. Frenkel's unambiguous July 26 expression of her wish/choice to return to Australia (reflected in the telephone call transcript text quoted above) conveys the impression that Mr. Hughes intended to flout Mrs. Frenkel's wish/choice.

On August 25, 2015, shortly before 1:56:28 pm AEST, Ellen's granddaughter Michelle Frenkel spoke on the telephone with Melanie Smith, **Team Leader**, in the New Client Team of STL's office. Michelle reports the following exchange occurred during the August 25 telephone call:

Melanie Smith of STL said to Michelle "that Ellen has travel insurance and, if she becomes unwell, she could come home."

Michelle "asked how we would know whether Ellen was unwell and/or whether Ellen wanted to come home."

Melanie "replied saying that Ellen could call or email her and tell her."

Letter to David Straughair

September 12, 2015

Page 6

Michelle “reminded [Melanie Smith] that Ellen can no longer make calls or emails, due to her Alzheimer’s dementia.”

Melanie “said then that Miriam would have to tell STL that Ellen wants to come back to Australia.”

Michelle “said are you joking!?”

Melanie Smith did not reply.

Melanie Smith’s August 25 statements on behalf of STL in the foregoing Kafkaesque colloquy indicate that STL is relying upon Miriam to spontaneously provide truthful reports to STL so that STL may know:

1. Whether Ellen is ill and whether Ellen needs medical care that conceivably is not covered by any lawfully acquired insurance health care policy; and
2. Whether Ellen wants to go back to Australia.

The foregoing August 25 colloquy between Michelle and Melanie Smith seems Kafkaesque because STL’s own report of 20 February 2015 to VCAT provided (i) ample reason to have strong doubts about Miriam’s honesty and (ii) ample reason to doubt that Miriam would ever endanger her income from Ellen by reporting to STL that Ellen wants to go home.

STL’s report of 20 February 2015 to VCAT included, among other things, the following statements by STL:

It was pointed out by STL that by Miriam gifting herself funds while operating as an Attorney under [Ellen’s Enduring] Power would be legally construed as a **breach of her fiduciary obligations** at.(sic) Miriam explained she was unaware of this and was advised otherwise. Furthermore, and **despite being requested to cease accessing her mother’s funds, Miriam appears to have continued to apply her mother’s funds for her own benefit since State Trustees’ appointment on 06 November 2014.** As Miriam is the carer for her mother and to some degree is responsible for the daily day-to-day expenses of the household, **State Trustees is unable to limit or observe Miriam’s use of the funds** deposited by State Trustees into the Westpac account which is used to pay for general household and day to day expenses for Ellen (by Miriam).

The following expenses were identified on Ellen’s Westpac bank account. **We wrote to Miriam and requested clarification** on the expenses. Various receipts have been provided **but State Trustees are not satisfied with the explanations provided** as there is a strong suggestion some of the purchases made were for people other than Ellen:

[List omitted]

We think it is obvious that STL should **not** trust and rely on Miriam, in light of the fact that Miriam:



Letter to David Straughair

September 12, 2015

Page 7

- 1) Opened three credit cards in **Mrs. Frenkel's** name and ran up tens of thousands of dollars of debt spending the funds on **Miriam's** US family and not for **Mrs. Frenkel's** benefit.
- 2) Sent the credit card statement to a secret post office box to hide their presence from the **other two "attorneys-in-fact" appointed by Mrs. Frenkel under her Enduring Power of Attorney.**
- 3) **Secretly** tried to rent the house and take Mrs. Frenkel to Los Angeles early 2014 without telling any other family member. (VCAT blocked that.)
- 4) **Spent** around \$100,000 of **Mrs. Frenkel's funds**, much of it in America on **Miriam's own** US expenses, taking those funds from **Mrs. Frenkel's** bank account and credit cards:
  - a) Paying for rental property in Los Angeles
  - b) Paying for various insurance fees
  - c) Paying for mold remediation in Los Angeles
  - d) Paying for eye ware, and
  - e) Paying for many other unexplained amounts
- 5) **Hid** payments to keep the cards current by taking out bulk cash and stating that these were for cash payments of current expenses related to Melbourne living expenses. This was untrue, as the amounts were taken to the credit cards banks to pay down the balances.
- 6) **Misrepresented** her speeding fines as **Mrs. Frenkel's** vehicle expenses, until caught at it.
- 7) **Misrepresented** her own medical bills as her mothers, paid for them with **Mrs. Frenkel's** funds and then pocketed the Medicare rebates into her own account.
- 8) **Paid** for expensive supplements from **Mrs. Frenkel's** funds, represented them as **Mrs. Frenkel's** expenses, yet consumed them herself and gave them to her own family
- 9) **Attempted** (only a few months ago) **to conceal** that Mrs. Frenkel had a serious fall in her Melbourne driveway on the way to the car with Miriam, resulting in an ambulance and ER admission, with severe hematomas to Mrs. Frenkel's face and a fractured wrist. Three days after the hospitalization, Miriam admitted the incident when David called her.
- 10) **Is a U.S. Chapter 13 bankrupt**, and has been in bankruptcy proceedings since November 2011 and is not likely to give up her income from Mrs. Frenkel voluntarily, as it may lead to Miriam's bankruptcy being dismissed. Therefore all Miriam's statements regarding Mrs. Frenkel's wishes and welfare are suspect, at best. Without the money Miriam self-dealt (i.e., embezzled) from Mrs. Frenkel's funds, Miriam could not have maintained, and still could not maintain, her US home, household and

Letter to David Straughair

September 12, 2015

Page 8

family expenses, AND the Chapter 13 bankruptcy repayment requirements. Miriam needs to be Mrs. Frenkel's paid caregiver to survive financially. The current caregiver setup could reasonably be regarded as having everything to do with Miriam's welfare, and nothing to do with Mrs. Frenkel's welfare.

- 11) **Terminated** the July 26 **telephone connection abruptly** after she heard Mrs. Frenkel say to David that she (Mrs. Frenkel) wanted to return to Australia. Before terminating the call, Miriam may be heard saying "no."
- 12) Steadfastly maintains a rule that no family member or friend may talk with Mrs. Frenkel unless Miriam is present to monitor the call, according to a Wednesday, August 16 2015 6:15 pm text message to David from Miriam's son:  
"Mom says that you're welcome to speak to Oma only if she is present to make sure you keep the conversation light and civil. I can't guarantee privacy."
- 13) **Etc.**

In light of the foregoing list, in addition to the text quoted above from STL's own report to VCAT, you can readily understand why it seems Kafkaesque to us that STL now steadfastly trusts Miriam to be forthcoming with all the truthful information STL needs (i) to ensure that STL is applying Ellen's funds in the furtherance of Ellen's best interests, and (ii) to know whether Ellen wants to return to Australia --- and thereby cut off a substantial amount of funds Miriam is now getting from STL.

One additional fact supporting the reasonableness of David's concern is the fact that Deputy President Nihil's June 25, 2015 order explicitly based itself upon an assertion by STL that "Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home."<sup>3</sup>

We believe that STL's statement was and remains **inaccurate or untrue** in light of (1) the likely cost of health care for Mrs. Frenkel in the United State, (2) the paucity of coverage provided by the travel insurance Mrs. Fehring purchased, (3) the low probability that Mrs. Frenkel will be able to lawfully obtain full health care insurance coverage in the United States. We believe that STL had a duty to Mrs. Frenkel to give accurate and truthful information to VCAT, a duty which was not excused. We maintain that Mrs. Frenkel suffered harm as a result.

In the August 10, 2015 hearing, Judge Davis stated quite clearly that she expected STL to provide information to David so that David will know that STL is doing its job of protecting his mother's best interests. Judge Davis said, for example:

---

<sup>3</sup> Quotation from Paragraph 78 of Deputy President Nihil's June 25, 2015 order.

Letter to David Straughair

September 12, 2015

Page 9

Mr Frenkel, as the other son, and is no doubt keen to have information and I'm sure **State Trustees** understand that situation and **will** be able to **make him aware of situations or issues or even how it's going about its business** in a way that you, Ms Frenkel-Fehring, may not be able to be prepared to do, because you don't get on.

I appreciate that. It's all about your **mother's best interests, and making sure that State Trustees does its job.**

Transcript of August 10, 2015 hearing, page 57, lines 12-21. (Bolding added for emphasis.)

STL's responses to David's inquiries seem to suggest that STL maintains that Judge Davis did not mean what she said. STL has refused to answer reasonable questions from David, and thereby prevented David from "making sure that STL does its job." STL has refused to answer a single one of David's reasonable questions. Instead, all we get are STL's assurances that STL is doing a fine job and that STL can't do things David would like STL to do.

I have composed a short list of questions which I hope you will answer, in order (i) to keep David "aware of situations or issues" relevant to his mother's safety, (ii) to enable David to protect his "mother's best interests, and mak[e] sure that State Trustees does its job", and (iii) to avoid forcing us to file:

1. An application to VCAT seeking an order compelling STL to provide information, and
2. An application to VCAT seeking an order for STL to be removed from its position as administrator without any compensation for STL's services.

We do not know whom the Los Angeles Superior Court will appoint as the conservator of Mrs. Frenkel's person and estate. Hence, I cannot predict whether the conservator will file a separate lawsuit against STL in the Victorian civil court for the harm Mrs. Frenkel suffered due to (i) STL's act of misinforming VCAT by asserting that "Mrs Frenkel has sufficient resources for her needs to be met, even without making irrevocable decisions about her home", and (ii) STL's failure to execute its duties: (a) to take reasonable steps to know whether Mrs. Frenkel has lost the capacity to evaluate the quality of the care she gets, and if she has lost that capacity, and (b) to take reasonable steps to ensure that STL is not subsidizing neglectful and abusive care, instead of applying Mrs. Frenkel's funds for Mrs. Frenkel's benefit.

Let's stop arguing about what you can do and can't do, and what we will do, if you persist in disregarding Judge Davis' suggestion that STL keep David informed. You need not reply to my comments above, responding to Mr. Hughes' rebukes of David.

Letter to David Straughair

September 12, 2015

Page 10

I trust that the foregoing account of disquieting behavior by STL demonstrates that David has a very reasonable basis for being concerned about whether STL is properly executing it's duties to Mrs. Frenkel.

Instead of making accusations and counter-accusations, let us move forward in collaboration for Mrs. Frenkel's best interests.

The following are the questions David and I request you answer on behalf of STL:

1. What is Ellen's current immigration status, and how do you know what it is? Or do you not know what her immigration status is?
2. What health insurance coverage does Ellen have in the U.S.?
3. Does Ellen's health insurance policy in the U.S. cover her specific pre-existing conditions (e.g., Alzheimer's disease)?
4. Does Ellen's health insurance policy cover her if she intends to apply for permanent residency or citizenship in the U.S. (or has applied for for permanent residency or citizenship in the U.S.)?
5. What evidence is there which supports your answers to the foregoing four questions? Are your answers based on statements that Miriam made to you? If so, when did she make those statements, and to whom in STL did she make those statements?
6. What were the three criteria for funding the \$13,000 that STL gave Miriam, to which Miriam referred in the August 10, 2015 VCAT hearing before Judge Davis?
7. Will STLs be requiring evidence of the use these funds (e.g., proofs of purchase such as receipts) to ensure Ellen's funds were spent for Ellen's benefit, given the history of misappropriation by Miriam? If yes, in what way will you implement these requirements?
8. Will STLs be paying Miriam for her services as caregiver? If yes, at what rate does STL intend to pay Miriam (e.g., hourly or monthly payment)? And in what currency was this commitment made, given the rapid decline of the Australian dollar versus the US dollar.
9. Does STL intend to monitor the quality of the caregiving services that Miriam is rendering to Ellen? If yes, how does STL intend to accomplish that?

We hope you do not consider it inappropriate to expect your answer to those 9 questions, within the next five business days. If you think you need more time to answer the foregoing 9 questions, please let me know how much time you need.

Letter to David Straughair

September 12, 2015

Page 11

Lastly, I must repeat and emphasize that there is no need for you to respond to anything in this letter except for the foregoing 9 questions (appearing on pages 9 and 10 of this letter). We can agree to disagree about various things. But David and I must insist on your answering the foregoing 9 simple questions. The only reason why I included the foregoing recitation of some of the reasons for our dissatisfaction with STL's conduct is Mr. Hughes' unambiguous insinuation that David was not justified in politely demanding answers to the reasonable questions posed (again) above.

As Judge Davis said:

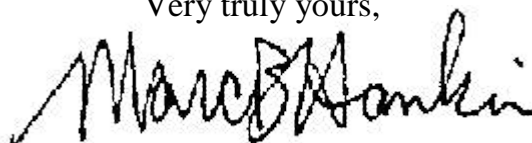
It's all about your **mother's best interests, and making sure that State Trustees does its job.**

Transcript of August 10, 2015 hearing, page 57, lines 12-21. (Bolding added for emphasis.)

Thank you in advance for your anticipated kind cooperation.

Kindest regards.

Very truly yours,

A handwritten signature in black ink that reads "Marc B. Hankin". The signature is fluid and cursive, with the first name "Marc" and last name "Hankin" clearly legible.

Marc B. Hankin  
Attorney at Law

MBH /se

Cc: Anthony Hughes, STL Client Concerns Manager  
Craig Dent, CEO of STL  
Agata Jarbin, Executive General Manager, Legal & Compliance and Company Secretary  
David Frenkel