

adjudication dated 10/19/99

***COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION***

No. 829 of 1995
Estate of CAROLA COLLINGS, An Incapacitated Person

Sur account entitled First And Final Account Of Rodney D. Williams,
Guardian

Before PAWELEC, J.

This account was called for audit: March 2 and April 13, 1998

Counsel appeared as follows:

GORDON M. WASE, ESQ., - for the Accountant

GORDON M. WASE, ESQ., Plenary Guardian - appeared p.p.

SANFORD L. PFEFFER, ESQ., - for Philadelphia Corporation
for Aging

CLIFFORD B. COHN, ESQ., Claimant - appeared p.p.

ELLEN COEN, Claimant - appeared p.p.

Carola Collings was adjudicated a totally incapacitated person by Decree of Lewis, J., dated November 13, 1996, and Rodney D. Williams, President of the Philadelphia Corporation for Aging (hereinafter "PCA"), was appointed Plenary Guardian of her person and Limited Guardian of her estate.

By Decree of this Court, dated October 20, 1997, Gordon M. Wase, Esquire, was appointed Plenary Guardian of the estate of Carola Collings, an incapacitated person, and, Rodney D. Williams was directed to file an account and turn over the assets, books and records to Mr. Wase.

On January 28, 1998, Rodney D. Williams filed his First and Final Account which is stated from November 13, 1996 to October 31, 1997.

On February 27, 1998, the firm of Cohn & Associates filed a Petition seeking \$15,693.75 in counsel fees and \$14.00 in costs which were allegedly incurred in the representation of Carola Collings and Jeffrey D. Cooper, Esquire, her attorney-in-fact, from July 30, 1996 to October 17, 1996. Said Petition contains the following averments, *inter alia*:

that Carola Collings executed a Power of Attorney in favor of Thomas Collings and Patricia Rivera in October or November of 1995;

that Ms. Collings executed a revocation of said Power on July 30, 1996;

that Ms. Collings executed a Power of Attorney in favor of Jeffrey D. Cooper, Esquire, on August 7, 1996;

that Mr. Cooper entered into a fee agreement with the firm of Cohn & Associates on August 16, 1996;

that Thomas Collings and Patricia Rivera filed a Petition for Adjudication of Incapacity, seeking the appointment of themselves as guardians of the person and estate of Carola Collings, on August 27, 1996;

that a hearing was held sur said Petition on October 17, 1996;

that the Court appointed Rodney D. Williams, President of Philadelphia Corporation for Aging, as guardian on November 13, 1996;

that, also on November 13, 1996, the Court ordered Thomas Collings and Patricia Rivera to file an account of their administration as attorneys-in-fact;

and, that the firm of Cohn & Associates provided valuable legal services to Carola Collings by successfully challenging the request of Thomas Collings and Patricia Rivera to be appointed plenary guardians of the person and estate of Ms. Collings.

At the call of the audit list on March 2, 1998, Clifford B. Cohn, Esquire, appeared in support of said Petition for counsel fees and costs.

Also at the call of the audit list on March 2, 1998, Ellen Coen appeared to state that she was the “companion” of Carola Collings, and, to make a claim.

On March 20, 1998, Rodney D. Williams, former Guardian, and, Gordon M. Wase, Esquire, successor Guardian, joined in filing an “Objection” to the Petition for counsel fees and costs. Said Objection contains the following averments,

inter alia:

that Carola Collings lacked capacity to execute a revocation of power of attorney on July 30, 1996, and, that members of the firm of Cohn & Associates knew or should have known of this lack of capacity;

that Ms. Collings lacked capacity to execute a power of attorney on August 7, 1996, and, that members of said firm knew or should have known of this lack of capacity;

that Jeffrey D. Cooper, Esquire, lacked authority to enter into a fee agreement on behalf of Ms. Collings

by reason of her aforementioned incapacity, and, that members of Cohn & Associates knew or should have known of this lack of authority;

that family members had filed a Petition for adjudication of incapacity in 1995, which Petition was dismissed by Judge Lewis in favor of a less restrictive measure, that is, in favor of issuance of a power of attorney to family members;

that family members took steps to protect Ms. Collings from herself and parties who had insinuated themselves into her life, which actions resulted in the filing of a second Petition for adjudication of incapacity on August 27, 1996;

that hearings were held on October 8, and October 20, 1996;

that Judge Lewis issued a Decree and Findings of Fact on November 13, 1996;

that the firm of Cohn & Associates never represented Carola Collings or anyone acting on her behalf because members of the firm knew or should have known that Ms. Collings lacked capacity to appoint Mr. Cooper as her attorney-in-fact;

and, that the firm of Cohn & Associates did not provide valuable legal services to Carola Collings.

The "Objection" of the Guardian and successor Guardian contains "New Matters" wherein it is averred that the claim of Cohn & Associates was not made until after all assets of Carola Collings had been "committed" to pay for her care in a nursing home and other necessary services, and, it is contended that the claim of Cohn & Associates should be denied by reason of laches.

On June 27, 1995, Patricia Rivera filed a Petition seeking the appointment of herself and her brothers, Frederick Collings and Thomas Collings, as guardians of the person and estate of her aunt, Carola Collings.

Said Petition contains the following averments, *inter alia*:

that Carola Collings was born on December 4, 1909 and resided in Apartment 2B, at 257 South 16th Street, Philadelphia;

that the presumptive adult heirs of Carola Collings were Ms. Rivera and her brothers, Frederick, Thomas, Joe and Alden Collings;

that Carola Collings suffered from moderate to severe dementia attributable to Alzheimers Disease;

that Carola Collings lived alone and failed to keep her apartment clean, resulting in an infestation of roaches which had prompted her landlord to serve her with a Notice of Eviction;

that Patricia Rivera and her brothers, Frederick and Thomas Collings, had been acting as guardians of the persons and estates of their mother and step-father for some one and one-half years; and,

that Patricia Rivera proposed to move Carola Collings to Patricia's ranch in New Mexico, where Patricia would care for Carola in the same manner in which Patricia had been caring for her own mother for some time.

At the conclusion of a hearing on October 20, 1995, Judge Lewis made the following comments on the record,

"....., at this time based on the information that's been presented, it appears that Ms. Collings has cooperated and continues to cooperate with the providing of alternatives that are assisting her in meeting her affairs of daily living. It also appears that she is a very independent person and a person who is very well aware of the people in her life who she

trusts including her niece and her nephew. And she's also indicated to this Court her willingness to, in the event that it were determined that she were unable by medical professionals to make her own decision that the people who she would want to assist her would be her niece and nephew.

That being the case, it would be this Court's suggestion that she have the opportunity to execute documents that would enable her to set forth clearly who would act for her and who it would be and who she would want to act for her rather than have this Court appoint a guardian.

From listening to her and others talking about her, how she manages her day-to-day affairs, her interest and cooperation with her niece in the management of her affairs, it appears to this Court that this Court cannot find that there is clear and convincing evidence on this record to adjudicate her an incapacitated person. But I believe Ms. Collings has indicated her willingness to cooperate and to execute necessary documents so that her wishes as to who she trusts can be carried out as well as her willingness to have the option to reside with her niece in New Mexico if that should be something that she is desirous of doing, if she would have the ability to make that decision.

At this point I would not adjudicate her an incapacitated person." NT 10-20-95 at 76-77

On October 20, 1995, Judge Lewis dismissed the Petition for adjudication of incapacity "without prejudice".

On August 19, 1996, Patricia Rivera and Thomas Collings filed a Petition seeking the appointment of themselves as guardians of the person and estate of their aunt, Carola Collings. Said Petition contains the following averments,

inter alia:

that Carola Collings had executed a Durable Power of Attorney in favor of Patricia Rivera and Thomas Collings on October 20, 1995, following the conclusion of the hearing on a prior Petition for adjudication of incapacity;

that Patricia Rivera and Thomas Collings had been acting under said Power of Attorney to manage their aunt's finances and her personal care;

that Patricia and Thomas had hired an aide named Ellen Coen through a firm called National Home Health Agency;

that Ellen Coen had been fired by National Home Health Agency because Ellen had violated the Agency's policies by taking Carola Collings to the bank to cash checks, but, that Ellen had nevertheless continued to be involved in the affairs of Ms. Collings;

that Ellen Coen had introduced Carola Collings to two attorneys, Jeffrey D. Cooper, Esquire, and Clifford Cohn, Esquire, who were previously unknown to Ms. Collings;

that Patricia and Thomas had been presented with documents, one undated and one dated August 7, 1996, whereby their Aunt had revoked the Power of Attorney which she had granted to them, and, had appointed Jeffrey D. Cooper, Esquire, as her attorney-in-fact;

that Patricia and Thomas believed that their Aunt lacked the requisite capacity to revoke their power and execute a new power or attorney;

that Patricia and Thomas had refused to honor the purported revocation of their power and appointment of Mr. Cooper, and, that Mr. Cooper had threatened them with legal action;

that the Philadelphia Corporation for Aging ("PCA"), acting under the Older Adult Protective Services Act, had been investigating suspected financial exploitation of Carola Collings;

that PCA had scheduled a psychiatric evaluation of Carola Collings which evaluation was interrupted when Clifford Cohn, Esquire, directed the psychiatrist to leave Ms. Collings' apartment;

that Mr. Cohn had refused to allow Patricia, Thomas, representatives of PCA, or their attorneys, to see Carola Collings;

that the affairs of Carola Collings could no longer be managed by an attorney-in-fact because Ms. Collings was susceptible to becoming the victim of designing persons; and,

that Ms. Collings had been ordered to vacate her apartment by September 30, 1996 because of filthy and unsanitary conditions therein.

On September 13, 1996, Jeffrey D. Cooper, Esquire, represented by Clifford B. Cohn, Esquire, of Cohn & Associates, filed an Emergency Motion For Protective Order seeking a stay of a psychiatric examination of Carola Collings. In said Motion, Mr. Cooper avers that Carola Collings revoked the power of attorney which she had given to her niece and nephew, Patricia Rivera and Thomas Collings, because Ms. Collings believed that Patricia and Thomas had improperly used her funds for their own benefit, including the building of an addition to their house in New Mexico; that Ms. Collings had appointed Mr. Cooper to act as her attorney-in-fact; and, that Patricia and Thomas had filed a petition for adjudication of incapacity in an effort to keep control of their Aunt's finances and prevent an investigation into their handling of her affairs.

After hearings on October 8, 9 and 17, 1996, Judge Lewis issued two Decrees and Findings of Fact on November 13, 1996. In one Decree, Judge

Lewis adjudicated Carola Collings a totally incapacitated person, and, appointed Rodney D. Williams, President of PCA, Plenary Guardian of Ms. Collings' person and Limited Guardian of her estate. In the other Decree, Judge Lewis ordered Patricia Rivera and Thomas Collings to file an account of their administration of their aunt's affairs under the power of attorney which had been granted to them.

Since no one filed Exceptions to the Findings of Fact which were issued by Judge Lewis on November 13, 1996, this Court will consider said Findings in determining the claim of the firm of Cohn & Associates for counsel fees and costs, and, in determining the claim of the "companion", Ellen Coen.

Relevant portions of the Findings of Fact read as follows:

" Carola Collings, born on December 4, 1909, is 87 years old and has lived in Philadelphia all her life. Ms. Collings is unmarried and has no children or siblings. She has numerous nieces and nephews who reside out of state. Thomas Collings (hereinafter "Thomas"), a nephew who resides in California and Patricia Rivera (hereinafter "Patricia"), a niece who resides in Truth or Consequences, New Mexico have expressed an interest in their aunt's well-being. Thomas and Patricia filed a petition to have Carola Collings adjudicated an incapacitated person in June 1995. However, an adjudication was not entered since it appeared that alternatives to the appointment of guardian were available.

Ms. Collings was hospitalized in June 1995 for delousing and mild dehydration. Subsequently, the Philadelphia Corporation for the Aging (hereinafter "PCA") contracted with the National Home Health Services (hereinafter "NHHS") and Meals on Wheels to provide services to Ms. Collings in her home. Ellen Coen (hereinafter "Ellen"), a home health aide, was assigned by NHHS to assist Ms. Collings 3 hours a day, 7 days per week. She was to do light

housekeeping, prepare meals, assist with personal hygiene and errands. Ms. Collings' personal hygiene is very poor, she is unable to prepare meals or to maintain her own apartment. She has been threatened with eviction in 1995 and August 1996 as a result of roach infestation and her apartment has been cited by the Department of License and Inspection as a fire hazard.

In June of 1995 Dr. Rosenstein, a Board Certified Psychiatrist evaluated Ms. Collings and rendered a diagnosis of mild dementia. Patricia requested that NHHS increase the services provided to Ms. Collings. Rather than pay the agency's rate for additional services, Patricia arranged with Ellen to pay her directly for more services, including spending the night at Ms. Collings' apartment on occasion. Ms. Collings quickly came to regard Ellen as her very best friend and has become totally dependent upon her. Ms. Collings appears to have reposed her trust in Ellen and follows her directions. In the fall of 1995, Patricia became concerned about the relationship between Ellen and Ms. Collings and requested that NHHS remove her from the home. At some time during winter, it appears that Ellen returned and again began helping Ms. Collings. Ellen states that Ms. Collings began paying her directly. The terms of her compensation and the method by which Ellen obtained funds from Ms. Collings are unspecified, irregular and highly suspicious.

Sometime in October or November 1995, it was represented that Ms. Collings executed a power of attorney naming Thomas and Patricia as her attorneys in fact. Initially, working with the Philadelphia Corporation of Aging, Thomas and Patricia attempted to put in place an array of services to provide daily care and meals for Ms. Collings and to pay her expenses. Efforts to arrange care for Ms. Collings in her home by Thomas and Patricia from across the country were ineffective because of Ms. Collings declining mental condition, inability and unwillingness to cooperate with designated service providers, and intermeddling of others including Ellen Coen and Peter Kaye, a recent acquaintance (hereinafter "Peter").

Peter and Ellen have insinuated themselves into Ms. Collings life with what appears to be the intent to exclude anyone who would assist her or closely observe their actions.

On another occasion Ellen took Ms. Collings to the bank and told the bank officer in Ms. Collings presence that Thomas and Patricia were stealing her money. The bank officer stated that Ellen stroked Ms. Collings hair and her arm and urged her to withdraw \$200.00. Ms. Collings was assisted outside by Ellen and placed into a waiting car driven by a man who had earlier come into the bank to observe Ms. Collings banking transaction. The bank officer became suspicious and followed Ellen and Ms. Collings to the door because she feared Ms. Collings was being exploited.

Thomas admits withdrawing approximately \$35,000.00 from Ms. Collings' funds to build a 600 square foot "guest house" on a ranch owned by his mother in New Mexico. He stated that this guest house is for Ms. Collings at such time as she desires to come to New Mexico. There is no indication that Ms. Collings was aware of this use of her funds or that she desires to leave Philadelphia to live on a ranch in New Mexico.

Peter and Ellen were concerned about Thomas' and Patricia's access to Ms. Collings funds. Ostensibly for the purposes of helping Ms. Collings regain control of her funds from her niece and nephew, Peter contacted his friend, Jeffrey Cooper, Esquire to assist her. On July 30, 1995, Peter arranged for and transported Ms. Collings and Ellen to a meeting with Clifford Cohn, Esquire and Jeffrey Cooper, Esquire. During this meeting, Ms. Collings executed a Revocation of Power of Attorney (Exhibit P-7). This document revoked the power of attorney appointing Patricia and Thomas as her attorneys in fact. When the revocation was executed Jeffrey Cooper was aware that a petition to declare Ms. Collings an incapacitated person had been filed in

1995 and that Ms. Collings had not been adjudicated an incapacitated person.

On or about August 1, 1996, Jeffrey Cooper and Clifford Cohn spoke to Sanford Pfeffer, Esquire, General Counsel for PCA, who advised them that the PCA had been involved in providing services to Ms. Collings and believed she was incapacitated. They were advised that PCA intended to have Ms. Collings reevaluated by a psychiatrist. On August 2, 1996, a psychiatrist was present at Ms. Collings' apartment to perform a psychiatric evaluation and Dr. Haebr was also present to perform a physical examination. Peter was called to come to the apartment by Ellen, who was present with her two children. Upon arriving, Peter called Clifford Cohn's office and immediately thereafter told the psychiatrist to leave. The psychiatric evaluation was not completed. However, on August 7, 1996 without any further effort to determine Ms. Collings' capacity, Ms. Collings was taken to Mr. Cohn's office where she executed a durable power of attorney appointing Jeffrey Cooper as her attorney in fact. It is significant to note that this was only Ms. Collings second meeting with Jeffrey Cooper or Clifford Cohn. It appears that apparently on their recommendation she gave Jeffrey Cooper authority over all of her assets.

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Ms. Collings was once a vibrant woman whose mental acuity has declined substantially. Her physical health has not been thoroughly examined for some time. She is in need of glasses, dental work and a safe, clean living environment. In addition she requires protection from those who seek to exploit her for their own personal benefit. Ms. Collings is confused, unaware of her limitations and very susceptible to influence by anyone who flatters her or shows her kindness. The ease with which Ms. Collings tends to permit strangers to come into her life, access information concerning finances and influence her decisions is obvious from her relationship with Ellen and Peter. The dangers

attendant to her vulnerability to such influence is evidenced by her revocation of the power of attorney which she gave to her niece and nephew and the subsequent designation of Jeffrey Cooper, a virtual stranger, as her power of attorney. It is significant to note that at the hearing, Ms. Collings was unable to identify Peter, Clifford Cohn, or Jeffrey Cooper.

Ellen continues to maintain a very close relationship with Ms. Collings. Throughout the hearing, Ellen was observed whispering to Ms. Collings, stroking her arm and hair and sharing her feelings of anger toward anyone who testified about her living conditions or banking transactions. Ellen demonstrates a settled intent to dominate and control Ms. Collings. It appears that Ellen's interest in helping Ms. Collings is genuine but very misguided. Ellen also appears to have some serious personal issues that prevent her from participating positively in future plans to care for Ms. Collings.

* * * * *

Dr. Ira R. Katz, a Board Certified Psychiatrist with added qualifications in Geriatrics was appointed by the Court to perform a psychiatric evaluation of Ms. Collings. He noted that Ms. Collings judgment and memory are severely impaired. She lacks the ability to manage her financial affairs and provide for her health, safety and welfare. Dr. Katz's diagnosis was that Ms. Collings suffers from 'Moderately severe dementia'. He further opined that 'her memory deficits prevent her from gathering information she needs to evaluate what is in her best interest. Her lack of judgment and insight into these deficits prevent her from adequately compensating for them.' Dr. Katz stated that Ms. Collings' impairment in insight judgment precluded her from caring for herself adequately and her current condition indicates deficits of a chronic and persistent nature which have existed at least since the previous several months.

* * * * *

The undersigned finds that Thomas Collings and Patricia Rivera may have interests which are adverse to Carola Collings. Accordingly, at this time, they will not be appointed guardians of her person or estate pending a review of the account of their administration under the Power of Attorney given to them on or about November 1995. Patricia Rivera and Thomas Collings by Decree of even date herewith will be ordered to file an account of their administration.”

On March 31, 1997, Rodney D. Williams, President of PCA and Limited Guardian of the estate of Carola Collings, an incapacitated person, filed an Inventory which showed cash and stocks having a value of \$65,000.00, and, jewelry having a value of \$6,000.00.

On April 17, 1997, the Limited Guardian filed a Petition for Allowance. In said Petition, it is averred that Carola Collings remained in her apartment until March 15, 1997 when she was admitted to Graduate Hospital for treatment of a broken hip and collateral injuries. It is further averred that Ms. Collings was transferred to Stapeley In Germantown Health Care Center on her discharge from Graduate Hospital, and, that she was expected to remain in the Center whose charges would be met by a grant from the Commonwealth's Medical Assistance Program when her own resources were reduced to less than \$2,400.00. The Petition for Allowance sought leave to pay the following sums from Ms. Collings' assets: \$2,613.75 for home health aide services; \$1,865.50 for care management and skilled nursing services; \$1,839.55 for back apartment rent and “exterminating” and “roach bait” services made necessary by the condition of the apartment during October of 1996; \$5,283.31 for legal services

rendered by counsel to Patricia Rivera and Thomas Collings from October 1, 1996 to November 27, 1996; \$3,726.00 for legal services of Gordon M. Wase, Esquire, as counsel to the Limited Guardian of the estate; \$5,000.00 to establish a restricted burial account for Ms. Collings; and, \$5,000.00, per month, for the care of Ms. Collings in Stapeley In Germantown Health Care Center, until her assets should be reduced to less than \$2,400.00 and she should thus become eligible for a nursing home grant from Medical Assistance.

After a hearing on July 9, 1997, Judge Lewis issued a Decree sur the aforementioned Petition for Allowance. By said Decree, Judge Lewis allowed nothing for home health aide services and care management and skilled nursing services, on the grounds that Carola Collings was entitled to receive such services from PCA free of charge; \$1,738.55 for charges by the landlord; nothing for services of counsel to Patricia Rivera and Thomas Collings, pending review of their account as attorneys-in-fact; \$2,726.00 to Gordon M. Wase, Esquire, for legal services for the benefit of Ms. Collings; \$5,000.00 to establish a restricted burial account for Ms. Collings; \$15,000.00 to Gordon M. Wase, Esquire, as a reserve to meet the expenses of anticipated litigation to recover assets; and, \$4,800.00, per month, to Stapeley In Germantown Health Care Center.

The First and Final Account of Rodney D. Williams as Limited Guardian of the Estate of Carola Collings, an Incapacitated Person, is stated from November 13, 1996 to October 31, 1997, and, was filed on January 28, 1998. Said account reflects a payment of \$15,000.00 to Gordon M. Wase, Esquire, on October 9, 1997, as an "Escrow for future litigation". Said account

also reflects distributions of \$42,898.00 in principal and \$6,401.59 in income to Gordon M. Wase, Esquire, as successor guardian of Ms. Collings' estate.

On December 29, 1998, Gordon M. Wase, Esquire, filed an "Annual Report Of Guardian Of The Estate" for the period November 1, 1997 to October 31, 1998. This Report makes no mention of the aforementioned "Escrow for future litigation". It shows the following assets remaining at the end of the Report Period, to wit: jewelry having an appraised value of \$5,979.00; a burial reserve account of \$5,000.00; principal cash in a checking account of \$4,038.68; and, income cash in a checking account of \$18,083.79. It ends with the following statement, to wit, "Excess resources are expected to be paid to the Commonwealth in reimbursement of a Medical Assistance Nursing Home Grant."

Carola S. Collings died on May 15, 1999. On September 14, 1999, Gordon M. Wase, Esquire, filed a "Final Report Of Guardian Of The Estate" for the period November 1, 1998 to May 15, 1999. This Report contains an Attachment which shows \$13,284.13 remaining in the aforementioned "Escrow for future litigation". It shows the following assets remaining at the end of the Report Period: jewelry having an appraised value of \$5,979.00; a burial reserve account of \$3,390.00; principal cash in a checking account of \$4,038.68; "escrow" cash in a checking account of \$13,284.13; and, \$14,227.50 in income cash in a checking account. It ends with the following statement, "Remaining resources are expected to be transferred to the personal representative when appointed."

On April 13, 1998, Clifford B. Cohn, Esquire, appeared before this Court and testified in support of the claim of Cohn & Associates for \$15,693.75 in counsel fees and \$14.00 in costs which were allegedly incurred in the representation of Carola Collings and Jeffrey D. Cooper, Esquire, her attorney-in-fact, from July 30, 1996 to October 17, 1996. In addition to his testimony, Mr. Cohn offered three Exhibits.

Exhibit "C-1" is a copy of a billing dated January 10, 1997. Exhibit "C-1" reflects charges of \$15,825.00 for 63.3 hours of Mr. Cohn's time at an hourly rate of \$250.00; \$218.75 for 1.75 hours of the time of Steven M. Montresor, Esquire, at an hourly rate of \$125.00; and, \$14.00 in costs to the Clerk.

Exhibit "C-2" is a copy of a letter, dated August 29, 1996, from Sanford L. Pfeffer, Esquire, General Counsel to Philadelphia Corporation for Aging, to Clifford B. Cohn, Esquire. In the first paragraph of this letter, Mr. Pfeffer asserts PCA's belief that Ms. Collings lacked capacity to retain Mr. Cohn; reminds Mr. Cohn of his failure to permit PCA to subject Ms. Collings to a psychiatric examination despite Mr. Cohn's assurances that he would permit such an examination; and, reiterates PCA's request that Ms. Collings be examined immediately. The second paragraph of this letter reads as follows,

“ PCA has been notified that Ms. Collings' niece, Patricia Rivera, and nephew, Tom Collings, have filed a petition for an adjudication of incapacity and the appointment of guardians of Ms. Collings' person and estate. Previously, I indicated to you that PCA

intended to file such a petition based upon its belief that Ms. Collings was incapacitated at the time that she revoked her then existing powers of attorney and executed new powers; it is PCA's belief that even the then existing powers of attorney do not adequately address all of her needs. Obviously, there is no need for PCA to file a petition at this juncture. I reiterate that PCA is not taking a position at this time as to who should be Ms. Collings' guardian."

In the third paragraph of this letter, Mr. Pfeffer responds to a request for PCA's complete file on Ms. Collings by offering to provide her with a redacted version of the report of need pursuant to 35 P.S. Sections 10219 (b)(3), 10221 (a)(2) and 10219 (b)(4). In the final paragraph of this letter, Mr. Pfeffer asks that any emergent, unmet needs of Ms. Collings be reported on PCA's 24 hour hotline, (215) 765-9033.

Exhibit "C-3" is a copy of a letter dated September 16, 1996 from Mr. Pfeffer to Mr.Cohn. The second paragraph of this letter reads as follows,

" For the record, and because I had tried accurately to characterize the status quo in my letter of August 29, 1996, I did not at that time write (as you state in your letter of September 10) that you did 'not deem [] a psychiatric examination [of Ms. Collings] appropriate.' To the contrary, you had assured me that you would permit Philadelphia Corporation for Aging ("PCA") to subject Ms. Collings to a psychiatric examination. Accordingly, I wrote only that you had 'not yet deemed it appropriate' for PCA to arrange the examination (emphasis supplied). I must reiterate, again, PCA's request that it be allowed to have Ms. Collings examined immediately. Similarly, I did not in my letter of August 29, or at any other time, tell you that PCA is not taking a position in the guardianship matter. Rather, I wrote that PCA had not at that time taken a position as to who should be the guardian; that is still the case as of this writing."

Clifford B. Cohn, Esquire, testified that he first met Carola Collings on July 30, 1996, at which time he was advised by Ms. Collings and other people that Ms. Collings had granted a power of attorney to her niece and nephew; that Ms. Collings' accounts had been moved to a location outside Pennsylvania which was unknown to Ms. Collings and the people around her; that Ms. Collings' money had been improperly taken; and, that this situation would continue unless action was taken. Mr. Cohn stated that Ellen Coen was a source of information to him. Mr. Cohn said that Ellen was a former employee of a Service which had been contracted by PCA to provide services to Ms. Collings; that Ellen had been fired from her position because the nephew and niece thought that Ellen was getting too close to Ms. Collings; and, that Ellen continued to work for Ms. Collings after the firing.

Clifford B. Cohn, Esquire, testified that he immediately called the attorney for the niece and nephew who told Mr. Cohn that the niece and nephew had filed a petition for adjudication of incapacity; that there had been a hearing sur said petition some nine months before; that Judge Lewis had felt that an adjudication of incapacity was inappropriate at that time; that a family settlement agreement had been reached whereby a power of attorney was granted to the niece and nephew; and, that there had been no subsequent hearings on the incapacity issue.

Clifford B. Cohn, Esquire, testified about a phone conversation which he had with Sanford Pfeffer, Esquire, of PCA, on August 1, 1996. Mr.

Cohn recalled that Mr. Pfeffer made the following comments during this conversation, to wit: that Mr. Pfeffer was aware of the situation of Carola Collings; that Mr. Pfeffer was well aware of the allegations regarding the niece and nephew; that Mr. Pfeffer believed that Ms. Collings had been incapacitated since the hearing in the previous year; that Mr. Pfeffer believed that Mr. Cohn should not be interfering in this matter; and, that Mr. Pfeffer was thinking about doing something about the matter. Mr. Cohn recalled that he made the following comments during this conversation: that Mr. Cohn had questions about whether Mr. Pfeffer was taking sides with a party in this matter; and, that it appeared to Mr. Cohn that Mr. Pfeffer was working for the niece and nephew. Mr. Cohn admitted that he sent a letter to Mr. Pfeffer, dated August 1, 1996, which reads as follows:

“ As you know, I represent Carola Collings. I have instructed you and your organization to have no contact with her without my written approval until such time as I can review the present state of affairs. Upon completion of my review, I will be more than happy to allow you to examine her, at a mutually convenient time, place and manner. Any failure to follow these instructions and to recognize the attorney-client relationship will be considered intentional, and will subject the individual and the organization to potential liability. In the meantime, I would request that you forward me your complete file on my client. I will provide you with an authorization, should you need one. I look forward to resolving all of your concerns. Sincerely.” NT 4-13-98 at 39-40

Clifford B. Cohn, Esquire, testified that he considered filing a petition with a Court to change the power of attorney which had been granted to the niece and nephew, and, filing a petition to have a hearing to determine the

competency of Carola Collings. According to Mr. Cohn, the need for immediate action required that he have Ms. Collings execute a revocation of the power of attorney and proceed to gather information. Mr. Cohn stated that his efforts to gather information ran into a stone wall which was erected by attorneys for PCA and the niece and nephew. In the words of Mr. Cohn,

“..... Everybody refused to do anything.

I then determined that having revoked the power of attorney, if that was defective, Miss Collings was out on her own; that she was completely there; and it was my opinion that she was going to be susceptible to people that wanted to take her money, if, in fact, they were of that ilk.” NT 4-13-98 at 9-10

And so, Mr. Cohn suggested to Ms. Collings that she should execute a power of attorney in favor of the attorney who had brought her to Mr. Cohn, that is, in favor of Jeffrey Cooper, Esquire. In the words of Mr. Cohn, the following events followed the execution of the new power of attorney, to wit,

“..... Once again, over the next two week period, we got essentially no information. Nobody would talk to us, and it had been clear that what I will call the other side, so to speak -- PCA and the niece and nephew -- were not interested in our position. Eventually after about a week and a half, the niece and nephew filed a petition to have Miss Collings declared incapacitated, and to have them appointed as guardians. Frankly, I thought that my strategy was a good one. I had put the burden of proof on them, rather than on me, and we were now going to get into court and find out what happened.” NT 4-13-98 at 11

Clifford B. Cohn, Esquire, testified that he represented both Carola Collings and her attorney-in-fact, Jeffrey Cooper, throughout the hearings before Judge Lewis in October of 1996. Mr. Cohn stated that he represented Ms.

Collings, first, then Mr. Cooper. According to Mr. Cohn, the main thrust of his representation was that the niece and nephew should not be appointed guardians, and, that they should be made to account for and return monies. Mr. Cohn described how it came out at the hearings that the nephew and niece had used \$35,000.00 of Ms. Collings money to build an addition on the niece's house in New Mexico, and, that they had used Ms. Collings money to fund their trips to Philadelphia. Mr. Cohn testified that he was the only person in court who took the position that the niece and nephew should not be appointed guardians. In the words of Mr. Cohn,

“..... I was the only person in court taking that position. Mr. Pfeffer did not take that position in court, and took the position that he was neutral as to the guardian. I believe, and it is my position, that without my input, the same guardians who had taken the money would have been appointed.” NT 4-13-98 at 15

In describing his first meeting with Carola Collings, on July 30, 1996, Clifford B. Cohn, Esquire, testified that,

“..... There were obvious deficits in Miss Collings at that point. She was aware enough to know that things were missing. She had difficulty articulating in specific details.” NT 4-13-98 at 6

When asked whether he had any problems with the capacity of Ms. Collings when she retained him to represent her, Mr. Cohn replied,

“ Oh, sure, yes. I'm not a professional. She clearly had some serious deficits, but I have to say she came in, and she told me, 'Somebody is taking my money. I can't find it. I think they are doing wrong.' I would have had to tell you, as a lawyer, I would have said she had enough capacity to write a

Will. That's a very low standard, but she knew her bounty, she knew the object of it, and combined with the fact that I had heard that the Judge had a hearing and found her not to be incapacitated, I thought that's what I had to go on at that point, and I thought I was doing what was best for her." NT 4-13-98 at 36-37

Mr. Cohn admitted that he did not read the transcript of the hearing before Judge Lewis in 1995, and, stated that he relied upon the summary of said hearing which was given to him by the attorney for the niece and nephew. Mr. Cohn admitted that there was no psychiatric examination of Ms. Collings before she executed the power of attorney in favor of Mr. Cooper, on August 7, 1996, and, testified that he opposed such an examination by PCA because he found it unusual that PCA did not seek to have such an examination performed until he got involved in the matter.

Exhibit "C-1" is a copy of a billing dated January 10, 1997. However, Clifford B. Cohn, Esquire, admitted that he did not submit a bill for his services until Friday, February 27, 1998. Mr. Cohn admitted that he was unaware of the standard practice of filing a Petition for allowance of counsel fees immediately after the close of incapacity proceedings. Mr. Cohn testified that he submitted his bill when Ellen Coen told him that an account had been filed in this matter. Mr. Cohn admitted that he understood that PCA would give him no notice of any further proceedings involving Carola Collings, and, that he would get only such information as he gleaned by his own efforts. Mr. Cohn stated that he was not aware that Judge Lewis had approved a Petition for allowance on July 15, 1997, and, that principal had been expended pursuant to said Decree.

According to Mr. Cohn, he watched the Legal Intelligencer for notice of the filing of an account, but, he did not go to Court to review the file in this matter. On cross-examination by Mr. Pfeffer, Mr. Cohn gave the following explanation of why he did not submit his bill on or about its date, that is, on or about January 10, 1977, to wit,

“Q. Why wouldn’t you have submitted it at that time?

A. Well, you told me I had no interest, so --

Q. Well, did you believe me?

A. I thought what would be the purpose of submitting a bill to you, when, in fact, you were not going to pay it; you were not going to do anything. We knew this was going to be a Court hearing, and, in fact, you have always taken that position. Well, that’s not fair. I have to say we hadn’t discussed the issue of my bill prior to that.

Q. We had?

A. We had not.” NT 4-13-98 at 59

Mr. Cohn stated his belief that there was plenty of money to pay his bill as of the date of the hearing thereon, that is, as of April 13, 1998.

Judge Lewis appointed Dr. Ira R. Katz to perform a psychiatric evaluation of Carola Collings. In her Findings of Fact, Judge Lewis referred to the following statement by Dr. Katz in his Psychiatric Evaluation Report, dated September 17, 1996:

“..... Ms. Collings’current condition indicates deficits of a chronic and persistent nature which have existed at least since the previous several months.”
Findings of Fact, at 11-12

Carola Collings testified before Judge Lewis on October 8, 1996, at which time Judge Lewis found her to be, “.....confused, unaware of her limitations and very susceptible to influence by anyone who flatters her or shows her kindness.”

Findings of Fact, at 10 Judge Lewis noted that Ms. Collings was unable to identify the following persons, to wit: her purported friend, Peter Kaye; her purported attorney-in-fact, Jeffrey D. Cooper; and, her purported attorney, Clifford B. Cohn.

Judge Lewis identified Peter Kaye and Ellen Coen as persons who had intermeddled in efforts to arrange care for Carola Collings. Judge Lewis referred to Peter and Ellen as persons who,

“.....have insinuated themselves into Ms. Collings life with what appears to be the intent to exclude anyone who would assist her or closely observe their actions.” Findings of Fact, at 7

Judge Lewis referred to Ellen Coen as a person who, “.....demonstrates a settled intent to dominate and control Ms. Collings.” Findings of Fact, at 11 Judge Lewis described one occasion on which,

“..... Ellen took Ms. Collings to the bank and told the bank officer in Ms. Collings presence that Thomas and Patricia were stealing her money.” Findings of Fact, at 7

Judge Lewis pointed to Ms. Collings’ relationship with Peter and Ellen as an obvious example of,

“The ease with which Ms. Collings tends to permit strangers to come into her life, access information concerning finances and influence her decisions” Findings of Fact, at 10

Judge Lewis found that Peter Kay and Ellen Coen were concerned about actions of the niece and nephew, and, that Peter arranged the meeting of himself, Ms. Collings and Ellen with Peter's friend, Jeffrey D. Cooper, Esquire, and Clifford B. Cohn, Esquire, on July 30, 1996. Judge Lewis found that his meeting was,

“Ostensibly for the purposes of helping Ms. Collings regain control of her funds from her niece and nephew,” Findings of Fact, at 9

Judge Lewis referred to Jeffrey D. Cooper, Esquire, as, “.....a virtual stranger,” to Carola Collings. Findings of Fact, at 10 Judge Lewis pointed to the revocation of the power of attorney which had been granted to the niece and nephew, and, the execution of the power of attorney in favor of Mr. Cooper as an example of, “The dangers attendant to ...[Ms. Collings']... vulnerability to influence.” Findings of Fact, at 10

Because Judge Lewis found that Carola Collings had chronic and persistent deficits which, as of September 17, 1996, had existed for at least several months; because Judge Lewis found that Ms. Collings could not identify Peter Kaye, Jeffrey D. Cooper or Clifford B. Cohn when she testified before Judge Lewis on October 8, 1996; because Mr. Cohn told this Court that he observed that Ms. Collings clearly had some obvious deficits on July 30, 1996; and, because Mr. Cohn told this Court that he was of the opinion, on August 7, 1996, that Ms. Collings would be susceptible to influence by people who wanted to take her money, this Court holds that Carola Collings lacked capacity to retain Mr. Cohn or revoke a power of attorney, on July 30, 1996, and, that Ms. Collings

lacked capacity to execute a power of attorney in favor of Mr. Cooper on August 7, 1996. Because of said lack of capacity, this Court further holds that Mr. Cooper lacked authority to bind Ms. Collings by the fee agreement which Mr. Cooper purportedly executed as her attorney-in-fact on August 16, 1996.

This Court finds that the chronic, persistent deficits of Carola Collings rendered her incapable, on July 30, 1996, of understanding or remembering that someone was taking her money. Having already told a bank officer that the niece and nephew were stealing Ms. Collings' money, this Court is convinced that Ellen Coen repeated said allegation to Mr. Cohn on July 30, 1996. This Court is further convinced that, if Carola Collings told Mr. Cohn that someone was taking her money, she was only repeating what she had been told by Peter Kaye or Ellen Coen. This Court is not at all convinced that Carola Collings knew the natural objects of her bounty when she met with Mr. Cohn on July 30, 1996.

Judge Lewis found that Peter Kaye and Ellen Coen had intermeddled in efforts to arrange care for Carola Collings, and, had insinuated themselves into her life for the purpose of excluding anyone who would assist her or closely observe their actions. This Court finds that Mr. Cohn was not justified in relying upon the earlier action of Judge Lewis in dismissing a petition for adjudication of incapacity and appointment of guardians on October 20, 1995. When faced with a prospective client who had obvious deficits, Mr. Cohn was obliged to satisfy himself as to her capacity by arranging an immediate

psychiatric evaluation before he undertook to represent her. Without having read the transcript of the hearing before Judge Lewis in 1995, and, without the benefit of a current psychiatric examination of Carola Collings, Mr. Cohn chose to act upon the allegations of people who had their own agenda, that is, their own reasons for removing the niece and nephew as attorneys-in-fact. In so doing, Mr. Cohn represented the interests of the people around Carol Collings, namely Peter Kaye and Ellen Coen, and not the interests of Ms. Collings herself.

When faced with a prospective client who was susceptible to influence by people who wanted to take her money, Mr. Cohn did not follow a good strategy by shunning the Court and having her execute another power of attorney. In so doing, Mr. Cohn exposed Carola Collings to the possible exertion of undue influence by persons who might prevail upon her to execute yet a third power of attorney.

This Court does not share Mr. Cohn's belief that the niece and nephew would have been appointed guardians if Mr. Cohn had not opposed their appointment. Mr. Pfeffer was well aware of the allegations against the niece and nephew, and, had expressed the intent of PCA to file a Petition for an adjudication of incapacity and the appointment of guardians. Once the niece and nephew had filed such a petition, and, Mr. Cohn had insinuated himself into the process by opposing said petition, PCA was no longer required to take a position as to who should be appointed guardian. By filing a Petition, the niece and nephew subjected themselves to the jurisdiction of the Court, and, subjected their conduct to scrutiny by the Court. The filing of a Petition is no guarantee of

appointment as guardian. Judge Lewis was not obliged to appoint the petitioners as guardians. Because they had acted as attorneys-in-fact for their Aunt, the petitioners were accountable to her, and, this accountability raised an issue as to whether they should or should not be appointed as guardians. Unlike Mr. Cohn, this Court does not regard PCA as being on, “.....the other side, so to speak.....” NT 4-13-98 at 11 This Court finds that, if Mr. Cohn had not opposed the appointment of the niece and nephew as guardians, PCA would have taken a position as to who should be appointed guardian, and, would have disclosed its knowledge of allegations against the niece and nephew to the Court, at which point Judge Lewis would have taken appropriate action to protect the interests of the alleged incapacitated person.

This Court has found that Clifford B. Cohn, Esquire, represented the interests of Peter Kay and Ellen Coen and not the interests of Carola Collings. This Court has rejected the suggestion that the niece and nephew would have been appointed guardians if Mr. Cohn had not opposed their appointment. Accordingly, this Court holds that the firm of Cohn & Associates did not provide valuable legal services to Carola Collings, and, that said firm is not entitled to recover counsel fees and costs from the estate of this incapacitated person. The Petition for counsel fees and costs will be denied by separate Decree bearing even date herewith.

On April 13, 1998, Ellen Coen appeared before this Court and testified in support of her claim for services rendered as a “companion” to Carola

Collings. In addition to her testimony, Ms.Coen offered Exhibit "CS-1" which Exhibit opens with the following statement,

"This is a bill for my services in which I rendered to Mrs. Carolla Stewart Collings for the year of January Nineteen Ninety Six until Febuary 25th, nineteen ninety-seven."

Exhibit "CS-1" includes a claim in the amount of \$4,880.00 for the purchase and preparation of food. The amount of \$4,880.00 purports to be the product of multiplying \$75.00 times sixty-four (64) weeks. This Court notes that the correct product of said multiplication process is \$4,800.00 and not \$4,880.00. Exhibit "CS-1" includes a claim in the amount of \$14,880.00 which is the product of multiplying \$465.00 times thirty-two (32) weeks. This claim for \$14,880.00 is accompanied by the following statements in the body of Exhibit "CS-1",

"Days and Nights I stayed (which were 7 dys per wk. Plus 3 nights a wk.) Escorted to stores, parks, ect.. Also washing, folding and delivering clothes, food, ect. Cleaning apartment, personal care plus supplies needed (brushes, squirt bottles ect..)

* * * * *

(Mrs.Patricia Rivera's and my agreement)
Mrs.Collings neice"

Exhibit "CS-1" includes a claim of \$10,246.40 for transportation to and from Ms. Collings' apartment. Said amount of \$10,246.40 purports to be the product of spending \$3.20 per day over a period of sixty-four (64) weeks and two days. This Court notes that the correct product of said calculation is \$1,030.40 and not \$10,246.40. In summary, Exhibit "CS-1" represents a claim for a grand total of

\$38,006.40 which is the result of adding \$4,880.00, \$14,880.00 and \$10,246.40. This Court notes that the correct result of adding the correct amounts is \$20,710.40 and not \$38,006.40. Exhibit "CS-1" ends with the following statement, "Expecting at least: \$14,880.00."

Ellen Coen testified that her claim was for transportation, food, clothing, cleaning of Ms. Collings' apartment, and, cleaning of Ms. Collings' person. While she did not give exact details of her services, Ms. Coen made the following statement:

"..... I was there every day of the week, seven days a week, and sometimes I spent three nights a week there also. Every week." NT 4-13-98, at 86

When asked about her testimony in the hearings before Judge Lewis, Ms. Coen gave the following responses:

"Q. During the hearing in October of 1996 on the guardianship of Carolla Collings, were you present?"

A. They weren't prepared to go to court. We didn't go to court until September, or it was September and October we went to court.

Q. That's what I asked you. In October of 1996, were you present?"

A. Yes. I was present at every case.

Q. And you testified at that hearing?"

A. Yes.

Q. Did you testify at that hearing that Miss Collings had been paying you directly for the services you were providing?"

A. Yes, she paid me a few times directly, and then I refused to go back to the bank, because I had bad vibes about the bank transferring all her money, doing little things with her money, like they recently did.

Q. Is that the nature of the testimony you gave that day?

A. They released \$45,000.00 to another woman before I even entered the picture. I had refused to go back to the bank because of that other woman robbing her. I did not want it put on me.

Q. So you were under the impression that someone was robbing her?

A. Somebody had robbed her. Nancy Burrisforth, if you check the transcript, robbed her before the niece and nephew robbed her, and PCA knew all along about these robberies." NT 4-13-98, at 86-87

Ellen Coen testified that no one instructed her to stay away from Carola Collings until Gordon Wase, Esquire, sent her a letter which was dated March 11, 1997.

Ellen Coen testified that she called Rodney D. Williams, about a month after the Decree of incapacity dated November 13, 1996, and asked Mr. Williams how she was going to receive the money which was owed to her. At a later point in her testimony, Ms. Coen stated that she spoke to Gordon M. Wase, Esquire, because she could not get Mr. Williams on the phone. According to Ms. Coen, she called Mr. Wase on January 31, 1997, at which time Mr. Wase told her to put any claim in writing, and, send it to him by mail. Ms. Coen said that she did not send a claim to Mr. Wase as a result of said call on January 31, 1997. Ms. Coen testified that she spoke to Mr. Wase at the call of the Audit List on March 2, 1998, but, that she did not then state the dollar amount of her claim

because she had not yet added it up. Ms. Coen stated that she called Mr. Wase on March 20, 1998, at which time Mr. Wase asked for a written claim with supporting information. Ms. Coen admitted that Mr. Wase had no way of knowing the amount of her claim until she delivered a copy of Exhibit "CS-1" to his office on April 10, 1998.

Judge Lewis found that Peter Kaye and Ellen Coen had intermeddled in efforts to arrange care for Carola Collings, and, had insinuated themselves into her life for the purpose of excluding anyone who would assist her or closely observe their actions. Judge Lewis found that Ellen Coen had demonstrated, ".....a settled intent to dominate and control Ms. Collings." Findings of Fact, at 11 Judge Lewis found that Ellen Coen was removed from Ms. Collings' apartment in the fall of 1995, but, returned in the winter of 1995-1996, at which time Ms. Collings began paying Ms. Coen directly. Judge Lewis found that,

"..... The terms of her compensation and the method by which Ellen obtained funds from Ms. Collings are unspecified, irregular and highly suspicious."
Findings of Fact, at 6

Judge Lewis found that Carola Collings was threatened with eviction, in August of 1996, because of roach infestation of her apartment.

Having observed the demeanor of Ellen Coen on the witness stand, and, considered her interest in the outcome of this matter, this Court finds that Ms. Coen is not a credible witness. This Court holds that any arrangements between Patricia Rivera and Ms. Coen came to an end when Ms. Rivera asked

that NHHS remove Ms. Coen from Ms. Collings' home. This Court does not believe the testimony of Ms. Coen as to the nature, extent and duration of the work which she allegedly performed for Ms. Collings. This Court finds that Ms. Coen did receive some payments from Ms. Collings, and, rejects the suggestion that Ms. Coen never received any payments. Ms. Coen offered no testimony as to the value of the services which she allegedly performed for Ms. Collings, and, an infestation of roaches does not speak well of her work in cleaning the apartment. Accordingly, this court holds that Ellen Coen has not proven her claim for services rendered as a "companion" to Carola Collings. Said claim will be denied by separate Decree bearing even date herewith.

Since the outstanding claims have been denied on their merits, and, since the "Final Report Of Guardian Of The Estate" shows resources remaining on the death of Carola Collings, this Court will not address the argument that the claims are barred by laches.

There was no objection to the account which shows a balance of	
principal, personal property, after distributions, of	\$00,000.00
and a balance of income, after distributions, of	<u>\$00,000.00</u>
leaving a balance available for distribution of	\$00,000.00

Accordingly, this Court can make no awards in this adjudication.

AND NOW, unless exceptions are filed to this adjudication within twenty (20) days, the First and Final Account of Rodney D. Williams as Limited Guardian of the Estate of Carola Collings, an

Incapacitated Person, stated from November 13, 1996 to October 31, 1997, is confirmed absolutely.

J.