

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D12952
E/cb

_____AD3d_____

Submitted - October 24, 2006

HOWARD MILLER, J.P.
DAVID S. RITTER
FRED T. SANTUCCI
ROBERT J. LUNN, JJ.

2005-10067

DECISION & ORDER

In the Matter of Marguerite C. Porter, a/k/a Margaret
Porter, deceased.
Peter D'Agostino, et al., appellants;
Marilyn Ritchie, etc., respondent.

(File No. P-400/03)

Connors and Sullivan, P.C., Brooklyn, N.Y. (Thomas C. Murray, Jr., and Marc J.
Monte of counsel), for appellants.

Gina-Marie Reitano, Staten Island, N.Y., for respondent.

In a contested probate proceeding, the petitioners appeal from an order of the
Surrogate's Court, Richmond County (Fusco, S.), dated September 13, 2005, which denied their
motion to disqualify the objectant's attorney.

ORDERED that the order is affirmed, with costs payable by the appellants personally.

Disqualification of the objectant's attorney for violation of the advocate-witness rule
was properly denied in the absence of a showing that the testimony of the attorney would be
necessary (*see* Code of Professional Responsibility DR 5-102 [22 NYCRR 1200.21]; *S&S Hotel
Ventures Ltd. Partnership v 777 S.H. Corp.*, 69 NY2d 437,446). Nor was disqualification warranted
under Code of Professional Responsibility DR 7-104 (*see* 22 NYCRR 1200.35), as at the time the
objectent's attorney spoke to the petitioners they were not represented by counsel.

MILLER, J.P., RITTER, SANTUCCI and LUNN, JJ., concur.

ENTER:



James Edward Pelzer
Clerk of the Court

December 5, 2006

MATTER OF PORTER, DECEASED