

ARTICLE 81 MOTION PRACTICE

I. HOW TO AVOID MOTION PRACTICE

II. MOTIONS USUALLY MADE

III. HOW TO MAKE MOTION

a) Notice

IV. COSTS

V. ATTORNEY'S FEES

At a Term of the Supreme Court held in and for the County of Albany at the Albany County Courthouse, in the City of Albany, New York on the day of 2005.

PRESENT: Hon. **James B. Canfield**
 Supreme Court Justice

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of

CAROL D [REDACTED],
 as Guardian for

MARGARET A. C [REDACTED],
An Alleged Incapacitated Person

ORDER TO SHOW
CAUSE
Index No.: [REDACTED]

UPON reading and filing the Affidavit of Murray S. Carr, Esq. sworn to the day of August, 2005, and all other papers and proceedings herein, let the Respondent, Carol A. D [REDACTED], SHOW CAUSE at an All Purpose Term of this Court to be held for the County of Albany, at the Rensselaer County Courthouse on the day of , 2005 at 9:30 o'clock in the forenoon or soon thereafter as counsel can be heard, why an Order should not be made removing Carol A. D [REDACTED] as Guardian of Margaret A. C [REDACTED], and compelling her to file a final accounting, assessing her for the misappropriated funds of Margaret A. C [REDACTED] and assessing her for attorneys fees and the costs of same, and it is further,

ORDERED, that service of this Order, and all papers upon which it is based, shall be made upon the following parties by ordinary mail, on or before the day of , 2005.

Paul T. Devane, attorney for Carol A. D [REDACTED], 112 State Street, Albany, NY 12207

Susan Carol Picotte, attorney for David C [REDACTED], 39 N. Pearl Street, Albany, NY 12207

Brian Kremmer, attorney for Estate of Ann R [REDACTED], Margaret Ann R [REDACTED] & Salvan R [REDACTED], 90 State Street, Albany, NY 12207

Edward Stano, Esq., attorney for Albany County Department of Social Services, 162 Washington Avenue, Albany, NY 12207

That Answering Affidavits, if any, shall be filed with the Court and Murray S. Carr, 1683 Western Avenue, Albany, NY 12203, on or before the day of , 2005.

Dated:

Hon. James B. Canfield

ENTER

PERSONAL APPEARANCES ARE REQUIRED

STATE OF NEW YORK
SUPREME COURT COUNTY OF ALBANY

In the Matter of

CAROL D [REDACTED],

as Guardian for

MARGARET A. C [REDACTED],

An Alleged Incapacitated Person

AFFIDAVIT

Index No.: [REDACTED]

STATE OF NEW YORK }

COUNTY OF ALBANY } ss.:

Murray S. Carr, being duly sworn, deposes and says:

1. That I am an attorney duly admitted to practice law in the State of New York.
2. That I am the Examiner of Accounts for proceedings under Article 81 of the Mental Hygiene Law for cases filed in Albany County.
3. That I was appointed as Examiner of Accounts by Order of the Honorable Anthony V. Cardona, Presiding Justice of the Appellate Division of Supreme Court, Third Department.
4. That a part of my duties involves the review of the Annual accountings filed by Guardians of Incapacitated people as designated under Article 81 of the Mental Hygiene.
5. That on or about June 4, 2001, the Honorable James B. Canfield, appointed Carol A. D [REDACTED] as Guardian of the Person and Property of Margaret A. C [REDACTED]. As a part of her duties as Guardian, Ms. D [REDACTED] was required to file annual accountings. That I have reviewed the annual accounting filed by Carol A. D [REDACTED] for the year 2002, and found there to be a number of questions, discrepancies and objectionable expenses. That I address this by forwarding a letter to Ms. D [REDACTED] dated November 29, 2004, copy is attached hereto. That I did not receive an appropriate response and therefore I asked the Supreme Court to schedule a conference in this matter.
6. On March 24, 2005, a conference was held before the Honorable James B. Canfield, Supreme Court Justice. The conference was presided over by the confidential law secretary of Judge Canfield. At that time the Guardian, Carol A. D [REDACTED] appeared in person and with her attorney, Paul T. Devane. Also present were your deponent, Susan Carol Picotte, attorney for David C [REDACTED], Brian Kremmer, attorney for Estate of Ann R [REDACTED], Margaret Ann R [REDACTED] & Salvan R [REDACTED]. At the time it was agreed that within the next two (2)

weeks, Carol A. D [REDACTED], would transfer her response to attorney Paul T. Devane, who would form an appropriate response to my inquiries. That response was to be forwarded to your deponent by April 25, 2005. That your deponent, as of this time, has not received a response to the objections made by the letter of November 29, 2004.

7. On May 5, 2005, I wrote to Judge Canfield informing the Court that a response by Ms. D [REDACTED] has not been filed. Copies of said letters were sent to Ms. D [REDACTED]'s attorney as well as the other attorneys of record in this case.

8. As of this date, I have not received a response to same, therefore I am asking that the Court set the matter down for a hearing to remove Carol A. D [REDACTED] as Guardian of Margaret I. C [REDACTED], and to review the expenditures made by Carol A. D [REDACTED], and make an assessment against the Guardian, as well as award attorney's fees for the cost of bringing this application.

Murray S. Carr

Sworn to before me this
5th day of August, 2005.

Notary Public