

6.

**Elizabeth Vaughan's Answer to Supreme Judicial
Court Petition**

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
CIVIL ACTION NO. 91-485

SAMUEL AND JOAN R.
VAUGHAN,

 Petitioners,

v.

ELIZABETH H. VAUGHAN,

 Respondent.

ANSWER OF ELIZABETH H. VAUGHAN TO "PETITION TO
INVOKE THE GENERAL SUPERINTENDENCE OF THE COURT"

Introduction

The respondent Elizabeth H. Vaughan hereby responds to the allegations set forth in the numbered paragraphs of the Petition of the petitioners Samuel and Joan R. Vaughan (hereinafter the "elder Vaughans") to invoke the general superintendence of the Court as follows:

PRELIMINARY STATEMENT

1. The respondent denies that either the Single Justice or the Probate Court for Essex County have committed errors of law. The respondent states that no response is required to the remaining allegations set forth in paragraph 1 of the Petition as they

constitute the petitioners' characterization of the relief they are seeking.

JURISDICTION

2. The respondent denies the allegations set forth in paragraph 2 of the Petition, and moves that the Petition be dismissed on the following grounds: (a) the Single Justice of the Appeals Court properly exercised his discretion in denying the elder Vaughans' Petition for Relief under G.L. c. 231, §118; (b) the Petition seeks review of a discovery order which is interlocutory and not reviewable; (c) the elder Vaughans' rights were adequately protected in the normal course of trial and appeal; and (d) the Petition fails to name the Probate and Family Court for Essex County as the nominal respondent. The facts and arguments in support of respondent's motion to dismiss the Petition are contained in her Memorandum In Opposition To Samuel and Joan R. Vaughan's "Petition To Invoke The General Superintendence Of The Court."

PARTIES

3. The respondent admits the allegations set forth in paragraph 3 of the Petition.

4. The respondent admits the allegations set forth in paragraph 4 of the Petition.

STATEMENT OF FACTS

5. The respondent admits that she "seeks to inquire into the "net worth, estate plans and wills of Samuel and Joan R. Vaughan." The respondent denies the remaining allegations set forth in paragraph 5 of the Petition. The respondent states that G.L. c. 208, §34 requires that the Probate Court, in determining an award of alimony or in fixing the nature and value of property to be assigned, consider this financial information when it assesses "the opportunity of each [party] for future acquisition of capital assets and income[.]" See Cherrington v. Cherrington, 404 Mass. 267, 272 (1989); Rice v. Rice, 372 Mass. 398, 402 (1977); Frederick v. Frederick, 29 Mass. App. Ct. 329, 334-335 (1990). The Massachusetts Courts have consistently held that the determination of each party's "opportunity ... for future acquisition of capital assets and income" includes a consideration of expectancies such as potential inheritances. See, e.g., Cherrington, 404 Mass. at 272; Rice, 372 Mass. at 402; Frederick, 29 Mass. App. Ct. at 334-335.

6. The respondent admits that the petitioners in a letter dated July 11, 1991 agreed to disclose only "the specific information regarding gifts which have been made to or for the benefit of the Vaughan family." The respondent states that counsel for the

petitioners had previously given his written assurance that he would advise his clients to disclose the approximate net worth of their respective estates. The respondent denies the remaining allegations set forth in paragraph 6 of the Petition.

7. The respondent admits that the petitioners moved for a protective order in the Probate Court seeking to prevent the respondent from taking their depositions. The respondent denies that she sought to discover "highly private and confidential information" through such depositions. The respondent admits the remaining allegations set forth in paragraph 7 of the Petition.

8. The respondent denies the allegations set forth in paragraph 8 of the Petition. The respondent states that the petitioners seek to invoke the Court's powers of general superintendence to review a discovery order of the Probate Court which is by definition interlocutory and therefore not reviewable. See Cronin v. Strayer, 392 Mass. 525, 528 (1984); Beit v. Probate & Family Court Dep't, 385 Mass. 854, 858 (1982); Borman v. Borman, 378 Mass. 775, 781-782 (1979). See also Ott v. Preferred Truck Leasing, Inc., 9 Mass. App. Ct. 875, 876 (1980) (Petition seeking relief from trial court's discovery order denied by Single Justice of this Court "[t]o the

extent that [it] seeks relief from this court under G.L. c. 211, §3). The respondent further states that the petitioners present no grounds for extraordinary intervention under G.L. c. 211, §3 since their rights were protected in both the trial court and the Appeals Court. See Hatfield v. Commonwealth, 387 Mass. 252, 255 n.2 (1982); Planned Parenthood League of Massachusetts, Inc., 406 Mass. at 706; Dunbrack v. Commonwealth, 398 Mass. 502, 504 (1986).

9. The respondent denies the allegations set forth in paragraph 9 of the Petition. The respondent states that G.L. c. 208, §34 requires that the Probate Court, in determining an award of alimony or in fixing the nature and value of property to be assigned, consider, inter alia, "the opportunity of each [party] for future acquisition of capital assets and income[.]" The respondent further states that the Massachusetts Courts have consistently held that the determination of each party's "opportunity ... for future acquisition of capital assets and income" includes a consideration of expectancies such as potential inheritances. See, e.g., Cherrington, 404 Mass. at 272; Rice, 372 Mass. at 402; Frederick, 29 Mass. App. Ct. at 334-335.

PROCEEDINGS BELOW

10. The respondent admits that on July 10, 1991, she subpoenaed the petitioners, requiring them to produce at their depositions "all documents or records in [their] possession, custody or control regarding [their] estate plan, including wills, trusts, or other documents." The respondent states that such subpoenas were served only after Allan Vaughan categorically refused to disclose any information concerning the nature and extent of the elder Vaughans' respective estates. The respondent further states that the depositions of the petitioners were deferred to a later date on the basis of counsel for the petitioners written assurance that he would advise his clients to disclose the approximate net worth of their respective estates. The respondent admits the remaining allegations set forth in paragraph 10 of the Petition.

11. The respondent admits that the petitioners moved for a protective order on September 26, 1991. The respondent states that counsel for the petitioners rescinded his earlier agreement to advise his clients to disclose the approximate net worth of their respective estates, leaving the respondent with no alternative but to reschedule the petitioners' depositions. The respondent denies the remaining allegations set forth in paragraph 11 of the Petition.

12. The respondent admits the allegations set forth in paragraph 12 of the Petition.

13. The respondent denies the allegations set forth in paragraph 13 of the Petition. The respondent states that the Probate Court applied correct legal standards and was within its broad discretion in denying the petitioners' motion for a protective order after they summarily rejected the court's practical alternative to extensive deposition/document production. The respondent further states that the Probate Court carefully weighed the parties' competing interests and correctly concluded that both the existence and nature of any potential inheritance by Allan Vaughan must be disclosed in order to properly consider his "opportunity ... for future acquisition of capital assets and income" pursuant to G.L. c. 208, §34. See Cherrington, 404 Mass. at 272; Rice, 372 Mass. at 402; Frederick, 29 Mass. App. Ct. at 334-335.

14. The respondent admits the allegations set forth in paragraph 14 of the Petition.

15. The respondent admits the allegations set forth in paragraph 15 of the Petition.

16. The respondent admits the allegations set forth in paragraph 16 of the Petition. The respondent states that the Single Justice properly denied the Petition for Relief because there was no "clear error

of law or abuse of discretion" by the trial court.
Jet-Line Services, Inc. v. Board of Selectmen of
Stoughton, 25 Mass. App. Ct. 645, 646 (1988).

17. The respondent admits that the petitioners filed a "Petition to Invoke the General Superintendence of the Court" on November 7, 1991. The respondent denies the remaining allegations set forth in paragraph 17 of the Petition. The respondent states that the petitioners present no grounds for extraordinary intervention under G.L. c. 211, §3 since their rights were protected in both the trial court and the Appeals Court. See Hatfield, 387 Mass. at 255 n.2 (1982); Planned Parenthood League of Massachusetts, Inc., 406 Mass. at 706; Dunbrack, 398 Mass. at 504 (1986).

STATEMENT OF RELIEF REQUESTED

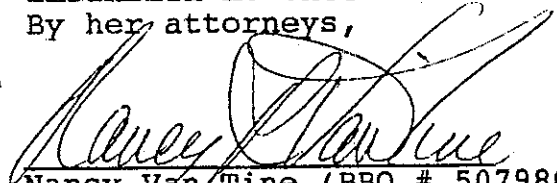
The respondent denies that the petitioners are entitled to the relief requested in the un-numbered concluding paragraph.

SUPPORTING MATERIALS

1. The respondent states that no response is required to paragraph 1 because it contains no allegations of fact.

2. The respondent states that no response is required to paragraph 2 because it contains no allegations of fact.

Respectfully Submitted,
ELIZABETH H. VAUGHAN
By her attorneys,



Nancy Van Tine (BBO # 507980)
Clarke E. Khoury (BBO # 556612)
BURNS & LEVINSON
125 Summer Street
Boston, MA 02110-1624
(617) 345-3000

Dated: November 19, 1991

CERTIFICATE OF SERVICE

I, Clarke E. Khoury, do hereby certify that on November 19, 1991 a true and accurate copy of the foregoing Answer Of Elizabeth H. Vaughan To "Petition To Invoke The General Superintendence Of The Court" was sent by hand delivery to all counsel of record.


Clarke E. Khoury