

1.

Vaughan Parents' Petition
to the Single Justice of the Appeals Court
with Exhibits*

*Note: The same exhibits were submitted to the Supreme Judicial Court but are only provided here so as not to duplicate.

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

* * * * *
ALLAN P. VAUGHAN, *
 *
Plaintiff, * C.A. _____
 *
v. *
 *
ELIZABETH H. VAUGHAN, *
 *
Defendant. *
 *
* * * * *

PETITION FOR RELIEF PURSUANT
TO M.G.L. c. 231, §118, PARA. 1

INTRODUCTION

Petitioners, Samuel and Joan R. Vaughn, ("the parents"), request that the Single Justice review and reverse an Order, entered in the Essex County Probate Court (Harms, J.) on October 3, 1991, denying the petitioners' motion for a protective order. That Order requires the parents to disclose personal and confidential matters regarding their net worth, estate plans and the terms of their wills. The Order is attached hereto as Exhibit 1.

The underlying divorce action, scheduled for trial on October 24 and 25, 1991, and the depositions scheduled for October 16, 1991 have been continued, pending disposition of this appeal. See Endorsed Order attached hereto as Exhibit 2.

Accordingly, immediate review is required and a prompt hearing is respectfully requested.

PARTIES

Petitioners Samuel and Joan R. Vaughn are individuals residing in Prides Crossing, Massachusetts. They are the parents of Allan D. Vaughn, the plaintiff in this divorce action and are not parties to this action.

Defendant Elizabeth Vaughn is the daughter-in-law who seeks to depose the parents.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case presents issues of first impression in the Commonwealth regarding the role of expectancy rights in the determination of alimony. Elizabeth Vaughn, the defendant-wife in this divorce action, seeks to depose her husband's parents, alleging that Allan possesses an "opportunity . . . for future acquisition of capital assets and income" in the form of inheritance from the parents. See Mass. Gen. Laws, ch. 208, §34. The Probate Court, without examining the respective interests involved in this discovery dispute, denied the parents' motion for a protective order. Such summary denial constitutes an abuse of discretion, warranting reversal.

This discovery dispute began on July 10, 1991, when Elizabeth Vaughn served subpoenas upon Samuel and Joan R. Vaughn seeking disclosure of, inter alia, "all documents or records in you (sic) possession, custody or control regarding your estate plan, including wills, trusts, or other

documents." See subpoenas attached hereto as Exhibits 3 & 4. /1/

The parents agreed to disclose all vested interests to Allan, attesting that Allan had no vested interest in their estate plans. Having supplied just the information required by §34 to assist in the determination of property division, the Vaughns were not required to reveal their other estate plans.

Elizabeth Vaughn nonetheless scheduled the depositions of Samuel and Joan Vaughn for October 16, 1991. See Notices attached hereto as Exhibits 5 & 6. The parents then filed a motion for a protective order on September 26, 1991 to prevent disclosure of their net worth and estate plans. See Motion attached hereto as Exhibit 7.

Notwithstanding the parents' disclosure, on October 3, 1991, Judge Harms denied their motion for a protective order, requiring that the parents disclose all of their estate plans, wills and any changes which may have arisen after filing of the divorce action. See Order, attached hereto as Exhibit 1. The net worth and tentative estate plans of Samuel and Joan Vaughn, however, play no role in Allan's "opportunity for future acquisition of capital assets." Indeed, nowhere in its

/1/ Indeed this same dispute arose in an earlier divorce proceeding involving a second son, Benjamin, in which a similar subpoena, served upon the fiduciary of the Vaughns, was quashed as unreasonable and oppressive, pursuant to Mass. R. Civ. P. 45(b)(1). See Nancy Vaughn v. Benjamin Vaughn, Docket # 89D-1482-D1.

Memorandum does the Probate Court consider the required §34 factors in light of the husband's expectancy rights, but merely berates the parents for refusing to compromise their privacy rights. Denial of the protective order without a detailed analysis of §34 is an abuse of discretion and error of law.

STATEMENT OF CLAIMS

The Probate Court abused its discretion by determining that non-vested expectancy interests were relevant to a determination of property division. M.G.L.A. ch. 208, §34. The statute does not permit the court to consider these non-vested and completely contingent interests in determining the division of property. Only those rights to which Allan holds title, "however acquired," can be factored into a division of property. Rice v. Rice, 361 N.E.2d 1305, 1307 (1977). Expectancy rights do not qualify as "title" nor do they "embody . . . enforceable rights accruing during marriage." Hanify v. Hanify, 403 Mass. 184, 188 (1988) (citations omitted). These rights require a detailed examination of collateral issues, such as the validity of a will, testator intent, etc., which only serves to unnecessarily cloud the real alimony issues. Davidson v. Davidson, 19 Mass. App. Ct. 346, 374 (1985); see also Hanify v. Hanify, 403 Mass. 184, 192 (1988) (Liacos, J., concurring). Moreover, the possibility that a testator might change his estate plans or will makes expectancy rights too tentative to influence an alimony award. See Hanify, supra, 403 Mass. at 192 (Liacos, J. concurring).

It is well settled that a protective order can be denied only if Elizabeth Vaughn's need for the additional information outweighs the annoyance, oppression and embarrassment of the parents. See Mass. R. Civ. P. 26(c); see Wangson v. Wangson, 395 Mass. 154, 156, 478 N.E.2d 1270, 1272, cert. denied, 474 U.S. 1014 (1985). First, the court never performed this required balancing of interests, but summarily denied the protective order. Second, the parents' offer to disclose vested, as opposed to contingent interests, supplied the Court with the only information relevant to a division of property. Had the court performed the required balancing test, it would have reached the only possible conclusion and granted the protective order. Having failed to apply the factors appropriately, the Probate Court's Order must be reversed.

STATEMENT OF RELIEF REQUESTED

WHEREFORE, Samuel and Joan R. Vaughn request that this Court:

- (1) Reverse the Probate Court's order denying the protective order;
- (2) Enter an Order granting petitioners' motion for a protective order, preventing disclosure of private and confidential estate matters, and financial information; and
- (3) Enter such other and further relief as this Court deems just and proper.

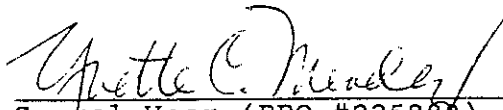
SUPPORTING MATERIALS

1. Endorsed Order denying protective order, with Memorandum attached, dated October 3, 1991
2. Endorsed Order granting Elizabeth Vaughn's motion to continue trial pending appeal, dated October 10, 1991.
3. Subpoena issued to Samuel Vaughn, dated July 10, 1991.
4. Subpoena issued to Joan R. Vaughn, dated July 10, 1991
5. Notice of Deposition of Samuel Vaughn, dated September 18, 1991.
6. Notice of Deposition of Joan R. Vaughn, dated September 18, 1991.
7. Motion for Protective Order, dated September 26, 1991.

As required by the Standing Order of this Court, all of these papers were presented to the Probate Court.

SAMUEL AND JOAN R. VAUGHN

By their attorneys,



Samuel Hoar (BBO #235880)
Yvette C. Mendez (BBO #558219)
GOODWIN, PROCTER & HOAR
Exchange Place
Boston, Massachusetts 02109
617/570-1000

Dated: October 17, 1991

To: Counsel for Elizabeth Vaughn

Nancy R. Van Tine
BURNS & LEVINSON
125 Summer Street
Boston, Massachusetts 02110
617/345-3000

WP-8159/V

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE AND FAMILY COURT
DOCKET NO. 89D-1482-D1

* * * * *

ALLAN P. VAUGHAN,
Plaintiff,

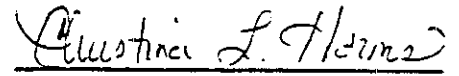
v.

ELIZABETH H. VAUGHAN,
Defendant.

* * * * *

10/3/91

The within Motion is DENIED.
See "Memorandum" on this ruling,
dated today.



Christina L. Harms

Judge

MOTION FOR PROTECTIVE ORDER AND TO

QUASH SUBPOENA DUCUS TUCUM

Samuel and Joan R. Vaughan (hereinafter the "Vaughans"), who are not parties to the above-captioned divorce matter, hereby move pursuant to Rule 26(c) of the Massachusetts Rules of Civil Procedure for an order preventing the plaintiff, Nancy D. Vaughan, from taking the depositions of the Vaughans, or in the alternative, limiting the scope of any deposition and production of documents in connection therewith to exclude all questions pertaining to specific aspects of the Vaughans' respective estate plans. In support of their motion, the Vaughans state that:

1. Subpoenas dated July 10, 1991 was served on your movants, seeking disclosure of, inter alia, ". . . all

COMMONWEALTH OF MASSACHUSETTS TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

ESSEX, ss

Docket No. 90 D 2428 D1

)
Allan VAUGHAN)
)
)
v.) MEMORANDUM on denial of
) "Motion for Protective
) Order and to Quash Subpoena
Elizabeth VAUGHAN) Ducus Tecum"
)

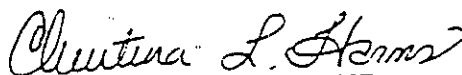
In denying the husband's parents' (hereinafter "the parents") request for protective order, the court was mindful of the fact that an exhaustive deposition and document request might be overkill; but counsel for the parents left little alternative. At the motion hearing, the undersigned judge suggested a practical alternative to the deposition/document production: that the parents simply execute an Affidavit under oath, setting forth:

1. their approximate current total net worth (which could be approximated as roughly as + or - several hundred thousand dollars, even up to + or - a half million dollars); and
2. a general description of their current estate plan and wills (i.e., we have left everything in equal shares to our three children; or we have left everything to one of our three children and nothing to the other two; or we have left our house in Maine to our daughter and everything else to charity; etc.); and
3. a statement of if and when said wills/estate plan were last significantly amended (so as to preclude the possibility that changes were made after divorce proceedings were contemplated, to attempt to shelter assets from scrutiny by the Probate Court).

While counsel for the wife was willing to work on fashioning such an alternative, counsel for the parents vigorously declined the above solution, leaving the court little option but to allow the wife's attorney to conduct discovery "the hard way". It is of concern that this matter is presently scheduled for trial on October 24 and 25, and that delay in resolving this discovery dispute may compromise the fairness to the wife of requiring her to go forward on that date. This court stands ready to take all reasonable steps to avoid a continuance of the trial date in this matter, but reserves the right to so continue the trial date if justice so requires.

10/3/91

date



Christina L. Harms

Exhibit 2

COMMONWEALTH OF MASSACHUSETTS

ESSEX DIVISION

PROBATE AND FAMILY COURT
DOCKET NO.: 90D2428-D1

ALLAN P. VAUGHAN,
Plaintiff

v.

ELIZABETH H. VAUGHAN,
Defendant

FILED

OCT 10 1991

DEFENDANT'S MOTION TO CONTINUE TRIAL

Now comes Elizabeth H. Vaughan, Defendant in the above-captioned matter (hereinafter the "Wife"), and requests that this Honorable Court continue the trial presently scheduled for October 24 and 25, 1991.

In support of her Motion, the Wife states as follows:

1. On February 22, 1991, the Wife filed Interrogatories to be answered by the Plaintiff (hereinafter the "Husband"), which specifically addressed questions regarding the Husband's potential inheritance and the values of his family's estate.

2. On March 22, 1991, the Husband answered the foregoing Interrogatories by objecting and refusing to answer those interrogatories regarding his potential inheritance, the value of his family's estate and his parents' estate plans, setting forth

Essex Division Probate and Family Court Department

10/10/91

The within motion is hereby allowed,

Christina L. Adams
Justice of Probate and Family Court

unless the Appeals Court, on or before Oct. 21, 1991, overturns the Order of Judge Adams as explicated by "Memorandum" dated 10/3/91.

Exhibit 3

Commonwealth of Massachusetts

ESSEX

PROBATE & FAMILY Court

ALLAN P. VAUGHAN

Docket No. 90D2428-D1

Plaintiff(s)

vs.

ELIZABETH H. VAUGHAN

M. R. C. P.
Rule 30(a) &
Rule 45

Defendant(s)

To: Samuel Vaughan, Jr.
44 Thissel Street
Prides Crossing, MA
Greetings:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Elizabeth H. Vaughan before a Notary Public of the Commonwealth, at the office of Nancy R. Van Tine Attorney Burns & Levinson, No. 125 Summer Street, in the City of Boston, on the 13th day of August, 19 91, at 4:00 o'clock P. M., and to testify as to your knowledge, at the taking of the deposition in the above-entitled action.

• And you are further required to bring with you the documents listed in the attached Schedule "A".

TRUE COPY ATTEST
D. J. Sullivan
CONSTABLE

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided

Dated July 10, 1991

Attorney for Elizabeth H. Vaughan
125 Summer Street
Address
Boston, MA 02110-1624
City or Town

[Signature]
Notary Public

My Commission expires 1/02, 1998

*Strike out the words "And you are further required to bring with you" unless the subpoena is to require the Production of Documents or tangible things, in which case production of document or tangible things should be designated in the space provided.

SCHEDULE A

1. Originals and/or copies of and all documents or records in your possession, custody or control, regarding your estate plan, including any wills, trusts or other documents in which the Plaintiff is a named beneficiary, residual beneficiary and/or contingent beneficiary.
2. Originals and/or copies of any and all documents and/or records, in your possession, custody or control, or of which you have knowledge, which evidence any and all trusts and estates in which the Plaintiff is a named beneficiary, whether residual or contingent.
3. Originals and/or copies of any and all documents of funds, income, assets, and accounts, held in trust by any other person or entity for the benefit of the Plaintiff.
4. Originals and/or copies of any and all documents and records, of any trusts and/or estates in which the Plaintiff has a present or contingent or beneficial interest, and whether or not said interest has vested in the Plaintiff.

Exhibit 4

Commonwealth of Massachusetts

ESSEX

PROBATE & FAMILY Court

ALLAN P. VAUGHAN

Docket No. 90D2428-D1

Plaintiff(s)

vs.

ELIZABETH H. VAUGHAN

Defendant(s)

M. R. C. P.
Rule 30(a) &
Rule 45

To: Joan Revell Vaughan
44 Thissel Street
Prides Crossing, MA

Greetings:

YOU ARE HEREBY COMMANDED in the name of the Commonwealth of Massachusetts in accordance with the provisions of Rule 45 of the Massachusetts Rules of Civil Procedure to appear and testify on behalf of Elizabeth H. Vaughan before a Notary Public of the Commonwealth, at the office of Nancy R. Van Tine Attorney Burns & Levinson, No. 125 Summer Street, in the City of Boston, on the 13th day of August, 19 91, at 2:00 o'clock P. M., and to testify as to your knowledge, at the taking of the deposition in the above-entitled action.

- And you are further required to bring with you the documents listed in the attached Schedule "A".

Handwritten signature: J. Sullivan
NOTARY PUBLIC

Hereof fail not as you will answer your default under the pains and penalties in the law in that behalf made and provided

Dated July 10 19 91

Attorney for Elizabeth H. Vaughan
125 Summer Street

Address
Boston, MA 02110-1624

City or Town

Handwritten signature: [Signature]

Notary Public

My Commission expires

1/02, 1998

*Strike out the words "And you are further required to bring with you" unless the subpoena is to require the Production of Documents or tangible things, in which case production of document or tangible things should be designated in the space provided.

SCHEDULE A

1. Originals and/or copies of and all documents or records in your possession, custody or control, regarding your estate plan, including any wills, trusts or other documents in which the Plaintiff is a named beneficiary, residual beneficiary and/or contingent beneficiary.
2. Originals and/or copies of any and all documents and/or records, in your possession, custody or control, or of which you have knowledge, which evidence any and all trusts and estates in which the Plaintiff is a named beneficiary, whether residual or contingent.
3. Originals and/or copies of any and all documents of funds, income, assets, and accounts, held in trust by any other person or entity for the benefit of the Plaintiff.
4. Originals and/or copies of any and all documents and records, of any trusts and/or estates in which the Plaintiff has a present or contingent or beneficial interest, and whether or not said interest has vested in the Plaintiff.

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE AND FAMILY COURT
DOCKET NO.: 90D2428-D1

_____)
ALLAN P. VAUGHAN,)
Plaintiff)
)
v.)
)
ELIZABETH H. VAUGHAN,)
Defendant)
_____)

NOTICE OF TAKING DEPOSITION

TO: David G. Stern, Esquire
210 Lincoln Street
Boston, MA 02111

Please take notice that at 12:00 P.M. on
Wednesday, October 16, 1991, at the offices of Nancy
R. Van Tine, Burns & Levinson, 125 Summer Street,
Boston, Massachusetts, Elizabeth H. Vaughan, Defendant
in the above-entitled action, by her attorney, will
take the deposition upon oral examination of Samuel
Vaughan, Jr., pursuant to applicable provisions of the
Massachusetts Rules of Domestic Relations Procedure,
before Fritz & Sheehan, Notaries Public, in and for
the Commonwealth of Massachusetts, or before some
other officer authorized by law to administer oaths.

The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully submitted
ELIZABETH H. VAUGHAN
by her attorney

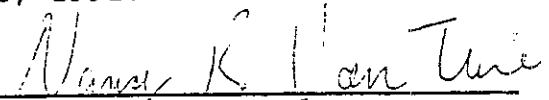
Dated: 9/3/91

Nancy R. Van Tine
Nancy R. Van Tine
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624
(617) 345-3000

CERTIFICATE OF SERVICE

I hereby certify that I served the within Notice of Taking Deposition of Samuel Vaughan, Jr., upon the Plaintiff, by mailing a copy of same, postage prepaid to his attorney of record, David G. Stern, Esquire, 210 Lincoln Street, Boston, MA 02111 and by mailing a copy of same to Samuel Hoar, Esquire Goodwin, Procter, & Hoar, Exchange Place, Boston, MA 02109-2881

Signed under the pains and penalties of perjury
this 18th day of September, 1991.


Nancy R. Van Tine
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624
(617) 345-3000

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE AND FAMILY COURT
DOCKET NO.: 90D2428-D1

_____)
ALLAN P. VAUGHAN,)
Plaintiff)
)
v.)
)
ELIZABETH H. VAUGHAN,)
Defendant)
_____)

NOTICE OF TAKING DEPOSITION

TO: David G. Stern, Esquire
210 Lincoln Street
Boston, MA 02111


Please take notice that at 10:00 a.m. on
Wednesday, October 16, 1991, at the offices of Nancy
R. Van Tine, Burns & Levinson, 125 Summer Street,
Boston, Massachusetts, Elizabeth H. Vaughan, Defendant
in the above-entitled action, by her attorney, will
take the deposition upon oral examination of Joan
Revell Vaughan, pursuant to applicable provisions of
the Massachusetts Rules of Domestic Relations
Procedure, before Fritz & Sheehan, Notaries Public, in
and for the Commonwealth of Massachusetts, or before
some other officer authorized by law to administer
oaths.

The oral examination will continue from day to day until completed.

You are invited to attend and cross-examine.

Respectfully submitted
ELIZABETH H. VAUGHAN
by her attorney /i


Dated: 9/14/91


Nancy R. Van Tine
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624
(617) 345-3000

CERTIFICATE OF SERVICE

I hereby certify that I served the within Notice of Taking Deposition of Joan Revell Vaughan, upon the Plaintiff, by mailing a copy of same, postage prepaid to his attorney of record, David G. Stern, Esquire, 210 Lincoln Street, Boston, MA 02111 and by mailing a copy of same to Samuel Hoar, Esquire Goodwin, Procter, & Hoar, Exchange Place, Boston, MA 02109-2881

Signed under the pains and penalties of perjury
this 14 day of September, 1991.



Nancy R. Van Tine
Burns & Levinson
125 Summer Street
Boston, MA 02110-1624
(617) 345-3000

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

PROBATE AND FAMILY COURT
DOCKET NO. 89D-1482-D1

* * * * *

ALLAN P. VAUGHAN,
Plaintiff,

v.

ELIZABETH H. VAUGHAN,
Defendant.

* * * * *

MOTION FOR PROTECTIVE ORDER AND TO
QUASH SUBPOENA DUCUS TUCUM

Samuel and Joan R. Vaughan (hereinafter the "Vaughans"), who are not parties to the above-captioned divorce matter, hereby move pursuant to Rule 26(c) of the Massachusetts Rules of Civil Procedure for an order preventing the plaintiff, Nancy D. Vaughan, from taking the depositions of the Vaughans, or in the alternative, limiting the scope of any deposition and production of documents in connection therewith to exclude all questions/pertaining to specific aspects of the Vaughans' respective estate plans. In support of their motion, the Vaughans state that:

1. Subpoenas dated July 10, 1991 was served on your movants, seeking disclosure of, inter alia, ". . . all

documents or records in your possession, custody, or control regarding your estate plans, including wills, trusts, or other documents." This same subpoena makes three additional requests, all of which pertain to the trusts and estates of the Vaughans.

2. A previous motion on behalf of Peter B. Loring, Trustee to quash a subpoena of similar impact was granted pursuant to Massachusetts Rules of Civil Procedure 45(b)(1) on the grounds that the subpoena was overbroad and thus unreasonable and oppressive.

3. Though the subpoena filed by the plaintiff seeking disclosure of this private information was quashed, the plaintiff continues to request that the Vaughans disclose specific information pertaining to their respective estate plans. The plaintiff has now gone to the extreme of scheduling the Vaughans for deposition on October 16, 1991 on these same matters.

4. The Vaughans have willingly agreed to disclose financial information pertaining to all vested interests created by them through their wills or in trusts to benefit Allan Vaughan.

5. Allowing plaintiff to depose the Vaughans for the purpose of learning the details of their estate plans would violate their rights of privacy and confidentiality as to these documents and records. The Vaughans have stated in good faith that Allan Vaughan has no vested interest in their wills.

Moreover, because the Vaughans have the freedom to alter or amend their estate plans at their slightest whim and are presently in good health, any information that could be gained by allowing the plaintiff to invade the privacy and confidentiality of their estate plans would be irrelevant to the equitable distribution of property involved with this divorce proceeding.

6. Finally, because the fact that the Vaughans are not parties to this action, forcing them to disclose their estate plans would be setting a precedent which would allow all future intended beneficiaries the same opportunity to force their benefactors to reveal their potential future interests. This will most likely lead to distrust and even hostile relations within families.

7. Thus, the Vaughans' good health, their willingness to disclose any vested interests in Allan Vaughan, and their attempt to maintain family harmony by keeping confidential information which may cause disputes, compel the conclusion that the Vaughans' desire to maintain privacy and family harmony outweighs any benefit the plaintiff might gain by probing into this sensitive area of their lives.

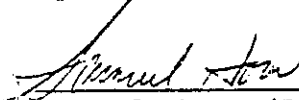
WHEREFORE, Samuel and Joan R. Vaughan request that the Court grant their Motion for Protective Order prohibiting, or in the alternative, limiting, the scope of discovery.

REQUEST FOR ORAL ARGUMENT

Samuel and Joan R. Vaughan respectfully request a hearing on their Motion For Protective Order and to Quash Subpoena.

SAMUEL AND JOAN R. VAUGHAN
NONPARTIES TO THE ABOVE
CAPTIONED SUIT,

By their Attorneys,



Samuel Hoar (BBO #235880)
GOODWIN, PROCTER & HOAR
Exchange Place
Boston, MA 02109
(617) 570-1000

Dated: September 26, 1991

WP-8148/V

CERTIFICATE OF SERVICE

I, Samuel Hoar, attorney for Samuel and Joan Revell Vaughn, hereby certify that on September 26, 1991 I served a copy of the within motion for protective order and to quash subpoena upon defendant Elizabeth Vaughn by mailing a copy of same in an envelope postage prepaid addressed to Nancy R. Van Tine, Esq. Burns & Levinson, 125 Summer Street, Boston, Massachusetts, attorney of record for said defendant. I further certify that I notified Nancy R. Van Tine, Esq. that I would present the enclosed motion for allowance to the Essex County Probate Court sitting in Salem, Massachusetts on Thursday, October 3, 1991 at 10:00 O'clock A.M.

Signed under the penalties of perjury.

Samuel Hoar
BBO # 235880