

STATE OF INDIANA) IN THE SUPERIOR COURT, PROBATE
)SS:
COUNTY OF MARION) TRUST DOCKET T-62, Page 11

IN THE MATTER OF THE)
PUBLIC BENEVOLENT TRUST)
U/W MARY POWELL CRUME,)
DECEASED; INDIANAPOLIS)
HUMANE SOCIETY, TRUSTEE)

**MOTION FOR CONTINUANCE OF DECEMBER 20, 2004 HEARING
ON TWENTY-SECOND STATEMENT OF ACCOUNTS AND SUPPLEMENTAL
REPORT TO THE TWENTY-SECOND STATEMENT OF ACCOUNTS**

Come now Complainants/intervenors Spay-Neuter Services of Indiana, Inc.; Alliance for Responsible Pet Ownership, Inc.; Home for Friendless Animals, Inc.; and Southside Animal Shelter, Inc, by their counsel, and move for continuance of the December 20, 2004 hearing on the Trustee's revised Twenty-Second Statement of Accounts due to the currently pending appeal in the Indiana Court of Appeals involving same, and in support thereof state:

1. On November 29, 2004, the Humane Society, as trustee, filed its Supplemental Report to the Twenty-Second Statement of Accounts.
2. Such Supplement addresses issues raised by the Attorney General and by Complainants – both in their claims in this matter and in their appeal pending in the Indiana Court of Appeals.
3. Complainants timely filed their Notice of Appeal of this Court's Order dismissing them from this matter for lack of standing.
4. Complainants filed their Appeal of same with the Indiana Court of Appeals on November 22, 2004, a full week prior to the Humane Society's filing its Supplemental Report. The Humane Society was served a copy of the appeal. The Cause No. of the appeal is 49A05-0409-CV-489.
5. The Humane Society's Supplemental **Report responds in part to an issue raised in the Complainants' Appeal filed a week earlier** that states the Humane Society has refused or failed to revise its Accounting despite Complainants' and the Attorney General's Objections thereto.

6. Counsel for Humane Society filed its Supplemental Report on November 29, 2004 and requested a hearing date for same, which is tentatively scheduled for December 20, 2004.
7. Counsel for the Humane Society **failed to serve on Complainants a copy of its Supplemental Report filed November 29, 2004 and the Court's order setting same for hearing until December 9, 2004, a full ten (10) days after filing the same.** A copy of Mr. Donahue's transmittal letter is attached hereto as Exhibit A.
8. Complainants did not receive a copy of Humane Society's Supplemental Report, responding to an issue in their appeal, until December 13, 2004 – just one week prior to the scheduled hearing.
9. Since Complainants' Appeal as to their legal standing to bring objections to the same Twenty-Second Accounting (and any Supplement thereto) and their claims related thereto is still pending in the Indiana Court of Appeals, Complainants request a continuance on this Court's hearing on the Supplement to same Accounting until such appeal is complete.
10. The **Humane Society suffers no harm** if a continuance of the December 20, 2004 hearing is granted pending the appeal at the Indiana Court of Appeals. If the Complainants do not succeed in their appeal (briefing must be completed before January 8, 2005), then the Humane Society can move forward at that time to obtain final approval of its Accounting and Supplemental Report.
11. However, **Complainants will be significantly harmed if the December 20, 2004 hearing goes forward prior to resolution of their appeal of legal standing:** if the Complainants succeed in their appeal on legal standing, then they must be allowed to present their objections to the same accounting and their related claims at such a hearing. However, if the December 20, 2004 hearing goes forward, Complainants will not have had the opportunity to present their objections and related claims.
12. The Complainants' related claims include the Humane Society's commingling of trust assets, breach of fiduciary duty for failure to account, attempted

conversion of trust assets, conflict of interest and self-dealing. These claims seek removal of the Humane Society as trustee due to significant breaches of trust. Since these claims are so closely related to the Accounting, and because the claims derive from the right to object to the accounting (which is the sole subject of the appeal) pursuant to I.C. 30-4-5-14(b), **no action on final approval of the Accounting should be taken until the Appeal is resolved.**

13. Further, because these claims will relate back to the Complainants' original objections and complaint, it will be a waste of this Court's time to have to re-hear the matter as to whether to approve the Accounting and Supplement in the event that Complainants appeal on legal standing is successful. On the other hand, **no harm will result to any party from postponing the December 20, 2004 hearing** on the Accounting and Supplement.

WHEREFORE, Complainants pray for an Order continuing the December 20, 2004 hearing on the trustee's Twenty-Second Statement of Accounts and Supplemental Report thereto, which are the subject of an appeal pending at the Indiana Court of Appeals and currently being briefed to the Court of Appeals, and for all other relief just and proper in the premises.

Respectfully Submitted,

Veronica L. Jarnagin (19419-49), Attorney for Complainants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the ____ day of December 14, 2004, a true and complete copy of the foregoing was made by depositing same in the United States Mail in an envelope properly addressed and with sufficient postage affixed thereto to the following:

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ORDER ON MOTION FOR CONTINUANCE

This matter comes before the Court on Complainants' Motion for Continuance of December 20, 2004 Hearing on Twenty-Second Statement of Accounts and Supplemental Report on Twenty-Second Statement of Accounts. And the Court, being duly advised, finds the same should be GRANTED.

The Hearing on Twenty-Second Statement of Accounts and Supplemental Report on Twenty-Second Statement of Accounts is continued until notification of the complete resolution of the appeal under Cause No. 49A05-0409-CV489.

So ORDERED this date, _____ .

Hon. Charles J. Dieter, Judge, Marion Probate Court

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