§ 81.43 Proceedings to discover property withheld.

(a) To the extent that it is consistent with the authority otherwise granted by the court a guardian may commence a proceeding in the court which appointed the guardian to discover property withheld. The petition shall contain knowledge, or information and belief of any facts tending to show that any interest in real property or money or other personal property, or the proceeds or value thereof, which should be delivered and paid to the guardian, is in the possession, under the control, or within the knowledge or information of respondent who withholds the same from the guardian, whether such possession or control was obtained before or after the appointment of the guardian, or that the respondent refuses to disclose knowledge or information which such person may have concerning the same or which will aid the guardian in making discovery of such property. The petition shall request that respondent be ordered to attend an inquiry and be examined accordingly and deliver property of the incapacitated person if it is within his or her control. The petition may be accompanied by an affidavit or other written evidence, tending to support the allegations thereof. If the court is satisfied on the papers so presented that there are reasonable grounds for the inquiry, it must make an order accordingly, which may be returnable forthwith, or at a future time fixed by the court, and may be served at any time before the hearing. If it shall appear from the petition or from the answer interposed thereto, or in the course of the inquiry made pursuant to the order that a person other than the respondent in the proceeding claims an interest in the property or the proceeds or the value thereof, the court may by the original order or by supplemental order, direct such additional party to attend and be examined in the proceeding in respect of his or her adverse claim, and deliver the property if in his or her control or the proceeds or value thereof. Service of such an order must be made by delivery of a certified copy thereof to the person or persons named therein and the payment or tender, to each of the sum required by law to be paid or tendered to a witness who is subpoenaed to attend a trial in such court.

(b) If the person directed to appear submits an answer denying any knowledge concerning or the possession of any property which belongs to the incapacitated person or should be delivered to the guardian, or shall make default in answer, he or she shall be sworn to answer truly

all questions put to him or her regarding the inquiry requested in the petition. Any claim of title to or right to the possession of any property of the incapacitated person must be made by verified answer in writing. If such answer is interposed, the issues raised thereby shall be tried according to the usual practice of the court as a litigated issue but the interposition of such answer shall not limit the right of the guardian to proceed with the inquiry in respect of property not so claimed by the verified answer. If possession of the property is denied, proof on that issue may be presented to the court by either party. The court may in an appropriate case make interim decrees directing the delivery of property not claimed by verified answer and may continue the proceeding for determination of any litigated issue. If it appears that the guardian is entitled to the possession of the property, the decree shall direct delivery thereof to the guardian or if the property shall have been diverted or disposed of, the decree may direct payment of the proceeds or the value of such property or may impress a trust upon said proceeds or make any determination which a court of equity might decree in following trust property funds. In any case in which a verified answer is served and the court after a trial or hearing determines the issue, the court may in its discretion award costs not exceeding fifty dollars and disbursements to be paid by the unsuccessful party.