

**NO. 08-12-00331-CV**

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**IN THE COURT OF APPEALS  
EIGHTH JUDICIAL DISTRICT OF TEXAS  
EL PASO, TEXAS**

FILED IN  
8th COURT OF APPEALS  
EL PASO, TEXAS  
4/3/2015 2:23:44 PM  
DENISE PACHECO  
Clerk

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**IN RE: ESTATE OF MAX D. HOPPER, DECEASED**

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**STEPHEN B. HOPPER and LAURA S. WASSMER,  
Defendants – Appellants/Cross-Appellees**

**JO N. HOPPER,  
Plaintiff – Appellee/Cross-Appellant**

**JPMORGAN CHASE BANK, N.A.,  
Defendant – Appellee/Cross-Appellee**

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**STEPHEN B. HOPPER AND LAURA S. WASSMER’S RESPONSE TO  
JPMORGAN CHASE BANK, N.A.’S MOTION FOR REHEARING**

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**ATTORNEYS FOR STEPHEN B. HOPPER  
and LAURA S. WASSMER**

Appellants Stephen B. Hopper and Laura S. Wassmer respond as follows to JPMorgan Chase Bank, N.A.'s Motion for Rehearing and respectfully show the Court as follows:

### **INTRODUCTION**

JPMorgan Chase Bank, N.A. (the "Estate Administrator") has asked this Court to unnecessarily amend its opinion so that it can apparently gain ammunition for extra administrative fees in the probate court below. To obtain such relief, the Estate Administrator seeks to clothe its request under the guise of a "clarification" of the Court's opinion. Such a motion is not well taken and should be denied.

Specifically, the Estate Administrator seeks to have the Court rule that it properly administered Jo N. Hopper's interests in the residence and properly defended her in the Probate Court. If the Court makes such a ruling, the Estate Administrator apparently plans to present such a ruling to the probate court as a binding affirmation of the fees it is entitled to for its administration. However, such a ruling is not only unnecessary, but also would cause this Court to issue rulings that have yet to be ruled on by the court below. As such, it would deprive Appellants of the ability to present their evidence and arguments before the trial court and require this Court to improperly rule without a full and complete record. The Motion, therefore should be denied.

### **ARGUMENT AND AUTHORITIES**

As the Court is undoubtedly aware, the Estate Administrator will be seeking fees for its work below which will include, among others, fees based upon the size of the estate. The Estate Administrator, therefore, seeks to have this Court rule now that the administered

estate **must** include the value of Mrs. Hopper's interest in the estate. These issues should be ruled on by the probate court before being addressed here.

**First**, as to the requested clarifications regarding the homestead rights and Robledo, the opinion is clear and no changes are needed. The issues of the Estate Administrator's rights and the property that could be administered are appropriately defined throughout the Court's opinion. However, through carefully placed tweaks (such as defining the term "Robledo" – which impacts the opinion in a myriad of detailed ways), the Estate Administrator seeks to have the Court amend its opinion to clarify that the entire property was properly administered (which would allow the entire value of the property to be used in seeking the Estate Administrator's fee). However, just because the property *can* be administered, does not necessarily mean that it was or that other actions did not occur to impact such an analysis. Thus, the issue of what was properly administered – as well as what should have been – remains an issue to be determined by the court below.

To be clear, Appellants are not asking the Court to rule that the Estate Administrator is not entitled to consider the entire value of the property in its fee. All Appellants are saying is that this Court should allow the trial court to make such determination with full facts and argument, create a full record, and after such ruling, this Court can resolve whatever issues remain if appealed. What this Court should not do is rule in lieu of the trial court on such an incomplete record.

**Second**, as to the Estate Administrator's request for the Court to delete a quote of counsel from the Court's opinion, Appellants believe that such action is unnecessary as the full quote is in the record and a suggestion that it would be misused is incorrect. That

being said, because such a deletion has no impact on the Court's opinion or the rights of the parties, Appellants have no opposition to this request if the Court feels that its opinion was not clear.

The Court, therefore, should deny the Motion, allow the mandate to issue, and send the Parties back to probate court to hopefully resolve all issues pending between them.

Respectfully submitted,

FISH & RICHARDSON P.C.

By:     /s/ Geoffrey S. Harper    

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been served on the following counsel of record via the electronic service manager and/or by e-mail on this 3rd day of April, 2015:

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*/s/ Geoffrey S. Harper*  
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