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08-12-00331-CV (5)

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NO. 08-12-00331-CV

DENISE PACHECO, CLERK
EIGHTH COURT OF APPEALS

IN THE COURT OF APPEALS
EIGHT JUDICIAL DISTRICT OF TEXAS
EL PASO, TEXAS

IN RE: ESTATE OF MAX D. HOPPER, DECEASED

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

FILED IN
COURT OF APPEALS

DEC 12 2012

DENISE PACHECO
CLERK 8th DISTRICT

On appeal from Probate Court No. 3
Dallas County, Texas
Trial Court Cause No. PR-11-3238-3

JPMORGAN CHASE BANK, N.A.'S MOTION TO MODIFY BRIEFING
DEADLINES OR, ALTERNATIVELY, FOR EXTENSION OF TIME

Appellee/Cross-Appellee JPMORGAN CHASE BANK, N.A. as Independent Administrator of the Estate of Max D. Hopper, Deceased (the "Administrator") files this Motion to Modify Briefing Deadlines or, Alternatively, for Extension of Time, as follows:

1. Appellants Stephen B. Hopper and Laura S. Wassmer filed their Appellants' Brief on November 21, 2012.

brief is filed
(Appellee - Cross-
Appellant).

2. On December 5, 2012, the Court granted Appellee/Cross-Appellant Jo N. Hopper's motion for extension of time to file her brief. With that extension, her combined brief is currently due February 5, 2012.

3. Fifth Court of Appeals Local Rule 10(3), adopted in this case, does not clearly establish the briefing schedule of the Administrator as an Appellee and Cross-Appellee in a three-party appeal. Local Rule 10, however, does reflect a policy of allowing a party who is wearing "two hats" in the appeal (for example, appellee and cross-appellant) to file a combined brief.

4. Looking to the Texas Rules of Appellate Procedure, the brief of the Administrator as Appellee in response to the Appellants' Brief is due on December 21, 2012. TEX. R. APP. P. 38.6(b). The brief of the Administrator as Cross-Appellee is due 30 days after Jo N. Hopper files her brief. *Id.*

5. Local Rule 10(5) states that "[t]he Court may change the requirements of this rule on its own motion or motion of any party to the appeal." Texas Rule of Appellate Procedure 38.6 also permits the Court to modify the filing deadlines.

6. The Administrator now respectfully requests that the Court allow it to file a single, combined brief as Appellee and Cross-Appellee, with a 30,000 word maximum, due 30 days after Jo. N. Hopper files her brief as Appellee/ Cross-Appellant. Allowing the Administrator to file a combined brief will promote judicial economy and clarity by decreasing the number of filings and allowing the Administrator to address the issues in a

more efficient, consolidated manner. This change will not expand the total time for briefing under the current schedule or cause any delay in the completion of the briefing.

7. In the alternative, the Administrator respectfully requests a 30-day extension of the deadline to file its brief as Appellee in response to the brief filed by Stephen B. Hopper and Laura S. Wassmer as Appellants. The extended deadline would be January 21, 2012. There is good cause for this extension for the following reasons. Thomas Cantrill of Hunton & Williams LLP is the Administrator's lead counsel in the underlying estate administration proceeding (John Eichman of that firm is lead counsel in the litigation and in this appeal). A significant portion of Mr. Cantrill's practice is estate planning. Given the current uncertainty in estate tax laws and the desire of many clients to make changes to their estate plans before January 1, 2013, Mr. Cantrill has been very busy with his estate planning practice. Although there was extensive briefing in the trial court, Mr. Cantrill's collaboration in the preparation of the Administrator's brief in response to Appellants' brief is essential, but has not been possible because of his other practice demands. In addition, Mr. Eichman will be out of the country during the holidays from December 23, 2012 until January 5, 2013. The Administrator requests this extension not for delay, but so that justice may be done.

8. Appellants Stephen B. Hopper and Laura S. Wassmer have agreed to the Administrator filing a combined brief of a maximum 30,000 words 30 days after Jo N. Hopper files her brief. Jo N. Hopper opposes this motion.

For these reasons, the Administrator respectfully requests that the Court enter an order allowing it to file a single, combined brief (30,000 word maximum) in response to both Appellants' and Cross-Appellant's briefs, due 30 days after Jo N. Hopper files her combined brief as Appellee/Cross-Appellant. Alternatively, the Administrator respectfully requests a 30-day extension of the time to file its brief as Appellee in response to Stephen B. Hopper and Laura S. Wassmer's brief as Appellants.

Respectfully submitted,

HUNTON & WILLIAMS LLP

By: 


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APPELLEE
JPMORGAN CHASE BANK, N.A.
IN ITS CAPACITY AS INDEPENDENT
ADMINISTRATOR OF THE ESTATE
OF MAX D. HOPPER, DECEASED**

CERTIFICATE OF CONFERENCE

I certify that on I conferred by email with counsel for the other parties. Lawrence Fischman, counsel for Appellants Stephen B. Hopper and Laura S. Wassmer, has informed me that he agrees to the administrator filing a combined brief of 30,000 words maximum within 30 days after Jo N. Hopper files her brief. Michael Yanof, counsel for Jo N. Hopper, has informed me that he opposes this motion.


John C. Eichman

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this document has been served by facsimile on the following counsel of record on the 17th day of December, 2012:

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