

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

IN RE: THE JACK A. HERRMANN AND
JEAN HERRMANN REVOCABLE TRUST
AGREEMENT,

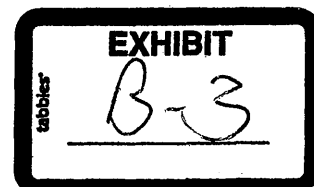
PB 2014-00056

ORDER APPOINTING RULE 11-706 EXPERT

This Cause is before the Court on the appointment of Judith A. Wagner CPA/ABV, CFF, CVA of Wagner Valuation & Financial Forensics, LLC as an accounting expert pursuant to Rule 11-706 (hereinafter "Rule 706 Expert") to provide a forensic accounting of the Trust at issue, and to perform other financial analysis on behalf of the Court as set forth herein. The purpose of this Order is to (1) memorialize her appointment; (2) establish the scope and terms of her appointment; and (3) provide background, definitions, and instructions to facilitate her appointment.

Background

This case involves the estate of Dr. Jack A. Herrmann, who died on August 16, 2013. Jean Herrmann predeceased Dr. Herrmann. Pursuant to the death of Dr. Herrmann, his estate, which had been held in a Revocable Trust, was divided into the Jack A. Herrmann Trust Agreement – Trust A ("Trust A") and the J & J Herrmann Decedents Trust ("Trust B"). Prior



to Dr. Herrmann's death a Guardianship and Conservatorship proceeding had been initiated in the Second Judicial District Court, D-202-PQ-2012-00113¹. In that matter, Dr. Herrmann was determined to be in need of a guardian and conservator. Albuquerque Advocates P.C. (Darryl Millet) ("Millet") was appointed Dr. Herrmann's temporary conservator on August 21, 2012 and conservator on January 8, 2013. Millet was additionally appointed the successor trustee of Trust A and Trust B, on January 14, 2013, over Nancy Hart's ("Hart") objections². That appointment carried over into the present case. The present case began with Millet's request to partially distribute certain Trust A assets for tax reasons in January 2014. That request was approved in March 2014.

Dr. Herrmann had eight children. Some of the children are in conflict and it appears that several fractional groupings of children exist. Dr. Herrmann had significant assets. During his life, upon information and belief, he made gifts and loans to various children. It appears that a great deal of work was undertaken in the PQ case to try and sort out Dr. Herrmann's finances. Millet has told the Court on more than one occasion that while allegations of improper distributions during Dr. Herrmann's life abound, it has been difficult to sort through the finances.

Nancy Herrmann Hart has continued to be critical of Millet's efforts. She has sought a second accounting since at least the initiation of the PB case. Initially the Court agreed that she could have an accounting done at her own initial expense. Because this estate needs to be examined and the remaining assets distributed, the Court has determined that the appointment of an independent forensic accountant is necessary to resolve this continued dispute.

¹ The guardianship case was initiated by Nancy Herrmann Hart.

² Prior to Millet being appointed as trustee, two of Dr. Herrmann's children, Carolyn Herrman Sullivan and Gary Herrmann served as co-Trustees.

Importantly Nancy Herrmann Hart is not a beneficiary of Trust B. The Court approved Millet's proposed distribution of Trust B assets on June 15, 2015³.

Scope of Work

The primary purposes of the Court's appointment of a Rule 706 Expert is the preparation of a report which (1) provides an inventory of any and all assets held by Trust A at the time of Dr. Herrmann's death⁴; (2) prepares a current accounting of all such assets; (3) investigates, to the extent she deems practical, and expresses an opinion as to the proposed distribution of Trust A to the beneficiaries; and (5) makes any further recommendations which the Rule 706 Expert believes may assist the Court in adjudicating the conduct of the parties and determining how to distribute Dr. Herrmann's assets in accordance with his estate planning. The expert should perform whatever forensic accounting procedures she deems necessary to analyze Trust A and provide her expert opinion to the Court.

A. Forensic Accounting and Analysis of Trustee Millet's Proposed Allocation

Millet has proposed an allocation of Trust A, which is disputed. The Rule 706 Expert shall review the Proposed Allocation, and express an opinion to the Court as to the whether the Proposed Allocation is accurate and supported. The Rule 706 Expert's report should identify and explain any potential material issues in the Proposed Allocation, and make any further recommendations she deems appropriate to assist the Court in adjudicating the conduct of the parties and determining how to distribute Dr. Herrmann's assets in accordance with his estate planning.

Terms and Conditions of Appointment

1. Ms. Wagner shall serve as a neutral, independent expert on behalf of the Court.

³ Hart objected to the proposed distribution of the Trust B assets and expressed concern that some Trust B beneficiaries might "owe" Trust A money due to prior disproportionate distributions from Dr. Herrmann.

⁴ Ms. Wagner may rely upon the inventory prepared in the PQ case or may independently review the Trust A assets.

She shall not be beholden to any parties in this action. Her function is to assist the Court by providing expert analysis, opinions, and a report as described more fully above. Ms. Wagner shall be acting as an officer of this Court under this Order and not on her own behalf.

2. Ms Wagner shall have access to the financial portion of the two reports filed by the Guardian ad litem, August 16, 2012 and December 27, 2012 in PQ 2012-00113. Dr. Herrmann's medical information has been redacted from those reports. Ms. Wagner shall also have access to financial records compiled or maintained by GAL Barbara Buck. Any information recovered during this review regarding Dr. Herrmann's capacity or health shall be kept confidential.

3. Ms. Wagner accepts this appointment by her signature below subject to the terms and conditions set forth herein.

4. The fees of the expert witness in this matter will be based on hourly rates, plus out-of-pocket expenses, including but not limited to postage, courier charges or specially purchased office supplies. These fees will not be contingent upon the outcome of the case. Fees billed will be at standard rates for all tasks performed by professional or administrative personnel and will range from \$75 to \$350 per hour depending on personnel assigned, plus applicable New Mexico gross receipts tax. Ms. Wagner's fees shall preliminarily be paid from the Trust. In her report, Ms. Wagner shall make a recommendation as to whether the Rule 706 Expert fees should be reapportioned, and if so, recommend how such fees should be reapportioned.

5. The expert witness will be paid a retainer of \$10,000 prior to providing any services pursuant to this appointment, said retainer to be paid as agreed by the parties or as further directed by the Court. Ms. Wagner will submit monthly bills for services in connection with this case to Trustee Millet. Monthly invoices will show amounts billed to the date shown on the invoice and the remaining balance of the retainer fee, if any. Any balance remaining due is payable when the invoice is received. If the retainer fee is depleted, Ms. Wagner will request by invoice additional retainer payments as necessary to keep a positive balance of \$2,500 in the account until completion of the engagement. A service charge of 1.5% per month will be charged against any amounts not paid within thirty days from the date of the invoice.

6. Ms. Wagner shall cease work in this matter and request a hearing if her fees are not timely paid. In no event shall Ms. Wagner be required to submit a report to the Court or to testify at trial unless fees due and payable to the date of delivery of said report or testimony are paid in full.

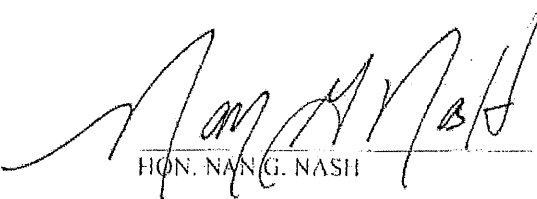
7. Each party shall fully cooperate with Ms. Wagner and provide promptly and completely all documents or information requested. If requested by Ms. Wagner, each party shall provide or sign written authorizations directing third parties to provide documents, records or information to the expert witness. If any third party refuses to cooperate, Ms. Wagner shall have authority to issue subpoenas as necessary. In the event either party files a motion or requests or initiates a hearing, conference or communication with the Court which could impact

Ms. Wagner's assignment, fees, timing of work, due dates, requirements for appearance or any other aspect of this appointment, the moving or requesting party shall provide notice to Ms. Wagner at the same time.

8. Ms. Wagner may initiate contact with any beneficiary of Trust A and with the Trustee. The parties, beneficiaries and the trustee shall initiate not contact with Ms. Wagner unless responding to her request or as otherwise set forth herein. Ms. Wagner shall take possession of all documentation related to the accounting, auditing or tax preparation work previously performed from the Trustee. If any of the beneficiaries have additional documentation to provide, it should be sent directly to the Ms. Wagner within twenty (20) days of this order. Any beneficiary or the Trustee is entitled to copies of all documentation provided to Ms. Wagner, from Ms. Wagner, at the requesting person's expense.

9. Ms. Wagner may have *ex parte* communications with the Court, the trustee, or any party or beneficiary. Each person shall simultaneously provide copies of all written communications and documents submitted to Ms. Wagner to the other party.

SO ORDERED.


HON. NAN G. NASH

Consent to Appointment

I consent to the above appointment by the Court to act as Rule 706 Expert.

Ju Attachment A

Judith A. Wagner CPA/ABV, CFF, CVA
Wagner Valuation & Financial Forensics, LLC

Ms. Wagner's assignment, fees, timing of work, due dates, requirements for appearance or any other aspect of this appointment, the moving or requesting party shall provide notice to Ms. Wagner at the same time.

8. Ms. Wagner may initiate contact with any beneficiary of Trust A and with the Trustee. The parties, beneficiaries and the trustee shall initiate not contact with Ms. Wagner unless responding to her request or as otherwise set forth herein. Ms. Wagner shall take possession of all documentation related to the accounting, auditing or tax preparation work previously performed from the Trustee. If any of the beneficiaries have additional documentation to provide, it should be sent directly to the Ms. Wagner within twenty (20) days of this order. Any beneficiary or the Trustee is entitled to copies of all documentation provided to Ms. Wagner, from Ms. Wagner, at the requesting person's expense.


9. Ms. Wagner may have *ex parte* communications with the Court, the trustee, or any party or beneficiary. Each person shall simultaneously provide copies of all written communications and documents submitted to Ms. Wagner to the other party.

SO ORDERED.

HON. NAN G. NASH

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I consent to the above appointment by the Court to act as Rule 706 Expert.



Judith A. Wagner CPA/ABV, CFF, CVA
Wagner Valuation & Financial Forensics, LLC

Attachment A

Date: AUGUST 19, 2015

A copy of this Order was mailed to all parties of record on the date of filing.