

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

IN THE MATTER OF THE ESTATE OF  
ROBERT D. ARMSTRONG,

Deceased.

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) PROBATE NO. SX-14-PB-71  
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**MOTION TO DISQUALIFY COUNSEL AND TO STAY PROCEEDINGS**

Douglas L. Armstrong moves to disqualify attorney Donovan M. Hamm, Jr., as counsel for petitioner, Mrs. Patricia L. Armstrong ("Mrs. Armstrong"), and to stay proceedings pending resolution of this motion. Attorney Hamm was previously retained by Douglas L. Armstrong, Elizabeth A. Armstrong, and Robert W. Armstrong in their capacities as trustees and beneficiaries of the Armstrong Family Trust ("AFT"), which succeeded the Robert D. Armstrong Living Trust ("RDA Living Trust") upon the death of the decedent. It is precisely the assets of AFT and its successor trusts that Attorney Hamm now wishes to invade by his client's intended election of a statutory share in derogation of the decedent's testamentary dispositions. Attorney Hamm's previous work for AFT and its trustees and beneficiaries creates a conflict of interest as set forth in VISCR 211.1.9(a), because his efforts on behalf of Mrs. Armstrong are "substantially related" to his prior work as legal counsel for the AFT trustees and beneficiaries, and is materially adverse to their interests. To avoid the risk of tainting these proceedings, the Court should stay all proceedings until this motion has been resolved – except for limited discovery deemed necessary to develop the factual basis

for disqualification. The declaration of Douglas L. Armstrong is attached in support of this motion.

### **Factual Background**

Decedent created the RDA Living Trust and transferred substantially all of his assets to that trust prior to his death. Upon his death, the RDA Living Trust became the AFT and Douglas L. Armstrong, Elizabeth A. Armstrong, and Robert W. Armstrong, became its successor trustees. AFT included a sub-trust called the “Patty Armstrong Trust” (“PLAT”), all income from which was for the benefit and support of Mrs. Armstrong. Douglas L. Armstrong, Elizabeth A. Armstrong, and Robert W. Armstrong were also the trustees of PLAT. Additionally, AFT provided for Mrs. Armstrong to enjoy the possession, use, and benefit of decedent’s residential estate at Estates Bulows Minde and Hafensight during her lifetime, with the residential estate to be maintained by AFT. Thus, the decedent’s testamentary dispositions made substantial provision for petitioner’s benefit, all of which she has accepted for the last nine years.

Prior to the death of Robert D. Armstrong (“RDA”), Attorney Hamm represented the decedent in numerous business transactions and tax matters. In particular, he represented RDA with respect to the sale of the capital stock of Haywood Street Redevelopment Corporation (“HSRC”), a Virgin Islands corporation having its principle investments in real property located in Ashville, North Carolina. The total

value of this transaction exceeded Eleven Million Dollars. Although the initial closing of the contract of sale occurred during RDA's lifetime, aspects of the transaction remained executory and continued after RDA's death in May of 2005. Attorney Hamm was retained by AFT to complete various direct and collateral matters related to or arising from this transaction and to directly advise the AFT trustees and beneficiaries concerning all matters related to or arising from the transaction. In addition, AFT and its trustees were represented by Attorney Hamm more generally, including, without limitation, the following:

- a. The closing of a real estate transaction involving property in Estate Constitution Hill which RDA had contracted to purchase prior to his death. The rights under the contract of purchase had not been transferred to the RDA Living Trust prior to RDA's death and may have been part of his probate estate. Attorney Hamm closed the transaction in the name of AFT without an intervening probate. At no time did Attorney Hamm discuss with the Trustees the possibility or advisability of probating the Will in order to administer assets that had not been transferred to the RDA Living Trust during RDA's lifetime.
- b. The reporting for tax purpose of the proceeds derived by AFT with respect to the sale of HSRC capital stock as noted above, as well as general tax matters involving AFT and the preparation of its tax returns.
- c. Following RDA's death, certain assets of HSRC - which ought to have been stripped from the corporation prior to the initial closing of the sale of HSRC capital stock - were discovered to be held in the name of the corporation. Attorney Hamm was aware of this fact, but did not advise the trustees of the possibility or advisability of probating the Will in order to administer assets that had not been transferred to the RDA Living Trust during RDA's lifetime.

In the course of Attorney Hamm's representation of AFT and its Trustees in these and other matters, Attorney Hamm is likely to have become privy to information concerning AFT, its assets, and its trustees and beneficiaries, that will be of benefit to Mrs. Armstrong in the petition for probate and her efforts to make a statutory election and invade the assets of the trusts created by RDA before his death. The subject matters of the petition for probate, the prospective statutory election, and the proposed invasion of RDA Living Trust assets are all "substantially related" to the subject matters in which Attorney Hamm once represented AFT and its trustees and beneficiaries. In particular, and without limitation, the subject matters are related because:

- a. Mrs. Armstrong's petition to submit the Will to probate and her stated intention to make a statutory election are possible only because the Will was not previously probated by her children. As detailed above, the Will was not submitted to probate notwithstanding the fact that the Trustees/Personal Representatives were represented by Attorney Hamm (a professed expert in Trusts and Estates) who knew or should have known that probate of the Will may have been advisable during his period of representation and in connection with the specific matters for which he had been retained. Attorney Hamm had a duty to advise the Personal Representatives respecting a possible probate of the Will, and his belated submission of the Will for probate on behalf of Mrs. Armstrong is "substantially related" to his prior representation of the Trustees / Personal Representatives.
- b. By attempting to open a probate estate for the sole purpose of electing against the decedent's testamentary dispositions, Attorney Hamm seeks the invasion of trust assets potentially resulting in the rescission of previous transactions. This carries the substantial risk of requiring recharacterization of tax matters for which Attorney Hamm previously advised AFT and its Trustees. Attorney Hamm's knowledge of such matters will inevitably benefit Mrs. Armstrong in the litigation and potential settlement of her disputes with the AFT trustees and beneficiaries.

- c. The petition asserts that the estate against which the election is to be made includes all of the assets of the RDA Living Trust transferred by RDA during his lifetime and which became the assets of AFT, the very trust that retained the service of Attorney Hamm. Thus, Attorney Hamm now seeks to invade the assets of the trusts which he had been charged with protecting when representing AFT and its trustees and beneficiaries.
- d. In order to effect a statutory election the value of the estate has to be determined. Pursuant to 15 V.I.C. § 10(a)(6), the elective share allowed Mrs. Armstrong (in the event such an election is allowed) is reduced by the principal value of all trusts or other testamentary provisions made by the decedent for the support of Mrs. Armstrong. Thus, the elective share will be a function of the value of the estate as a whole and the values of the corpus of sub-trusts created for Mrs. Armstrong's benefit and the value of the family estate property which she currently occupies comprising Estates Bulows Minde and Hafensight. Attorney Hamm formerly represented AFT and its Trustees, specifically respecting its tax obligations resulting from the HSRC transactions and real estate contracts pending at the time of RDA's death – all of which are directly related to estate valuations. Thus, the subjects of Attorney Hamm's prior retention by the AFT Trustees are inextricably linked to the subject matter of his proposed representation of Mrs. Armstrong in this case.

Attorney Hamm's representation of Mrs. Armstrong in the present petition to probate the Will and to elect a statutory share in derogation of the decedent's wishes and of Douglas Armstrong's rights as his former client (both as an AFT trustee and beneficiary) is in violation of VISCR 211.1.9 (Model Rule 1.9).

**Discussion:**

Rule 211.1.9 provides in pertinent part that "(a) A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse

to the interests of the former client unless the former client gives informed consent, confirmed in writing.”

“Matters are "substantially related" for purposes of this Rule if they involve the same transaction or . . . or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.” ABA, Comment on Rule 1.9 of the Model Rules of Professional Conduct.<sup>1</sup> Commentary on Rule 1.9 provides an example that is analogous to the one in the instant matter, pointing out that “a lawyer who has represented a businessperson and learned extensive private financial information about that person may not then represent that person's spouse in seeking a divorce.” Likewise, in this case, Attorney Hamm having acquired substantial financial information about the AFT and its Trustees (and its beneficiaries) and their management of the testamentary trusts, cannot represent Mrs. Armstrong, whose interests in the current litigation are adverse to those of the Douglas Armstrong and his fellow AFT trustees and beneficiaries. Like the divorcing party in the commentary example, Mrs. Armstrong could benefit from confidential information acquired by

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<sup>1</sup> V.I.S.T.CR. 203 provides that “to the extent applicable, the accompanying or related ABA INTERPRETIVE GUIDELINES, COMMENTS, and COMMITTEE COMMENTS, shall govern the conduct of members of the Bar of this Territory . . . .” MRPC 1.9 is related to VISTCR 2.11.1.9 as its language is nearly identical (providing that “[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.” Thus the commentary cited above is applicable when interpreting Rule 211.1.9.

Attorney Hamm concerning the trusts themselves, their businesses, the trustees, and the trust beneficiaries. These are exactly the circumstances MRPC 1.9 and VISCTR 211.1.9 were intended to preclude.

Whether a matter is substantially related hinges upon “1) the nature and scope of the prior representation; 2) the nature and scope of the current representation; and 3) whether during the prior representation the client might have disclosed confidences to his attorney which could be relevant and detrimental to the client in the current action” (emphasis supplied). *Yhan v. Hovenssa, L.L.C.*, 2012 WL 5493774, at \*6 (D.V.I. Nov. 12, 2012) (interpreting MRPC 1.9). Disqualification may be ordered without proof that the attorney actually had access to or received privileged information while representing the former client. *Government of India v. Cook Industries, Inc.*, 569 F.2d 737, 740 (2d Cir. 1978); *see, also, In re. I Successor Corp.*, 321 B.R. 640, 648 (“Establishing that there is a substantial relationship between the prior representation and the present controversy is sufficient for disqualification without requiring the movant to show actual prejudice ...” (New York law)).

Litigation of the issues presented by this petition will inevitably touch upon the following:

- a) The underlying reasons for the Personal Representatives (Douglas Armstrong and his siblings) not previously submitting the Will to probate (which would have immediately triggered the time period allowed Mrs. Armstrong to challenge her husband’s testamentary dispositions).

- b) Whether the AFT trustees and beneficiaries were made aware by counsel (including Attorney Hamm) of the potential for Mrs. Armstrong to make a statutory election.
- c) Justified reliance by the trustees and beneficiaries on the validity and inviolability of their father's testamentary dispositions.
- d) Justified reliance by the trustees and beneficiaries on Mrs. Armstrong's failure to seek an elective share in the nine years since the death of RDA.
- e) The varying interests of the three trustees in the administration and disposition of AFT assets (which would aid in settlement negotiations and in discovery concerning trust transactions during the nine year interval since RDA's death).
- f) The acquisition and valuation of AFT assets at the time of death and afterwards (which are facts necessary to determine whether statutory election is permissible and to determine the amounts necessary to fund the election if permitted).
- g) In the event of an election, adjustments to the elected share as may be equitably required to account for taxes and expenses paid in the nine year interval between death and the filing of this petition.

All of these are matters are ineluctably interrelated with Attorney Hamm's prior representation of AFT and its trustees and beneficiaries. It is impossible to conclude that Attorney Hamm could not have been made privy to facts relevant to these issues and which might be used to the detriment of his former clients. When a substantial relationship is established between successive representations, access to confidential information is presumed, and disqualification is mandatory. *Jessen v. Hartford Cas. Co.*, 111 Cal. App. 4th 698, 706 (Cal. App. 2003); *see, also, Koch v. Koch Industries, Inc.*, 798 F.Supp. 1525, (D.Kans. 1992) ("If a substantial relationship is found, an irrebuttable



presumption arises that the former client revealed facts requiring the attorney's disqualification."); accord, *In re Blinder, Robinson & Co., Inc.*, 123 BR 900, 910 (Bkpcy. N.D. Colo. 1991).

It is not necessary that the subjects of the prior and subsequent representations be identical. It is sufficient that significant factual matters be common to both. *In re Blinder, Robinson & Co., Inc.*, *supra*, 123 BR at 909 ("Identical legal issues are not necessary to satisfy the test once it is shown that the same significant factual subject matter is common to both engagements."); *In re. I Successor Corp.*, *supra*, 321 B.R. at 658 ("...disqualification may be appropriate when the two matters are merely similar ..."); *See also, Kaselaan & D'Angelo Assoc. v. D'Angelo*, 144 F.R.D. 235, 243 (D.N.J. 1992).

As the Third Circuit has pointed out, Rule 1.9 is a prophylactic rule without which "clients may be reluctant to confide completely in their attorneys." *In re Corn Derivatives Antitrust Litig.*, 748 F.2d 157, 162 (3d Cir. 1984). It is a rule that maintains "public confidence in the integrity of the bar" and which underscores that "a client has a right to expect the loyalty of his attorney in the matter for which he is retained." *Id.* The rule not only protects client confidences but also the "expectation of loyalty by a prior client." *In re. I Successor Corp.*, *supra*, 321 B.R. at 656. "The interest to be preserved by preventing attorneys from accepting representation adverse to a former client is the protection and enhancement of the professional relationship in all its dimensions. It is necessary to preserve the value attached to the relationship both by the attorney and by

the client. These objectives require a rule that prevents attorneys from accepting representation adverse to a former client if the later case bears a substantial connection to the earlier one. ... Both the lawyer and the client should expect that the lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation on the client's behalf. That professional commitment is not furthered, but endangered, if the possibility exists that the lawyer will change sides later in a substantially related matter." *Trone v. Smith*, 621 F.2d 994, 998 (9th Cir. 1980).

Attorney Hamm represented AFT trustees in transactions involving large sums, rendered tax advice to them concerning those same transactions, and dealt directly with them in such matters. It is impossible to conclude that in the course of his representation of AFT and its trustees and beneficiaries that he could not have gained insight into the assets and inner workings of AFT, and the confidences of its trustees and beneficiaries, that would benefit Mrs. Armstrong to the detriment of Attorney Hamm's former clients. *See, e.g., In re Kaufman*, 40 Misc. 3d 1234(A), 980 N.Y.S.2d 276 (Sur. 2013) (court disqualified law firm in a lawsuit between beneficiaries of an Estate where attorneys from the firm previously met with the heir for the purpose of him retaining the firm to represent him in his litigation against his brother, a co-executor and co-trustee, in connection with his parents' estates); *Gagliardo v. Caffrey*, 344 Ill. App. 3d 219, 230-31, 800 N.E.2d 489, 498 (2003) (upholding disqualification of attorney who

sought to represent executor of estate in suit by sole beneficiary when the attorney formerly represented the Estate). In *Gagliardo*, the court found that the attorney's involvement with the estate, "albeit of limited duration, concerned the payment of legal fees for the investigation, or, in other words, financial matters. In such capacity, it would, then, be reasonable to infer that [counsel] was given other information concerning estate finances . . . and . . . that an attorney charged with estate finances would have an overview of the estate's value and the various assets it contained."

The test is whether there is any substantial possibility that Attorney Hamm obtained insight and information in the course of his representation of AFT and its trustees and beneficiaries. Having dealt directly with Douglas Armstrong and his siblings on substantial business, property, and tax matters, Attorney Hamm cannot negate that very real danger. While movant bears the burden of establishing grounds for disqualification, the interests of justice and the integrity of the legal process and the legal profession require that all doubts be resolved in favor of disqualification. *In re Blinder, Robinson & Co., Inc., supra*, 123 BR 900, at 907; *Koch v. Koch Industries, supra*, 798 F.Supp. at 1531; *Jordan v. Philadelphia Housing Authority*, 337 F.Supp. 666, 672 (E.D.Pa., 2004); *Living Cross Ambulance Serv., Inc. v. New Mexico Pub. Regulation Comm'n*, 2014 WL 4401473 at \*6 (Supreme Court of New Mexico, Sept. 8, 2014). Attorney Hamm cannot eliminate such doubt and thus disqualification must follow.

### **Proceedings Should be Stayed Pending Ruling on the Motion to Disqualify**

It is essential that the Court should rule on the motion to disqualify prior to permitting any hearing to go forward on this matter as there is a risk that confidential information could be used in preparing for the hearing, thereby infecting the evidence presented to court. *Bowers v. Ophthalmology Grp.*, 733 F.3d 647, 654-55 (6th Cir. 2013) (“A district court must rule on a motion for disqualification of counsel prior to ruling on a dispositive motion because the success of a disqualification motion has the potential to change the proceedings entirely.”); *see, also, Living Cross Ambulance Serv., supra*, at \*4 (“The PRC should have stayed the proceedings while it or a hearing examiner determined whether AMR’s counsel was disqualified.”). A stay of proceedings pending resolution of the motion to disqualify Attorney Hamm is absolutely required because any proceedings addressing the merits would irremediably harm Attorney Hamm’s former clients in the event that disqualification is warranted. In the interim, only discovery related to this motion should be allowed.

Accordingly, petitioner Doug Armstrong respectfully requests that the Court stay proceedings while considering his motion to disqualify Attorney Hamm. A proposed interim order staying proceedings other than limited discovery is attached.

## Conclusion

At the very least, we have shown that substantial questions exist regarding the propriety of Attorney Hamm's representation of Mrs. Armstrong against his former clients. As the case law provides, all doubt should be resolved in favor of disqualification. If the Court believes the record on this issue needs to be supplemented or that a hearing be held before ruling on the motion to disqualify, then limited discovery should be permitted related solely to issues raised by this motion. In the interim the Court should not rule on the pending petition to admit the Will to probate, or to appoint Mrs. Armstrong as Administratrix CTA.

Dated: January 7, 2015

Respectfully submitted,  
HUNTER & COLE



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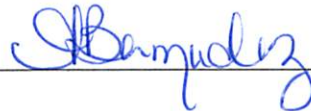
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of January, 2015, I caused a true and correct copy of the foregoing to be mailed, postage pre-paid, to:

Donovan Hamm, Esq.  
The Hamm Law Firm  
5030 Anchor Way, Suite 5  
Christiansted, VI 00802

Robert W. Armstrong  
P.O. Box 26230  
Christiansted, VI 00824

Ellen G. Donovan  
2116 (53-B) Company Street  
Christiansted, VI 00820

  
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**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX**

**IN THE MATTER OF THE ESTATE OF  
ROBERT D. ARMSTRONG,**

**Deceased.**

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**PROBATE NO. SX-14-PB-71**

**DECLARATION OF DOUGLAS L. ARMSTRONG**

1. I am the oldest son of the decedent and a named Personal Representative under his Last Will and Testament ("Will").
2. Pursuant to § 2.02 of the Will, all assets of the probate estate are to be placed in the Robert D. Armstrong Living Trust ("RDA Living Trust") dated May 16, 2005.
3. Pursuant to § 2.03 of the will, I and the other named Personal Representatives, Robert W. Armstrong and Elizabeth Anne Armstrong, are directed to establish a testamentary trust to include any existing probate assets for the named beneficiaries of the RDA Living Trust.
4. In accordance with the Will of the decedent, and pursuant to the terms and conditions of the RDA Living Trust, I along with my siblings, Robert W. Armstrong and Elizabeth Anne Armstrong, were Trustees and Beneficiaries of the Armstrong Family Trust ("AFT"), successor to the RDA Living Trust after our father's death.
5. Included among the provisions of the RDA Living Trust was the creation of a sub-trust, the "Patty Armstrong Trust" ("PLAT") for the support and maintenance of our mother, Patricia L. Armstrong. I along with my siblings, Robert W. Armstrong and Elizabeth Anne Armstrong, were Trustees and residuary beneficiaries of PLAT.
6. In accordance with the provisions of the AFT, my mother, Patricia L. Armstrong, has, continuously since my father's death, enjoyed the possession of my father's residential estate property at Estates Bulows Minde, and Hafensight. This property was held by the RDA Living Trust at the time of my father's death and continued under the ownership of AFT.
7. The present petition for probate has been filed by Attorney Donovan M. Hamm, Jr. on behalf of my mother, who seeks her own appointment as Administratrix

CTA for the stated purpose of asserting a statutory election against the testamentary dispositions made by my father via the RDA Living Trust and the Will.

8. On or about August 8, 2014, my mother commenced an action in the Superior Court of the Virgin Islands, District of St. Croix, for declaratory and injunctive relief against me, my sister, my brother, and collateral family members who were contingent beneficiaries under the RDA Living Trust. I am made a defendant individually, as Trustee and residuary beneficiary of PLAT, and as natural guardian of my three children. *Patricial Layland Armstrong v. Elizabeth Anne Armstrong, et al.*, Civ. No. SX-14-cv-280 (the "Civil Action"). My mother is represented in the Civil Action by Attorney Hamm. Among the relief sought in the Civil Action are the rescissions of certain transactions entered into by the AFT Trustees and the reconveyance of certain real property to AFT.
9. Prior to my father's death Attorney Hamm represented my father in numerous business transactions and tax matters. Although I have no direct knowledge of the scope of his professional representation of my father's interests, I do know that he represented by father with respect to the sale of the capital stock of Haywood Street Redevelopment Corporation ("HSRC"), a Virgin Islands corporation having its principle investments in real property located in Ashville, North Carolina. The total value of this transaction exceeded Eleven Million Dollars. Although the closing of the contract of sale occurred on or about January 1, 2005, particulars of this transaction continued after my father's death in May of 2005 and Attorney Hamm was retained by AFT to complete various direct and collateral matters related to or arising from this transaction.
10. For a substantial period following my father's death AFT and its Trustees were represented in certain matters by Attorney Hamm. The subject of these representations included, without limitation, the following matters:
  - a. The closing of a real estate transaction involving property in Estate Constitution Hill which my father had contracted to purchase prior to his death. Upon information and belief the rights under the contract of purchase had not been transferred to the RDA Living Trust prior to my father's death and may have been part of his probate estate. Attorney Hamm closed the transaction in the name of AFT. At no time did Attorney Hamm discuss with me or the other AFT Trustees the possibility



or advisability of probating the Will in order to administer assets that had not been transferred to the RDA Living Trust during my father's lifetime.

- b. The reporting for tax purpose the proceeds derived by AFT with respect to the sale of HSRC capital stock as noted in Paragraph 9, above, as well as general tax matters involving AFT.
  - c. Following my father's death, certain assets of HSRC - which ought to have been stripped from the corporation prior to the initial closing of the sale of HSRC capital stock - were discovered to be held in the name of the corporation. Attorney Hamm was aware of this fact but did not advise the trustees of the possibility or advisability of probating the Will in order to administer assets that had not been transferred to the RDA Living Trust during RDA's lifetime.
11. In the course of Attorney Hamm's representation of AFT and its Trustees in these and other matters, Attorney Hamm has, perforce, become privy to information concerning AFT and its Trustees that will likely be of benefit to my mother both in the Civil Action and in the present petition for probate in which she has stated her intention to make a statutory election and invade the assets of the trusts created by my father before his death.
12. The subject matters of the Civil Action and the present petition for probate (with its stated intention of election and the invasion of RDA Living Trust assets) are substantially related to the subject matters in which Attorney Hamm represented AFT and its Trustees as more fully described in Paragraph 8, above. In particular, and without limitation, the subject matters coincide because:
- a. My mother's stated intention to make a statutory election is possible only because the Will has not heretofore been submitted to probate. As detailed above, the Will was not submitted to probate notwithstanding the fact that the Trustees/Personal Representatives were represented by Attorney Hamm (a professed expert in Trusts and Estates) who knew or should have known that probate of the Will may have been advisable during his period of representation and who had a duty to advise the Personal Representatives respecting a possible probate of the Will.
  - b. The invasion of trust assets to accomplish the intended statutory election and the rescission of previous transactions may require recharacterization

of tax matters for which Attorney Hamm previously advised AFT and its Trustees. In any event, Attorney Hamm's knowledge of facts and legal advice concerning AFT tax matters will be of material advantage to my mother in litigation and negotiation of her disputes with AFT trustees and beneficiaries.

- c. The petition asserts that the estate against which the election is to be made must include the assets of the RDA Living Trust transferred by my father during his lifetime and which became the assets of AFT, the very trust that retained the service of Attorney Hamm. Thus, Attorney Hamm now seeks to invade the assets of the trusts which he had been charged with protecting when representing AFT and its Trustees.
  - d. In order to effect a statutory election the value of the estate has to be determined. Pursuant to 15 V.I.C. § 10(a)(6), the elective share allowed my mother (in the event such an election is allowed) is reduced by the principal value of all trusts or other testamentary provisions made by my father for my mother's benefit in the RDA Living Trust. Thus, the elective share will be a function of the value of the estate as a whole and the values of the corpus of PLAT and the value of the family estate property comprising Estates Bulows Minde and Hafensight. Attorney Hamm formerly represented AFT and its Trustees, specifically respecting its tax obligations resulting from the HSRC transactions and real estate contracts pending at the time of my father's death - all of which are directly related to the estate valuations.
13. Attorney Hamm may have represented AFT or the Trustees or my father on other relevant matters of which I am presently unaware but for which I reserve the right of civil discovery.
14. Attorney Hamm's representation of my mother in both the present petition to probate and the Civil Action are in derogation of my rights as his former client (both as an AFT Trustee and as an AFT beneficiary) under Model Rules 1.9(b) and (c).

In the Matter of the Estate of  
Robert D. Armstrong  
**Probate No. SX-14-PB-71**  
Declaration of Douglas L. Armstrong  
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Pursuant to the provisions of Sup. Ct. R. 18, I declare under penalty of perjury under the laws of the United States Virgin Islands that the foregoing is true and correct.

Date: 11/5/2014

BY

  
\_\_\_\_\_  
Douglas L. Armstrong

IN THE MATTER OF THE ESTATE OF )  
ROBERT D. ARMSTRONG, )  
 )  
 )  
Deceased. )  
 )

PROBATE NO. SX-14-PB-71

Dated:

ATTEST:  
Estrella H. George  
Clerk of the Court  
By:\_\_\_\_\_