

# **EXHIBIT 6**

**Estate of Dorothy Decedent**

**Affirmation of Legal Services**

SURROGATE'S COURT OF THE STATE OF NEW YORK  
COUNTY OF DUTCHESS

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Accounting by MARY McCARTHY as Executor of the Estate of

**DOROTHY DECEDENT,**

Deceased.  
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**AFFIRMATION OF  
LEGAL SERVICES**

File No. 2013/2345

I, JAMES LITTLE ABNER, an attorney duly admitted to practice in the Courts of the State of New York, under penalty of perjury, affirm as follows:

1. I am Counsel to the firm of Capp & Abner. I make this Affirmation of Legal Services in support of the application for a legal fee for my firm made in connection with the administration of the Estate of Dorothy Decedent. My firm's services are detailed below.

**I. Probate Proceeding**

2. My firm prepared all papers necessary for the probate proceeding for Decedent's Will, including petition for probate and for Preliminary Letters Testamentary, citation, Notice of Probate and Affidavit required by Uniform Surrogate Court Rule 207.17(e) [required for attorney/executors].

3. The probate proceeding was made more difficult because Decedent did not have any surviving close relatives (no spouse, no issue, no parents, no brother or sisters, no issue of predeceased brothers or sisters [nieces or nephews], no grandparents [maternal or paternal], no maternal or paternal aunts or uncles, and no children of deceased maternal or paternal aunts or uncles [first cousins]).

4. In addition, family records were incomplete, and in some instances were located in foreign countries. Ultimately it was determined that Decedent was survived by four first cousins,

once removed, all of whom live in hollers in the Ozarks.

5. By reason of the time needed to resolve these issues, my firm applied for and obtained Preliminary Letters Testamentary.

6 Ultimately, all distributees were identified and located. A family tree was prepared for the probate proceeding, the distributees were served with process, and the Court determined that jurisdiction was complete.

7 There were difficulties with identifying and locating legatees, and service of Notice of Probate on them.

a. There were eleven legatees (taking into account pre-deceased legatees, and excluding distributees who were also legatees).

b. Adjustments had to be for fractional "gifts-over" for legacies to pre-deceased legatees.

c. Locating and service of four of the legatees was made more difficult by the fact that four of them live outside the United States (two in Germany, one in England and one in the Netherlands).

## **II. Administration of Estate**

8 My firm rendered services in the administration of Decedent's estate, including:

a. Assisting the Executor in marshaling Decedent's assets, liquidating estate assets, and payment of all creditors. This included obtaining a Court Order for opening Decedent's Safe Deposit Box, and assisting the Executor with the opening of the box.

b. Preparation and filing in Court an inventory for the estate.

c. Registration of Estate with New York Attorney General's Office.

d. Assisting the accountant for the estate with preparation of fiduciary income tax returns for the estate, including obtaining an Employer Identification Number for the Estate.

9. My firm also rendered services with the payment of legacies, including preparation of Receipts and Releases, correspondence with the legatees, and seeing to the execution of the Receipts and Releases.

10. There were also special considerations by reason of the Executor also being affiliated with my law firm.

a. My firm determined that there was insufficient compliance with SCPA 2307-a and advised the Executor that the commissions payable to her would be one-half of the statutory commissions to which she would otherwise be entitled pursuant to SCPA 2307.

b. My firm also advised that, pursuant to Uniform Surrogate's Court Rule 207.62, no payments on account for Executor's commissions and legal fees should be made unless and until approved by the Court in the Executor's accounting.

### **III. Judicial Accounting Proceeding**

11. My firm has prepared and will prepare all of the papers necessary for this judicial accounting proceeding (including Petition, Schedules of Account and Citations), and saw to the service of the citation on all necessary parties.

### **IV. Fixing Compensation for My Firm**

12. The seminal case establishing criteria for fixing attorneys fees in matters relating to estates is Matter of Potts.

“In general, the court, in determining the justice and reasonableness of an attorney's claims for services, should consider the time spent, the difficulties involved in the matters in which services were

rendered, the nature of the services, the amount involved, the professional standing of the counsel, and the results obtained [citations omitted].”<sup>1</sup>

These factors will be discussed below.

**A. Difficulties Involved**

13. As set forth above, this administration was made difficult by, among other things, the facts that:

- a. Decedent did not have any surviving close relatives.
- b. There were numerous legatees, some of whom live in foreign countries
- c. Charitable legatees and the New York Attorney General were involved.
- d. The Executor is also an attorney who drafted Decedent’s Will, and is affiliated with my law firm.

**B. Results Achieved**

14. Good results were achieved. All necessary parties were identified and served in the probate proceeding, Decedent’s Will was admitted to probate, estate assets were marshaled, creditors paid, all pecuniary legacies paid, and all legal requirements particular to (i) charitable interests in the estate and (ii) the Executor being the attorney/draftsperson and affiliated with my firm have been attended to.

**C. Amount Involved; Time Spent**

15. Total assets of Decedent’s estate had a value of \$837,355 (\$579,354 probate assets and \$257,981 non-probate assets)

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<sup>1</sup> 213 A.D. 59, 251 N.Y.S. 655 (4<sup>th</sup> Dept. 1925, aff’d, 241 N.Y. 593, 150 N.E. 568 (1925); see also Matter of Freeman, 40 A.D.2d 397, 341 N.Y.S.2d 511 (4<sup>th</sup> Dept. 1973), aff’d, 34 N.Y.2d 1, 355 N.Y.S.2d 336, 311 N.E.2d 480 (1974).

16. A computer printout of time entries recorded by attorneys and employees of Capp & Abner through November 30, 2013 is attached. It shows that the following persons expended 103.26 hours for which time charges were recorded in connection with the administration of Decedent's estate, with a billing rate of \$375/hour for attorney time and \$110/hour for paralegal time, for a total of \$15,079.79<sup>2</sup> of time charges:

<u>Name</u>	<u>Hours</u>	<u>Hourly Rate</u>	<u>Value</u>
James Little Abner, Esq.	7.90	\$375.00	\$2,962.50
Sheila Jones, Paralegal	110.16	\$110.00	<u>\$12,117.29</u>
			\$15,079.79

**D. PROFESSIONAL STANDING**

17. I received a B.A. cum laude from Dogpatch College in 1977, and a J.D. cum laude from Dogpatch Law School in 1980. I was admitted to the New York bar in 1971, and have concentrated in the area of trusts and estates since graduation. I (a) am a member of the New York State Bar Association, (b) have lectured in its Practical Skills Courses in Accounting and in Probate and Administration of Estates and Estate Planning and Will Drafting, (c) have also lectured on accountings at the Dutchess County CLE Program for Guardians ad Litem, (d) have presented CLE Courses for the Dutchess County Bar Association on the 2009 and 2010 Amendments to the New York Power of Attorney Law, and (e) have published articles in the field.

18. The paralegal, Sheila Jones, received her Associate in Applied Science in Business-Paralegal from Ulster County Community College in 2009. She studied Accounting at the State

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<sup>2</sup> This time does not include any time spent in the preparation of this Affirmation. In addition, it does not include 5.80 hours of James Little Abner and 7.50 hours of Sheila Jones expended by them, but for which time was not billed).

University of New York - Oneonta.

**E. Value of Services**

18. Taking into account the relevant factors, including time spent, I respectfully submit that the fair and reasonable value of my firm's services is \$15,000.00.

**F. Disbursements**

19. My firm applies for allowance of the following disbursements:

Dutchess County Surrogate's Court Fees

Probate filing fee (additional fees)	\$625.00	
Accounting Petition filing fee	\$1,250.00	<u>\$1,875.00</u>
		\$1,875.00

**G. Aggregate Fees and Disbursements**

25. My firm applies that its fees through November 30, 2013 be fixed in the amount of \$15,000.00 (of which no part has been paid), and that disbursements be fixed in the amount of \$1,875.00 (of which no part has been paid), for an aggregate payment of \$16,875.00 .

Dated: December 6, 2013  
Stanfordville, New York

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JAMES LITTLE ABNER

**[Attach billing sheet printout]**