STATE OF NEW HAMPSHIRE

ROCKINGHAM 10TH CIRCUIT COURT

BRENTWOOD PROBATE DIVISION

In re: Estate of Arthur Waldo Perham

Case No. 318-2016-ET-01482

**MOTION TO CLARIFY OR EXTEND**

**DEADLINE FOR ELECTION OF SPOUSAL SHARE**

 NOW COMES Karen Horsman and moves:

1. In the special circumstances of this case in which the validity of the decedent’s last Will (the “2016 Will”) has been challenged and the merits of the challenge will not be resolved within the initial six months of the administration of the Estate, “good cause” within the meaning of RSA 560:14 exists for extending the deadline for the surviving spouse *in the event the Will contest is successful* to waive the provisions of the prior Will (the “2014 Will”) and take her elective share under RSA 560:10.
2. Under RSA 560:10, the surviving spouse may “waive the homestead rights, if any, and the provisions of the will in his or her favor” and receive instead the elective share provided in the statute.
3. The statute plainly is intended to afford the surviving spouse the opportunity to consider and choose between the Will being probated and the statutory share.
4. Under RSA 560:14, this election “shall be filed in the probate office within six months after the appointment of an executor or administrator, and not afterwards, unless by permission of the judge of probate for good cause shown.” “‘For good cause shown’ means that permission should be granted whenever it would be reasonable and just to do so. This means that when justice requires it, an extension should be granted.” *Jacques v. Chandler,* 73 N.H. 260, 265 (1905).
5. The surviving spouse cannot reasonably be asked to choose between her statutory share and a Will that is not yet and may never be controlling.
6. Movant asks that the Court rule that the six month deadline shall commence to run upon the appointment of an executor or administrator to administer the Estate subject to the 2014 Will. This will carry out the purpose of the statute, honor the rights of the surviving spouse, and not work any prejudice on any other party.

WHEREFORE, Karen Horsman respectfully requests that this Honorable Court:

A. Order that in the event the Court invalidates the 2016 Will and finds that the 2014 Will governs probate of this Estate, the surviving spouse shall have six months from the date of the appointment of the executor or administrator to administer the Estate subject to the 2014 Will to waive the 2014 Will and elect to receive her share under RSA 560:10; and

B. Grant such other relief as is just.

 Respectfully submitted,

 KAREN HORSMAN

 By Her Attorneys,

 McLANE MIDDLETON, PA

Date: February 10, 2017 By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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