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ST-2021-RV-00005

TAMARA CHARLES
CLERK OF THE COURT

**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

IN THE MATTER OF THE ESTATE OF)

JEFFREY E. EPSTEIN,)

Deceased.)

Case No. ST-2021-RV-00005

Originating Case No.
ST-2019-PB-00080

**GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS'
OPPOSITION TO CO-EXECUTORS' MOTION FOR AWARD OF ATTORNEYS' FEES**

The Government of the United States Virgin Islands (“Government”) hereby responds in opposition to the Motion for Award of Attorneys’ Fees brought by the Co-Executors of the Estate of Jeffrey E. Epstein (the “Epstein Estate”) (the “Epstein Estate’s Motion”) regarding the Government’s Motion to Intervene in the Probate Action, the Government’s Emergency Motion to Immediately Freeze All Assets and Cash on Hand, and the Government’s Notice of Appeal and Petition for Review of Magistrate Judge’s Orders.

The Epstein Estate’s Motion is baseless and should be denied. First, the Epstein Estate is not entitled to attorneys’ fees, because the underlying orders are not “judgment[s]” and the Epstein Estate is not the “prevailing party”. Second, even if underlying orders were judgments and the Epstein Estate was the prevailing party—both of which are not true—the Court should exercise its discretion to deny the Epstein Estate’s request for attorneys’ fees. Requiring the Government to pay the Epstein Estate’s attorneys’ fees when the Government may ultimately prevail in its claims and is acting as a law enforcement agency to protect the public is contrary to the policy behind section 541. Third, the Epstein Estate’s request for over \$112,000 in attorneys’ fees is extremely unreasonable.

BACKGROUND

On January 15, 2020, the Government filed a lawsuit against the Estate, the 1953 Trust, and numerous Epstein business affiliates and associates for violation of the Criminally Influenced and Corrupt Organization Act (“CICO”), 14 V.I.C. § 600 *et seq.*, and civil conspiracy, seeking forfeiture and divestment of assets in favor of the Government, civil penalties, damages, and other remedies (a redacted copy of the Government’s Second Amended Complaint is attached as Government Exhibit 1). The Government alleges that for decades Jeffrey Epstein conducted an enterprise whereby he used his web of businesses in the Virgin Islands to transport female victims, many of them children, to his privately-owned Little St. James Island, where they were sexually abused, injured, and held captive in violation of Virgin Islands criminal laws. *See* Ex. 1, 2d Amend. Compl. ¶¶ 43-75. The Government further alleges that Southern Trust Company, Inc.—a Virgin Islands corporation of which Jeffrey Epstein was President/Director and Co-Executors Darren K. Indyke and Richard D. Kahn were corporate officers—committed fraud against the Virgin Islands Economic Development Authority by claiming at least \$80.5 million in unearned tax benefits. *See id.* at ¶¶ 157-176.

On January 23, 2020, the Government filed its Motion to Intervene in the Probate Action (“Government’s Motion to Intervene”) and on February 4, 2021, the Government filed its Emergency Motion to Immediately Freeze All Assets and Cash on Hand (“Government’s Motion to Freeze Assets”). On February 26, 2021, the Court denied the Government’s Motion to Intervene without prejudice and directed the Government to file a claim in the Epstein Estate instead of seeking to intervene. The Court also struck the Government’s Motion to Freeze Assets.

The Court's orders on the Government's Motion to Intervene and the Government's Motion to Freeze Assets were formally issued on February 26, 2021. On March 17, 2021, the Government filed its Notice of Appeal and Petition for Review of Magistrate Judge's Orders ("Government's Petition for Review") pursuant to V.I. Super. Ct. R. 322(b)(1) and/or 322.1(b).

On February 4, 2022, the Court denied the Government's Petition for Review with prejudice, finding that the underlying orders were not final judgments eligible for appeal.

On February 22, 2022, the Government filed a claim in the Epstein Estate.

ARGUMENT

I. THE EPSTEIN ESTATE IS NOT ENTITLED TO ATTORNEYS' FEES UNDER SECTION 541

Section 541(b) provides that courts may award attorneys' fees to "the prevailing party in the judgment." 5 V.I.C. § 541.¹ Here, the underlying orders are not "judgment[s]" and the Epstein Estate is not the "prevailing party." Thus, the Epstein Estate's requests for attorneys' fees should be denied.

A. The Orders Underlying the Epstein's Estate's Request For Attorneys' Fees Are Not Judgments

Rule 54 of the Virgin Islands defines judgment as "a decree and any order from which an appeal lies." The Rule embraces two different types of orders: (1) any final decision from which an appeal is permitted, and (2) any appealable interlocutory order. *See Island Tile and Marble,*

¹ The Epstein Estate cites to 15 V.I.C. § 165 to support its request for attorneys' fees. The standard for awarding attorneys' fees under section 165 is the same as the standard for awarding attorneys' fees under 5 V.I.C. § 541. *See Kalloo v. Estate of Small*, 62 V.I. 571, 582 (V.I. 2015) (applying the attorneys' fees standard of section 5 V.I.C. § 541 to a claim for attorneys' fees under 15 V.I.C. § 165).

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LLC v. Bertrand, 57 V.I. 596, 614 (V.I. 2012) (citing to 10 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice & Procedure* § 2651 (1998)).²

The orders stemming from the Government's Motion to Intervene and the Government's Motion to Freeze Assets are not final decisions. The orders unquestionably do not dispose of the litigation. Further, the Court denied the Government's Motion to Intervene without prejudice and struck the Government's Motion to Freeze assets—allowing the Government to correct the errors identified by the Court. In addition, the Court's orders do not specify that they are final judgments, and the Court did not “expressly determine[] that there is no just reason for delay.” V.I. R. Civ. P. 54(b). The Superior Court Judge reviewing the Government's Petition for Review found these facts to be determinative in finding that the orders were not final orders eligible for appeal. As such, the Court reviewed the Government's Petition for Review pursuant to its reconsideration authority under 4 V.I.C. § 123(c), not as an appeal pursuant to section 322(b)(1) or 322.1(b). *See* Feb. 4, 2022 Mem. Order at 3; *see also Valerino v. Manning*, 68 V.I. 276, 301 (V.I. Super. Ct. 2018) (“appeal is not the same as reconsideration”).

Similarly, these orders are not appealable interlocutory orders. Interlocutory orders can only be appealed in limited circumstances, such as granting/modifying/refusing an injunction, appointing receivers or refusing orders to wind up receivership, and other orders in which the Superior Court judge finds a controlling question of law as to which there is substantial ground for

² Decisions by the Virgin Islands Supreme Court and Superior Court interpreting and applying the Federal Rules of Civil Procedure remain applicable where the relevant provision of the Virgin Islands Rules of Civil Procedure resemble its federal counterpart. *See Gov't of the V.I. v. Takata Corp.*, 67 V.I. 316, 336 & n.13 (V.I. Super. Ct. 2017).

difference of opinion and that an immediate appeal from the order may materially advance the ultimate termination of litigation. *See* 4 V.I.C. § 33(b). None of those circumstances apply here.³

B. The Epstein Estate Is Not The Prevailing Party

The test adopted by the Superior Court for determining whether a party is a “prevailing party” is whether a party has achieved at least some of the benefits sought in litigation. *Rohn v. Daily News Publ’g Co., Inc.*, 72 V.I. 301, 308-09 (V.I. Super. Ct. 2019). “Under this standard, ‘the operative criteria for such an award of attorney’s fees is success at the conclusion of proceedings, rather than the means by which success is achieved.’” *Id.* (internal citation omitted). As such, attorneys’ fees are awarded “‘at the conclusion of litigation’, not in the beginning or in the midst of it.” *Bell v. Radcliffe*, 2014 V.I. LEXIS 119, at *7 (V.I. Super. Ct. Apr. 30, 2014) (“None of the defendants are ‘prevailing parties’ because this matter is still pending.”) (internal citation omitted).

As discussed above, the Court’s denial of the Government’s Motion to Intervene and striking of the Government’s Motion to Freeze Assets were not final judgments and did not dispose of this litigation. To the contrary, the Government has now filed a claim in this proceeding and is free to seek the same type of relief it requested as an intervenor. Awarding attorneys’ fees to the Epstein Estate when the Government may still ultimately prevail and obtain the same relief it requested as an intervenor contradicts the entire notion of a prevailing party.

³ The Court did not deny the Government’s Motion to Freeze Assets. The Court simply struck the motion, allowing the Government to later refile.

**II. THE COURT SHOULD EXERCISE ITS DISCRETION UNDER SECTION 541
TO DENY THE EPSTEIN ESTATE'S REQUEST FOR ATTORNEYS' FEES**

Even if the Court believes the Epstein Estate's request for attorneys' fees satisfies the prerequisites of section 541—which the Government strongly disputes—the Court should still deny the Epstein Estate's request. It is within the Court's discretion to grant or deny attorneys' fees pursuant to section 541. *See Mahabir v. Heirs of George*, 2021 V.I. 22, 4 (V.I. 2021) (“Section 541(b) provides that the court ‘may’ award attorneys’ fees ‘in its discretion.’”). The policy behind section 541 is that “a party should not have to bear the legal expenses of demonstrating either that it is not at fault or that it is the victim of another's fault.” *M & N Aviation, Inc. v. United Parcel Servs., Inc.*, No. 2010-0083, 2014 U.S. Dist. LEXIS 37382, at *6-*7 (D.V.I. Mar. 21, 2014). As discussed above, the Court has not considered, let alone decided, the merits of the Government's claims. It is possible (and in the Government's view, likely) that the Government will ultimately prevail in its claims against the Epstein Estate, which would make awarding attorneys' fees to the Epstein Estate contrary to the policy behind section 541.

Further, unlike the cases cited by the Epstein Estate, Epstein Estate's Motion at 6, the Government's claims relate to a law enforcement action the Government initiated to protect the public. The Government filed the underlying motions to ensure the Epstein Estate preserved assets to compensate victims and the people of the Virgin Islands for Jeffrey Epstein's illegal conduct. The Court directed the Government to enter the probate action as a claimant—rather than an intervenor—to accomplish this goal. Requiring the Government to pay the Epstein Estate's attorneys' fees under these circumstances is contrary to the spirit of section 541 and unjust.

III. THE EPSTEIN ESTATE'S REQUEST FOR ATTORNEYS' FEES IS EXTREMELY UNREASONABLE

The Epstein Estate's request for attorneys' fees is extremely unreasonable. Counsel's hourly rates are excessive and their billing entries contain vague descriptions, duplicative tasks, unrelated work, and clerical duties. In the event the Court decides to award attorneys' fees, the attorneys' hourly rates should be reduced to a maximum of \$350 per hour and all inappropriate billing entries should be excluded.

A. Counsel's Hourly Rates Are Excessive

When determining the reasonableness of an hourly rate, courts compare the hourly rate being charged with the customary charges of Virgin Islands attorneys. *See Lakeview Loan Serv., LLC v. Singh*, 74 V.I. 439, 449 (V.I. Super. Ct. July 28, 2021). "It is universally accepted that the party seeking fees bears the burden of 'producing satisfactory evidence—in addition to the attorney's own affidavit—that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonable comparable skill, experience, and reputation.'" *Isaac v. Rhonda Crichlow*, 2016 V.I. LEXIS 145, *9 (V.I. Super. Ct. Sept. 29, 2016) (citing *Blum v. Stenson*, 465 U.S. 886 (1984)). The Supreme Court of the Virgin Islands has held that a reasonable hourly rate is calculated according to the prevailing market in the community. *See Hodge v. Superior Court of the Virgin Islands*, 2009 U.S. Dist. LEXIS 110340, at *4 (D.V.I. Nov. 25, 2009) (noting requested fees must be based on "counsel's usual billing rates, which are in accord with customary and prevailing market rates in the Virgin Islands" for legal services). The Estate's reliance on New York rates and rates above the prevailing market rates for attorneys in the Virgin Islands is misplaced. Virgin Islands courts have found hourly rates between \$250-\$350

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to be reasonable, including a \$350 hourly rate for a trial counsel who had practiced law for 37 years. *See Lakeview Loan Serv.*, 74 V.I. at 449. In 2019, in *Matter of Estate of Benjamin*, 70 V.I. 110, 114, 117-18 (V.I. 2019), the Court found the \$350 hourly rate of attorney Marjorie Whalen—one of the attorneys now representing the Epstein Estate and requesting fees—to be excessive and reduced the hourly rate to \$300.

The Epstein Estate is seeking over \$112,000 for less than 150 hours of work billed at the following hourly rates:

| | |
|------------------------------|----------------------------------|
| Attorney Daniel H. Weiner | \$1,315 (2020) \$1,251 (2021) |
| Attorney Andrew Heymann | \$630 (2020) \$660 (2021) |
| Attorney Christopher Kroblin | \$500 |
| Attorney Marjorie Whalen | \$360 |
| Attorney Shari D'Andrade | \$400 |
| Legal Assistant Shauna Betz | \$135 |

See Epstein Estate's Mot., Aff. Daniel H. Weiner, Ex. B; Epstein Estate's Mot., Aff. Christopher A. Kroblin, Ex. B.

These hourly rates are excessive and far exceed the customary charges of Virgin Islands attorneys, which range from \$250-\$350 per hour. Attorney Weiner's rate, for example, exceeds the high-end of the customary range by almost \$1,000. If the Court awards the Epstein Estate attorneys' fees, it should reduce each attorney's hourly rate to no more than \$350 per hour.

B. Several Billing Entries Are Inappropriate And Should Be Excluded

Counsel for the Epstein Estate submitted several, inappropriate billing entries that should be excluded, including entries that contain vague descriptions, duplicative tasks, unrelated matters, and clerical work. A chart identifying the Government's specific objections to counsel's billing entries is attached as Government Exhibit 2.⁴

1. Vague Descriptions

Requests for attorneys' fees must be sufficiently specific to allow the court to determine whether the hours claimed are unreasonable for the work performed. *See Crown Bay Marina, L.P. v. Subbase Drydock, Inc.*, No. 2018-68, 2021 U.S. Dist. LEXIS 129178, at *6 (D.V.I. July 12, 2021). Courts have found that entries lumping together multiple tasks without identifying the amount of time spent on each task are not sufficiently specific. *Id.*

Several of the Epstein Estate's billing entries have vague descriptions and contain multiple tasks, which makes it impossible for the Government to determine what work counsel performed and how much time counsel spent on each task. *See* Gov't Ex. 2 (Entry Nos. 2, 5, 7-10, 14-15, 32-33, 40-41, 43-44, 46-47, 49, 68-70). For example, Attorney Heymann's description for 5.9 billed hours is: "Strategize on opposition to AG motion to freeze assets and standard and research and related advice to clients." *See* Gov't Ex. 2 (Entry No. 4). Similarly, Attorney D'Andrade's description for 1.8 billed hours is: "Calendared deadline for response to GVI's emergency motion; tried to gain access to court website for docket; called clerk's office to determine when GVI

⁴ Government Exhibit 2 is an annotated version of the billing information the Epstein Estate provided in its Motion. The Government created additional columns and rows (all highlighted in gray) to state its objections and make the chart easier to read.

emergency motion was filed; communication w/team re strategy.” *See* Gov’t Ex. 2 (Entry No. 33).

These vague entries should be excluded.

2. Duplicative Tasks

Courts have previously reduced fee awards for duplication of effort among several attorneys, including multiple-lawyer conferences not involving opposing counsel. *See Morcher v. Nash*, 32 F. Supp. 2d 239, 258 (D.V.I. 1998). The Epstein Estate’s Motion contains several billing entries for duplicative work. *See* Gov’t Ex. 2 (Entry Nos. 1-6, 8, 11-13, 16-18, 22, 24, 26-28, 30-32, 36, 38, 50-54, 56-61, 63-70). For example, Attorneys Weiner, Heymann, Kroblin, Whalen, and Andrade all billed time to drafting and editing opposition to the Government’s Motion to Intervene. *See* Gov’t Ex. 2 (Entry Nos. 1-2, 5-6, 8, 22, 24, 26-28, 31-32, 50-54). The Government should not have to pay counsel’s exorbitant hourly rates for several attorneys to perform the same tasks. Thus, the Court should exclude all duplicative entries.

3. Unrelated Matters

The Epstein Estate’s Motion also includes tasks unrelated to the Government’s Motion to Intervene, the Government’s Motion to Freeze Assets, or the Government Petition for Review and should therefore be excluded. *See* Gov’t Ex. 2 (Entry Nos. 2, 5, 7- 10, 14-15, 25, 29, 32, 40, 43, 50, 55, 62). In some instances, counsel lumps together these unrelated tasks with tasks that do relate to the at-issue motions, making it impossible for the Government to separate the appropriate and inappropriate billing entries. For example, Attorney Kroblin’s description for 2.9 billed hours is: “Preparation for hearing including proposed agenda, proposed witnesses, and hearing binders, and review of the quarterly accounting and edit of the same.” *See* Gov’t Ex. 2 (Entry No. 7). Reviewing and editing the quarterly accounting is not related to the at-issue motions; however, the

Government cannot determine what portion of the 2.9 billed hours Attorney Kroblin spent on this task. As such, these types of entries should be excluded.

4. Clerical Work

Expenses for clerical work, such as copying and filing, are considered overhead and should be excluded. *See Crown Bay Marina, L.P.*, 2021 U.S. Dist. LEXIS 129178, at *6; *see also Matter of Estate of Benjamin*, 70 V.I. at 117 (excluded hours Kellerhals Ferguson Kroblin PLLC billed to contacting Court's clerks regarding status updates and conferences). The Epstein Estate's Motion contains several billing entries for clerical work. *See* Gov't Ex. 2 (Entry Nos. 7, 25, 29, 33, 35, 40-49). For example, Attorney D'Andrade billed five hours (at \$360 per hour) for "prepar[ing] binders for February 4 hearing." *See* Gov't Ex. 2 (Entry No. 29).

In addition, the Epstein Estate's Motion includes billing entries for legal assistant Shauna Betz. Counsel cites to a case in which Ms. Betz's time was included in an award for attorneys' fees, Epstein Estate's Mot. at 14-15; however, counsel failed to explain that in that case, Ms. Betz was identified as a paralegal—not a legal assistant—and the tasks she performed included drafting pleadings. *See Matter of Estate of Benjamin*, 70 V.I. at 117-18. Here, Ms. Betz's tasks are entirely clerical, such as assisting with copying and filing documents, and should be excluded. *See* Gov't Ex. 2 (Entry Nos. 40-49); *see also Crown Bay Marina, L.P.*, 2021 U.S. Dist. LEXIS 129178, at *6 (citing *Jordan v. SEPTA*, 2013 U.S. Dist. LEXIS 42123, at *3 (E.D. Pa. Mar. 26, 2013) ("Purely clerical or secretarial tasks should not be billed at a paralegal rate . . .").

CONCLUSION

For all the reasons set forth, the Court should deny the Epstein Estate's Motion for Award of Attorneys' Fees. Alternatively, the Court should exclude the billing entries the Government identifies herein and in Government Exhibit 2 and reduce counsel's hourly rate to a maximum rate of \$350 per hour.

Respectfully Submitted,

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Dated: March 17, 2022

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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that this document complies with the page or word limitation set forth in Rule 6-1(e) and a true and correct copy of the Government of the United States Virgin Islands' Opposition to Co-Executors' Motion for Award of Attorneys' Fees was served via the electronic filing system and by email to counsel of record on March 17, 2022 to:

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