

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

IN THE MATTER OF THE ESTATE OF	)	Probate No. ST-99-PB-5
MAGDALENE MOSES	)	
	)	
Deceased.	)	Lack of Capacity, Improper
	)	Execution, Undue Influence,
	)	& Forgery
	)	

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on the Updated Motion for Award of Costs and Attorneys' Fees filed by Counsel for Ira Moses, Administrator of the Estate of Magdalene Moses ("the Estate"). Filed with the motion is an Affirmation filed in lieu of an attorney's fee affidavit pursuant to 5 V.I.C. § 699. Together, the Motion and Affirmation request the Court to, in its discretion, indemnify the Estate from payment of attorney's fees and costs to Counsel as a result of defending a Declaration of Will Contest filed by Vernon Monsanto ("Will Contest").¹ The Affirmation states that since January 14, 2009 until October 15, 2012, the firm incurred thirty thousand six hundred eighty-seven dollars and 50/100 (\$30,687.50) in attorney's fees and two hundred nineteen dollars and 35/100 (\$219.35) in costs, all related to the Will Contest. Because the Estate was the prevailing party in the Will Contest, the Court will order Vernon Monsanto to indemnify Ira Moses for a portion of the attorney's fees and costs incurred in defending the will contest.

DISCUSSION

The Estate requests indemnification from payment of attorney's fees and costs in the Will Contest pursuant to 5 V.I.C. §§ 541 and 543, which allow for recovery of costs and attorney's fees in civil actions. § 541 states, in pertinent part, that "there shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney's fees in maintaining the action or defenses thereto."² A will contest is treated as a civil action.³ "[C]ourts favor an expansive interpretation of the Virgin Islands fee-shifting statute."⁴

¹ While the Law offices of BoltNagi PC have represented the Estate in probate matters since 2004, the Court notes that this Motion and Affirmation request only attorney's fees for the will contest.

² 5 V.I.C. § 541.

³ See Super. Ct. R. 193.

⁴ Bluebeard's Castle, Inc. v. Hodge, 51 V.I. 672, 699 (D.C.V.I. 2009).

Under these provisions, our Courts have held that “the amount of attorney’s fees to be awarded to the prevailing party . . . is intended to be an indemnification . . . for the fair and reasonable portion of his attorney’s fees incurred in the prosecution or defense of an action, and not the whole amount charged by the attorney.”⁵ Therefore, the “normal award under section 541 is often only a minor fraction of what an attorney may reasonably have charged a client for the services involved in the litigation.”⁶

As the prevailing party, the Estate is entitled to indemnification of reasonable attorney’s fees and costs expended in defending against the Will Contest.

I. Reasonableness of the Fee Under the Model Rules

Courts of the Virgin Islands apply a number of factors in deciding whether attorney’s fees are reasonable. Traditionally, Courts relied on the amount of the estate in determining the amount of the fee.⁷ The Supreme Court of the Virgin Islands noted that “[i]t has long since been established that attorneys’ fees . . . are subject to the reasonableness standard of Model Rule 1.5(a) and its counterpart in the ABA Code of Prof. Resp., DR 2-106(A), (B).”⁸ Rule 1.5(a) states:

A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonable of a fee include the following: (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (3) the fee customarily charged in the locality for similar legal services; (4) the amount involved and the results obtained; (5) the time limitations imposed by the client or by the circumstances; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and (8) whether the fee is fixed or contingent.⁹

The Court will apply each factor to the present probate proceeding to determine a reasonable fee.

⁵ *Damidaux v. Hess Oil V.I. Corp.*, 18 V.I. 417, 421 (D.C.V.I. 1981) (quoting *Lucerne Investment Co. v. Estate Belvedere, Inc.*, 7 V.I. 242, 411 F.2d 1205 (3d Cir. 1969)).

⁶ *Hess Oil*, 18 V.I. at 421 (quoting *Smith v. Gov’t of the Virgin Islands*, 5 V.I. 536, 361 F.2d 469 (3d Cir. 1969)).

⁷ *In the Matter of the Estate of David Violet*, 24 V.I. 16, 24 (Terr.Ct. 1998) (finding this standard to be unreasonable and inequitable).

⁸ *Rainey v. Hermon*, 2011 V.I. Supreme LEXIS (2011) (quoting *Christian v. Gordon*, 43 V.I. 179, 184 (V.I. Terr. Ct. 2001)).

⁹ ABA Model R. Prof. Cond. 1.5(a).

A. The Time and Labor Required, the Novelty and Difficulty of the Questions Involved, and the Skill Required to Perform the Legal Service Properly.

A review of the Will Contest proceeding shows that this was an ordinary will contest, with only one party claiming that the will should not be enforced. Additionally, the Court notes that while an appeal was filed, it was improperly done and the appeal was dismissed. The time and labor spent on this will contest action is largely the reason for the Court's present Order as to whether the time and labor performed in this matter was reasonable given the circumstances.

B. The Likelihood, if Apparent to the Client, that the Acceptance of the Particular Employment will Preclude Other Employment by the Lawyer

Based on the findings in Section I.A., the Court finds that the acceptance of this probate estate would not preclude additional employment by Counsel.

C. The Fee Customarily Charged in the Locality for Similar Legal Services

Four individuals worked on the Will Contest: Nycole Thompson at \$250.00/hour, Carol Hart at \$125.00/hour, Cordelia Jones at \$125.00/hour, and Carrie DeLeon at \$125.00/hour. The first individual is an associate at the Estate's Counsel's firm, while the last three are legal assistants. The Court finds that these rates are those customarily charged in this jurisdiction.

D. The Amount Involved and the Results Obtained

Again, the Court cannot look at the amounts involved in deciding whether a fee is reasonable.¹⁰ Therefore, the Court addresses the results obtained. The results obtained for the Estate in the Will Contest were positive. As was the expectation of the Estate, the Will Contest was dismissed.

E. The Time Limitations Imposed by the Client or by the Circumstances

It is well known that probate proceedings, including will contest proceedings, can, depending on the circumstances of the specific estate, be lengthy. There is, however, no evidence in this case that the client had any expectations regarding the length of time this probate would take or that counsel made any representations to the client in that regard. Therefore, the Court finds that the client's expectations regarding the timeliness of the processing of this estate to be nonexistent.

¹⁰ See footnote 2.

F. The Nature and Length of the Professional Relationship with the Client

Courts in this jurisdiction have not specifically discussed this factor as it relates to attorney's fees. Outside of this Will Contest proceeding, Counsel has represented the Estate since 2004 during probate proceedings.

G. The Experience, Reputation, and Ability of the Lawyer or Lawyers Performing the Services

Counsel has practiced in this jurisdiction for many years and handled many estates. Indeed, much of Counsel's practice is probate. Counsel maintains a good reputation among the citizens and members of the judiciary and Virgin Islands Bar. Given this experience, the Court gives weight to this factor in determining the reasonableness of the fees.

H. Whether the Fee is Fixed or Contingent

This last factor does not apply in probate matters and the Court will not consider it.¹¹

II. Reasonableness of Fees Under *Violet*

In addition to the eight factors listed in the Model Rules, additional considerations must be made in light of the opinion in *In Re Estate of Violet*.¹² In probate proceedings, the Court generally does not allow the attorney to recover the full amount of the demanded fee due to the non-adversarial nature of probate.¹³ However, the Court in *Violet* also recognizes that probate proceedings can lead to adversarial litigation, specifically mentioning Will Contests.¹⁴ In these cases, higher fees are given, because the case is no longer a "run-of-the-mill probate proceeding" and has instead "propel[led]" the proceeding into a "full-blown adversarial action."¹⁵ This requires a higher amount of pressure, skill, and strain for the attorney.¹⁶

However, the Court also recognizes that throughout the will contest proceeding, the associate attorney, billing at two hundred fifty dollars (\$250.00) an hour, spent a great deal of time addressing routine administrative matters that could have been delegated.¹⁷ Additionally, it

¹¹ See *Violet*, 24 V.I. at 26 (stating that the contingency element of attorney's fees is inapplicable to probate proceedings).

¹² This case enumerates seven factors to apply to probate proceedings; however, the seven factors cover, essentially, the same factors under the Model Rules. Therefore, an application of those factors is unnecessary.

¹³ *Violet*, 24 V.I. at 25.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ These include making several calls to the probate clerk to check on the status of the case and telephone calls to Ira Moses regarding the payment of the law firm's bill.

is important to note that a very substantial portion of attorney's fees for indemnification is sought presently demanded arose from the Will Contest and post-judgment issues; it is expected that the Court will receive an additional demand for attorney's fees for the administration of the probate estate.

III. Application and Conclusion

Applying these factors to the present Motion, the Court finds that the requested fees in this case are not reasonable under Model Rule 1.5(a) and *Violet*. Therefore, the Court will use its discretion and reduce the attorney's fees to \$26,575.00 and the costs to \$160.00. The amount of time spent on this case by the firm's associate is reasonable given the circumstances and outcome of the case.

However, the Court must also apply the legal standards from *Hess Oil, supra*, and reduce that amount based on the Moses's request for indemnification under 5 V.I.C. § 541. The Court will reduce the attorney's fees by twenty (20%) percent, which is \$21,336.00.

Therefore, it is hereby

ORDERED that Vernon Monsanto shall indemnify Ira Moses, Administrator of the Estate of Magdalene Moses, for attorney's fees in the amount of **TWENTY-ONE THOUSAND THREE HUNDRED AND THIRTY-SIX DOLLARS (\$21,336.00)** plus costs of **ONE HUNDRED AND SIXTY DOLLARS (\$160.00)**; and it is further

ORDERED that copies of this Memorandum Opinion and Order shall be served on the parties herein.

DATED: January 10, 2013



ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: 

JEWEL A. SPRAUVE

Court Clerk Supervisor 1/10/13