

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

IN THE MATTER OF THE ESTATE OF)

PAUL AUBAIN,)

Deceased.)

Probate No. ST-06-PB-31

BERNARD M. VANSLUYTMAN, ESQ.

No. 1401 Fourth Street, Sugar Estate

St. Thomas, Virgin Islands

SMITH, ALAN D., Magistrate

MEMORANDUM OPINION

Summary

Counsel for the Estate of Paul Aubain has filed an affidavit in which he seeks payment of attorney's fees. Virgin Islands law treats attorney's fees like any other expense of administration in that they are an expense of the administrator or executor. Therefore, the administrator or executor, not Counsel in a personal capacity, is the one who must move the Court for payment of attorney's fees. Counsel's request to be reimbursed for costs that would normally be paid by the administrator or executor will be granted.

Facts

The Administratrix retained Counsel to administer this Estate. The Estate has been fully administered with the final adjudication being entered on May 11, 2011. During the administration process, Counsel also personally bore certain expenses: a \$50.00 filing fee, \$350.14 for publishing notice to creditors, \$390.92 for pushing notice of the hearing on the final account, and a \$500.00 adjudication fee.

Discussion

Virgin Islands law clearly states that attorney's fees are one of many expenses of an administrator or executor. Title 15 V.I.C. § 568 provides that "an executor or administrator shall be allowed in the settlement of his account, all necessary expenses incurred in the care, management, and settlement of the estate, including reasonable attorney's fees in any necessary litigation or matter requiring legal advice or counsel."¹ The administrator or executor must demonstrate to the Court that the attorney's fees were not only generated in "necessary litigation or matter[s] requiring legal advice or counsel" but were also "reasonable" before they will be allowed in settlement of the account. Furthermore, "[i]t is the duty of the personal representative to pay all the claims against the estate and the expenses of administration of the estate"² Finally, "[t]he executor or administrator may retain in his hands in preference to any claim or charge against the estate, the amount of his own compensation and necessary expenses of

¹ VI CODE ANN. tit. 15 § 568 (1996).

² *In the Matter of the Estate of Bonifacio Latalladi, Deceased*, 23 V.I. 353, 356 (Terr. Ct. 1988) (citing VI CODE ANN. tit. 15 § 492 *et seq.*).

administration.”³ Therefore, under appropriate circumstances and with Court approval, an administrator or executor may pay reasonable attorney’s fees from the assets of the estate.

While the Court is mindful that some judges have awarded attorney’s fees in the past, both interim and final, there is no statute or court rule that authorizes payment of attorney’s fees to counsel upon his direct request to the Court. Moreover, in light of the Court’s supervisory function, sections 421(c), 492 and 568 should be prudently read. Therefore, prudence requires that applications for attorney’s fees must, at a minimum, be approved by the administrator or executor of the estate.

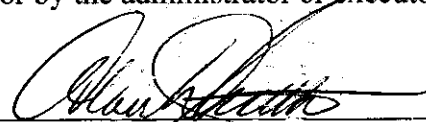
In this case, the application for attorney’s fees was made by Counsel. There is no evidence that the Administratrix reviewed or approved that application. Under such circumstances, it would not be prudent to release monies to satisfy the entire request of Counsel.

Counsel requests reimbursement for expenses he incurred to pay Court fees and publish required notices. These costs are distinct from fees for legal services and are commonly paid directly by the executor or administrator. The Court distinguishes these costs from those necessarily related to legal services and will grant recovery of such costs at this time.

Conclusion

Attorney’s fees are an expense of the administrator or executor. Therefore, the Court will not, absent approval by the administrator or executor, award attorney’s fees upon application of Counsel. Upon receipt of such approval or application, reasonable attorney’s fees will granted. The Court will order reimbursement of costs incurred by Counsel that were necessary for the administration of the Estate and would normally be paid for by the administrator or executor.

DATED: May 18, 2011



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 5/18/11

³ VI CODE ANN. tit. 15 § 421(c).