

FILED

March 04, 2022 05:36 PM

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-2019-00080**

**MOTION FOR AWARD OF ATTORNEYS' FEES AND INCORPORATED
MEMORANDUM OF LAW IN SUPPORT THEREOF**

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the "Epstein Estate"), **DARREN K. INDYKE** and **RICHARD D. KAHN** (the "Co-Executors"), and hereby move this Honorable Court pursuant to 5 V.I.C. § 541 for an award of attorneys' fees incurred by the Co-Executors in their successful opposition to the Government of the Virgin Islands' (the "GVI") Motion to Intervene in the Probate Action pursuant to Rule 24 of the Virgin Islands Rules of Civil Procedure, filed January 23, 2020 (the "GVI Motion to Intervene") and the GVI's Emergency Motion to Immediately Freeze All Assets and Cash on Hand, filed February 4, 2021 (the "GVI Motion to Freeze Assets" and, together with the GVI Motion to Intervene, the "GVI Motions") and the GVI's Appeal and Petition for Review of Magistrate Judge's Orders, filed March 17, 2021 and decided by the Court on February 4, 2022 (the "GVI Appeal"). Counsels' affidavits in support of this motion are submitted herewith.

The Co-Executors prevailed on the GVI Motions before the Magistrate Judge and on the GVI Appeal before this Court. In defending against those applications, the Co-Executors incurred \$112,216.90 in attorneys' fees. The attorneys' fees sought are fair and reasonable, supported by contemporaneous time entries, and reflect the actual time and labor involved in dealing with the far-reaching implications of the GVI Motions, developing a strategy for

responding to the GVI Motions and GVI Appeal, researching relevant legal issues, drafting the required briefing, and preparing for and appearing at the Probate Division's hearings regarding the GVI Motions.

BACKGROUND

On August 10, 2019, Jeffrey Epstein died suddenly in the Manhattan Correctional Center in New York City. Since the Epstein Estate's creation on August 15, 2019 and the Probate Division's appointment of Messrs. Indyke and Kahn as Co-Executors on September 6, 2019, the Co-Executors have administered the Epstein Estate in the proceeding entitled *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-2019-00080 (the "Probate Action").

The Epstein Estate is massive, complex and multi-jurisdictional. Initially valued at over \$636 million, the Epstein Estate's assets included cash and personal property (*e.g.*, vehicles, jewelry, artwork, collectibles, furnishings and equipment), fifteen limited liability companies wholly owned by Mr. Epstein, ten corporate entities owned by Mr. Epstein and three entities in which Mr. Epstein held partial ownership interests.¹ In turn, those entities held a wide variety of cash, investments, real property, aircraft, vehicles and other assets located around the world, including in New York, New Mexico, Florida, France and the Virgin Islands.²

Following Mr. Epstein's death, the Epstein Estate and/or the Co-Executors, acting in that capacity, were named as defendants in a welter of sizeable and complex civil suits. To date, sixty-four individual plaintiffs filed forty-seven lawsuits against the Epstein Estate and/or the Co-Executors in the United States District Court for the Southern District of New York, as

1. Verified Inventory, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-00080 (V.I. Super. Ct. Feb. 28, 2020).

2. *Id.*

well as in the state courts of New York, Minnesota and Florida, claiming sexual abuse at the hands of Mr. Epstein. Many of these suits sought unliquidated damages and together contain a litany of factual allegations going back to the 1980s. In addition to their defense of these civil suits, the Co-Executors worked extensively to establish a voluntarily administered, independent claims resolution program (the “Epstein Victims’ Compensation Program”), which provided compensation for individual claimants seeking redress for sexual abuse. In November 2019, the Co-Executors sought the Probate Division’s approval for this novel program, the first ever established by an estate; Magistrate Judge Carolyn P. Hermon-Percell granted that approval on June 3, 2020.

On January 15, 2020, the GVI filed a lawsuit against the Epstein Estate and numerous Epstein business affiliates and associates for, among other allegations, violation of the Criminally Influenced and Corrupt Organizations Act (the “CICO Action”).³

On January 23, 2020, the GVI filed the GVI Motion to Intervene, which sought to intervene in the Probate Action pursuant to Rule 24 of the Virgin Islands Rules of Civil Procedure (“Rule 24”). On February 3, 2020, the Co-Executors filed their opposition to the GVI Motion to Intervene, arguing that (i) intervention by the GVI was unnecessary in light of the Co-Executors’ fiduciary duties to the Epstein Estate and Probate Division’s original jurisdiction to “supervise and administer estates and fiduciary relations,” 4 V.I.C. § 76(a), (ii) the Virgin Islands Code and Probate Rules, rather than Rule 24, govern permissible intervention in the Probate Action, (iii) the GVI failed to follow the applicable claims procedure, and (iv) even if Rule 24

3. In February 2021, the GVI sought leave to amend its complaint in the CICO Action to add the Co-Executors as defendants. That application is pending.

were applicable, the contingent nature of the GVI's claim required the Court's denial of its motion to intervene.

On February 4, 2020, at an all-day hearing held in St. Thomas, Judge Hermon-Percell denied the GVI Motion to Intervene, finding that the GVI was not a party to the Probate Action and was therefore not permitted to intervene in that proceeding.⁴ Judge Hermon-Percell issued a written order confirming her ruling on February 26, 2021 (*nunc pro tunc* to February 4, 2020).

On February 4, 2021, the GVI filed the GVI Motion to Freeze Assets, arguing that the Probate Division should immediately freeze all of the Epstein Estate's assets and cash on hand because the Epstein Estate allegedly breached its commitment to fund the Epstein Victims' Compensation Program and the Co-Executors purportedly mismanaged the Epstein Estate. On February 10, 2021, the Co-Executors filed their opposition to the GVI Motion to Freeze Assets, noting, among other things, (i) the Epstein Estate had already funded the Epstein Victims' Compensation Program with over \$87 million specifically to pay claimants, in addition to regular payments made by the Epstein Estate to cover the costs of the Program's administration and operations, and the Co-Executors were in the process of liquidating additional assets for additional funding;⁵ (ii) the Co-Executors had not mismanaged the Epstein Estate but were instead complying with applicable Virgin Islands law, (iii) the GVI would not be harmed by denial of the requested relief and, given the Court's earlier denial of the GVI Motion to Intervene

4. See February 4, 2020 Hearing Tr., **Exhibit 1** at 98:1-16. Among other things, the Court directed the GVI to file a formal claim in the Probate Action if it wished to be heard as a claimant. (*Id.* at 98:12-14, 100:8-102:16.)

5. The Epstein Victims' Compensation Program ultimately awarded 136 claimants over \$121 million in compensation, which the Epstein Estate fully funded.

and the GVI's continued failure to file a formal claim in the Probate Action, the GVI lacked standing to obtain the relief demanded in the GVI Motion to Freeze Assets, and (iv) the GVI's demand would result in extraordinary harm to the Epstein Estate and would not serve the public interest.

Following a hearing on February 19, 2021, Judge Hermon-Percell struck the GVI Motion to Freeze Assets, finding that, because the Court had previously denied the GVI Motion to Intervene, the GVI lacked standing to move the Court to freeze the Epstein Estate's assets.⁶

On March 17, 2021, the GVI filed the GVI Appeal, challenging the Probate Division's orders denying the GVI Motion to Intervene and GVI Motion to Freeze Assets. On March 29, 2021, the Co-Executors filed their response to the GVI Appeal, arguing that (i) the GVI's appeal was untimely, (ii) the GVI's continued refusal to file a formal claim in the Probate Action against the Epstein Estate further substantiated the GVI's lack of standing, and (iii) the GVI Motion to Freeze Assets was moot because the Epstein Victims' Compensation Program was fully funded and was operating as it had since its implementation.

On February 4, 2022, this Court (the Honorable Debra S. Watlington) issued a Memorandum Opinion affirming the Magistrate Judge's denial of both the GVI Motion to Intervene and the GVI Motion to Freeze Assets. In its accompanying Order, the Court denied the GVI Appeal with prejudice.⁷

6. Order, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-80 (V.I. Super. Ct. Feb. 26, 2021).

7. Memorandum Opinion and Order, *In the Matter of the Estate of Jeffrey E. Epstein*, Case No. ST-2021-RV-00005 (V.I. Super. Ct. Feb. 7, 2022).

APPLICABLE LEGAL STANDARD

In a civil action in the Virgin Islands, a prevailing party may recover its costs, including attorneys' fees, pursuant to 5 V.I.C. § 541(a).⁸ Such attorneys' fees may be awarded against the GVI. *See, e.g., Bennett v. Virgin Islands Govt.*, No. 2004-CV-0031., 2007 BL 131136 (D.V.I. Oct. 22, 2007) (awarding recovery of attorney's fees against the GVI); *Berne Corp. v Govt. of the Virgin Is.*, 2010 US Dist LEXIS 105265, at *1 (D.V.I. Sep. 30, 2010) (same).

Pursuant to 5 V.I.C. § 541(b), awards of attorneys' fees are considered an indemnity for the prevailing party. 5 V.I.C. § 541(b) (absent agreement to the contrary by the parties, "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"). While such awards lie within the Court's discretion, the Supreme Court of the Virgin Islands recently made clear that courts do not have unlimited discretion to reduce the amount of requested attorneys' fees. *See Mahabir v. Heirs of James Wellington George*, S. Ct. Civ. No. 2014-0025, 2021 WL 6100552, at *2-4 (V.I. Dec. 22, 2021) (finding that Superior Court erred in reducing attorneys' requested hourly rate). Instead, courts must "first calculate the number of hours reasonably expended on the litigation," then multiply that number of hours "by a reasonable hourly rate, calculated according to the prevailing market rates in the relevant community." *Id.* at *2-3 (citing *Blum v. Stenson*, 465 U.S. 886, 895 (1984)). "The court must then evaluate the attorney's experience and skill and compare their rates to the rates prevailing in

8. Courts in the probate proceedings in the Magistrate Division are likewise empowered to grant costs such as attorneys' fees to a prevailing party. 15 V.I.C. § 165 (costs may be awarded in favor of one party against another, to be paid personally or out of the estate or fund, in any proceedings contested adversely).

the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Id.* (citing *Blum*, 465 U.S. at 895 n.11). Courts determining a reasonable hourly rate may also consider factors including:

- (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.

Yearwood Enterprises, Inc. v. Antilles Gas Corp., No. ST-17-CV-77, 2017 WL 6316625, at *2 (V.I. Super. Ct. Dec. 5, 2017), *aff'd*, 69 V.I. 863 (2018).

ARGUMENT

Here, the Co-Executors unquestionably prevailed on the GVI Motion to Intervene and the GVI Motion to Freeze Assets before Judge Hermon-Percell and on the GVI Appeal before this Court. The Court should therefore award attorneys' fees to the Co-Executors.

Contemporaneously recorded, detailed descriptions of the hours expended for legal services rendered by the Epstein Estate's counsel in relation to the GVI Motions and GVI Appeal, as well as the relevant attorneys' rates, are set forth in the accompanying Affidavits of Daniel H. Weiner and Christopher A. Kroblin. As discussed in more detail below, the number of hours expended and rates requested are reasonable.

I. The Hours Expended by the Co-Executors' Counsel in Defeating the GVI Motions and GVI Appeal Are Reasonable.

Defeating the GVI Motions and GVI Appeal was of significant importance to the Co-Executors and their administration of the Epstein Estate. The GVI has repeatedly sought to unlawfully seize effective control over the Epstein Estate in an attempt to appropriate for itself the Court's power and the Co-Executors' responsibility under the Virgin Islands Code to administer the Epstein Estate.⁹ The GVI Motions constituted another such illegitimate attempt, with the GVI seeking to improperly interfere with the Probate Division's authority and the Co-Executors' ability to discharge their legal obligations. Instead of properly filing a claim against the Epstein Estate *as expressly instructed by Judge Hermon-Percell on February 4, 2020* and in accordance with the Virgin Islands Rules of Probate and Fiduciary Proceedings—which would have allowed the Co-Executors to properly review that claim and conferred standing on the GVI to seek relief before the Probate Division—the GVI attempted to circumvent the probate process and gain priority over the Epstein Estate's assets to the detriment of other claimants and creditors.¹⁰ Likewise, through the GVI Motion to Freeze Assets, the GVI improperly sought to prevent the Co-Executors from paying for the necessary and ongoing administration of the Epstein Estate.

Given the size and complexity of the Epstein Estate and the novel, multifaceted nature of the Epstein Victims' Compensation Program, the implications of the Motions were far-

9. *See, e.g.,* Co-Executors' *Emergency* Motion for Order Releasing Funds for Administration of the Estate, *In the Matter of the Estate of Jeffrey E. Epstein*, Probate No. ST-19-PB-00080 (V.I. Super. Ct. Feb. 10, 2020) (explaining that improper criminal activity lien notices issued by the GVI in January 2020 had brought the administration of the Epstein Estate to a potentially disastrous halt).

10. The GVI finally filed its claim in the Probate Action on February 18, 2022, more than two years after Judge Hermon-Percell directed the GVI to do so.

reaching. The GVI's unauthorized attempt to intervene in the Probate Action and seize control of the Epstein Estate's assets was both extremely unusual and of extraordinary importance to the Epstein Estate. To further complicate matters, the GVI based its improper Motions on unsupported applications of law and baseless accusations concerning the Co-Executors and the Probate Division's ability to effectively administer the Epstein Estate. As a result, the Co-Executors were forced retain counsel to spend considerable time in order to, among other things, evaluate the implications of the GVI Motions on both the Probate Action and the GVI's CICO Action, strategize the proper response to the GVI Motions in light of those implications, research and draft responses to the GVI Motions and GVI Appeal, prepare to argue the GVI Motions and appear and argue before the Probate Division.¹¹

In light of these facts, the Court should conclude that time spent by the Co-Executors' counsel in relation to the GVI Motions and GVI Appeal was reasonable.

II. The Co-Executors' Counsels' Rates Are Reasonable.

To determine a reasonable hourly rate, courts should assess the experience and skill of the prevailing party's attorneys and "compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Mahabir*, 2021 WL 6100552, at *3. The appropriate rate used for this analysis is the "rate at the time of the fee petition, not at the time the services were performed." *Anthony v.*

11. In total, counsel for the Co-Executors researched and drafted three opposition briefs—each of which required analysis of complex legal issues and far-reaching implications for the Epstein Estate—and prepared for and participated in two substantive hearings before the Probate Court. When broken down, counsel for the Co-Executors spent approximately fifty-two hours on their opposition briefs to each of the GVI's Motions, twenty-three hours preparing for and participating in the February 4, 2020 Hearing, eight hours preparing for and participating in the February 19, 2021 hearing, and fourteen hours on their opposition brief to the GVI's Appeal.

Abbott, 2012 U.S. Dist. LEXIS 94323, at *7 (D.V.I. July 9, 2012) (quoting *Lanni v. New Jersey*, 259 F.3d 146, 149-50 (3d Cir. 2001)).

Here, the Co-Executors employed highly qualified attorneys from Kellerhals Ferguson Kroblin PLLC ("Kellerhals"), a law firm with offices in the U.S. Virgin Islands and New York and which is affiliated with New York law firm Solomon Blum Heymann LLP ("Solomon"), and Hughes Hubbard & Reed LLP ("Hughes Hubbard"), a well-known international law firm with offices in New York, Florida and Paris, each a jurisdiction in which the Epstein Estate has substantial property and in which the Estate faces various complex legal issues. Counsels' rates are listed in the Weiner and Kroblin Affidavits filed herewith and range from \$360 to \$1,315 per hour for attorneys and \$135 for a legal assistant, including relevant discounts negotiated by the Co-Executors. As discussed below, the requested rates for each of the relevant counsel and legal assistants (i) reflect their skills and experience; (ii) constitute customary rates as paid by other clients as well as the Epstein Estate; (iii) are consistent with rates charged by comparable professionals; and (iv) reflect the complexity of the Epstein Estate and the legal issues involved in the GVI Motions and GVI Appeal, and the benefits obtained by counsel's successes.

1. Counsels' Rates Reflect Their Reputation, Skills and Experience.

As detailed further in the Weiner and Kroblin Affidavits and the biographies attached thereto, the Co-Executors' counsel are experienced attorneys whose rates reflect their skills:

A. Christopher A. Kroblin is a member and the lead litigator at Kellerhals.

His focus on civil and commercial litigation includes complex contract disputes, product defects and other tort disputes, arbitration, employment law, commercial banking litigation, and

creditor's side bankruptcy representation. Mr. Kroblin also handles tax litigation cases as well as association, partnership, and corporate litigation matters. In addition to his general trial level practice, Mr. Kroblin handles a broad array of appellate issues. Mr. Kroblin has practiced in the Virgin Islands since 2005; he was previously a law clerk for Virgin Islands Supreme Court Justice Maria M. Cabret in her former position as Presiding Judge of the Superior Court of the Virgin Islands. Mr. Kroblin also interned for the Federal Trade Commission, the Superior Court of the District of Columbia, and the Supreme Court of California. He is admitted to practice law in New York and the Virgin Islands, as well as before the Third Circuit Court of Appeals.

B. Shari N. D'Andrade is a litigation associate with Kellerhals with more than eleven years of experience practicing law. She rejoined the firm in 2019 after serving several years as an Assistant Attorney General with the Virgin Islands Department of Justice and General Counsel for the GVI's Bureau of Corrections. There, Ms. D'Andrade handled a broad range of legal matters, including prison litigation, defamation, class action suits, elections disputes, and Title VII employment discrimination cases. Ms. D'Andrade appears regularly before the local and federal courts of the Virgin Islands, including the Virgin Islands Supreme Court. Her practice areas are commercial and civil litigation, civil rights, employment law, personal injury, and medical malpractice. She also has experience in compliance and regulatory matters and corporate governance. Before practicing law, Ms. D'Andrade served as a law clerk for Virgin Islands Superior Court Judge James S. Carroll, III. Ms. D'Andrade graduated with honors from the American University Washington College of Law. During law school, she served as a law clerk for the United States Department of Justice, Civil Division, Federal Tort Claims Act Section, and was a judicial intern for the Honorable Reggie B. Walton, United States

District Court Judge for the District of Columbia. Ms. D'Andrade is admitted to practice in the Virgin Islands and New York.

C. Marjorie Whalen is a litigation associate with Kellerhals with more than nine years of experience practicing law. Before joining Kellerhals, she served for two years as a law clerk to the Honorable Kathleen Y. Mackay of the Virgin Islands Superior Court. A member of the Law Review at Roger Williams University School of Law, Ms. Whalen interned for the Honorable O. Rogeriee Thompson in the U.S. Court of Appeals for the First Circuit. Ms. Whalen is admitted to practice law in Massachusetts, Rhode Island and the Virgin Islands.

D. Andrew Heymann is a New York City-based partner at Solomon with significant experience handling matters in the Virgin Islands. He has more than thirty years' experience litigating trust, estate and complicated multi-jurisdiction commercial disputes, including obtaining judgments defending fiduciaries and beneficiaries in proceedings involving foreign forced heirship, undue influence, breach of fiduciary duty, and fraudulent conveyance claims; foreign tribunal arbitrations resulting in the successful dissolution and distribution of international trusts; international reinsurance litigation resulting in multimillion-dollar settlements; and, U.S. tax reporting, advice and financial disclosure cases. He is admitted to practice before the federal, state and territorial courts in the jurisdictions of New York, New Jersey and the Virgin Islands, and before several federal Circuit Courts of Appeals and the U.S. Tax Court.

E. Daniel H. Weiner is a partner at Hughes Hubbard, where he serves as Chair of that firm's Litigation Department and Complex Business Disputes practice. Mr. Weiner, a 1981 graduate *cum laude* of Princeton University and a 1984 graduate of New York University School of Law, has more than thirty-seven years of experience litigating complex

disputes and has first-chair experience in more than thirty litigations and arbitrations.

Recognized as a leading international arbitration lawyer by *Law360*, *The Legal 500 United States*, *Chambers USA* and *Chambers Global*, ranked in *Chambers USA* as a leading lawyer in commercial litigation, and recognized by New York Super Lawyers Business Litigation as a “super lawyer,” Mr. Weiner is based in New York City and is licensed to practice law in Florida and New York, as well as before numerous federal Circuit Courts of Appeals and the United States Tax Court, Court of International Trade and U.S. Supreme Court. He has been admitted *pro hac vice* to practice law in the Virgin Islands in the Probate Action.

2. Clients Routinely Pay Counsels' Rates.

As the Virgin Islands Supreme Court has recognized, “no fee is reasonable unless it would be adequate to induce other attorneys to represent similarly situated clients seeking relief comparable to that obtained in the case at hand.” *Mahabir*, 2021 WL 6100552 at *3. For this purpose, “[t]he value of an attorney’s time generally is reflected in his normal billing rate.” *Id.* at *3. The rates that attorneys actually charge are the best evidence of what the market will bear, as compared to a “rate devised by the court” because “[l]awyers do not come from cookie cutters Clients are willing to pay more, per hour, for . . . better lawyers Markets recognize these truths; judges must too.” *Gusman v. Unisys Corp.*, 986 F.2d 1146, 1150 (7th Cir. 1993) (Easterbrook, J.); *see also Rozell v. Ross-Holst*, 576 F. Supp. 2d 527, 544 (S.D.N.Y. 2008) (“[T]he range of rates that plaintiff’s counsel actually charge their clients . . . is obviously strong evidence of what the market will bear.”).

Here, the Co-Executors’ requested fees are based on their counsel’s customary rates, which are routinely paid by clients in the Virgin Islands and around the world. (Kroblin Aff. ¶¶ 5-6; Weiner Aff. ¶¶ 4-6.) In particular, these rates represent the rates that Co-Executors’

counsel is actually paid for work relating to the Epstein Estate. (Kroblin Aff. ¶ 5; Weiner Aff. ¶ 5.) As rates actually charged and paid, the requested rates are reasonable and consistent with the rates charged in the relevant communities.

3. The Requested Rates Reflect the Rates in the Relevant Communities.

The rates charged by each of the Co-Executors' counsel who did work associated with the GVI Motions and GVI Appeal also are commensurate with rates customarily charged by similarly-experienced attorneys for similar work in the relevant communities.

For many years, courts in the Virgin Islands stated that the hourly rate for attorneys practicing in the Virgin Islands was roughly \$300. *See, e.g., Diamond Crest, Ltd. v. FNA Service Stations, Inc.*, Civil No. 591/01, 2006 WL 8418818 (V.I. Super. June 14, 2006) (finding that, in 2006, the standard rates charged by attorneys in the Virgin Islands was \$200-\$400). However, just as the cost of living increased dramatically over the last decade and a half, rates charged by attorneys in the Virgin Islands have also risen. As the Virgin Islands Supreme Court recently cautioned, courts must not allow their pre-conceived notions of customary market rates for attorneys in the Virgin Islands to prevail over the evidence of the prevailing rates set forth in the case before them, such as the customary rates actually charged by the attorneys in question and affidavits evidencing the standard rates. *Mahabir*, 2021 WL 6100552, at *3 (finding that the court should not use its preconceived notion of current standard rates as a basis to lower the requested standard rate). As set forth in Mr. Kroblin's Affidavit, the rates requested here for the Kellerhals and Solomon attorneys are standard rates charged by experienced attorneys in the Virgin Islands. (Kroblin Aff. ¶ 6.)

The rate charged by Kellerhals' legal assistant Shauna Betz also is consistent with rates charged by legal assistants in the Virgin Islands. *See, e.g., LPP Mortg., Ltd. v. Ferris*, 2014

U.S. Dist. LEXIS 74599, at *25 n.3 (D.V.I. June 2, 2014) (approving paralegal hourly rates ranging from \$120 to \$150). The Virgin Islands Superior Court recently found reasonable and approved a Kellerhals' paralegal's similar hourly rate. *See Matter of Estate of Benjamin*, No. ST-95-PB-53, 2019 WL 3219450, at *5 (V.I. Super. Feb. 21, 2019) ("The paralegals' hourly legal rate set forth in Attorney Kellerhals' motion between \$135.00 and \$80.00 appears reasonable . . .").

The rates charged by Mr. Weiner of Hughes Hubbard likewise reflect the prevalent rates in the relevant community. (Weiner Aff. ¶ 6.) While courts frequently look to the local geographic area to determine the applicable "community" of attorneys against whom to evaluate the attorney's rates, courts addressing attorney's fees for complex cases may look outside their geographic area to find the appropriate hourly rate. *See, e.g., Strauch v. Computer Scis. Corp.*, No. 3:14-CV-956 (JBA), 2020 WL 4289955, at *7 (D. Conn. July 27, 2020) (finding that, because the complex litigation was the kind of case for which a local attorney "would need to seek out-of-district counsel to prosecute the case effectively," counsel was "entitled to rates in excess of those that prevail in this district . . ."); *Polk v. N.Y. State Dep't of Corr. Servs.*, 722 F.2d 23, 25 (2d Cir. 1983) (holding, as a judge "may consider all of the circumstances of the case," out-of-forum rates were appropriate "upon a showing that the special expertise of counsel from a distant district is required"); *Howes v. Medical Components, Inc.*, 761 F. Supp. 1193, 1196 (E.D. Pa. 1990) (finding that "a party should be entitled to retain the most competent counsel available, particularly in the highly specialized area [at issue] and particularly when its local counsel suggests using an out-of-state law firm for the purpose of litigation. . . . [because P]laintiffs had a good reason for using non-local counsel, plaintiffs' New York City counsel [were] entitled to recover the reasonable hourly rate for the New York City community.").

Considering the complex, multi-jurisdictional nature of the Epstein Estate and the far-reaching implications of the GVI Motions and GVI Appeal, this is precisely the type of case where counsel outside of the Virgin Islands with special expertise in similar cases is necessary and appropriate.¹²

Mr. Weiner's rate is commensurate with other attorneys in the New York City area with similar experience, skill and reputation as well as with other attorneys in relation to matters whose complexity is comparable to administration of the Epstein Estate. (Weiner Aff. ¶¶ 4, 6); *see also, e.g., Trupia v. Astrue*, No. 05-CV-6085 (SJF), 2008 WL 858994, at *4 (E.D.N.Y. Mar. 27, 2008) (awarding what amounted to a \$1,714 hourly fee); *McDonald v. Comm'r of Soc. Sec.*, No. 16-CV-926-FPG, 2019 WL 1375084, at *2 (W.D.N.Y. Mar. 27, 2019) (awarding what amounted to a \$1,051 hourly fee); *Kanzanjian v. Astrue*, No. 09 CIV. 3678 BMC, 2011 WL 284743, at *2-3 (E.D.N.Y. July 15, 2011) (approving fee award of \$2,100 per hour); Sara Randazzo and Jacqueline Palank, *Legal Fees Cross New Mark: \$1,500 an Hour*, The Wall St. J. (Feb. 9, 2016), <https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708> (**Exhibit 2**). Here, Mr. Weiner's requested rate for time spent on the GVI Motions and the GVI Appeal reflects a discount from his current standard rates. (Weiner Aff. ¶ 5.)

12. The USVI Attorney General likewise engaged Motley Rice LLC, a firm with more than 100 attorneys and offices in New York, New Jersey, Washington, D.C., South Carolina, Rhode Island, Connecticut, West Virginia, and Pennsylvania, to represent the GVI in the Probate Action and GVI's CICO action.

4. The Requested Rates Reflect the Benefits Obtained by Counsels' Success as well as the Complexity of the Epstein Estate and the Legal Issues Involved in the GVI Motions and GVI Appeal.

In evaluating the reasonableness of an attorney's rate, the Court also considers factors such as the time and labor involved, the novelty and difficulty of the questions involved, the amount involved and the benefits obtained, and the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer. *See, e.g., Yearwood Enterprises, Inc.*, 2017 WL 6316625, at *2; *Dorval v. Sapphire Vill. Condo. Owners Ass'n*, Nos. 16-50;18-29, 2020 U.S. Dist. LEXIS 84668, at *6 (D.V.I. May 11, 2020) (citation omitted).

Here, as discussed above, the GVI Motions and GVI Appeal presented far-reaching implications for the Epstein Estate. Evaluating the GVI Motions and GVI Appeal, strategizing appropriate responses, researching and drafting those responses, and preparing and appearing for the Court hearings required a substantial amount of time, labor and skill. Likewise, as grant of the GVI Motions or GVI Appeal would have resulted in both (1) the GVI "jumping the line" ahead of numerous claimants and creditors who had properly filed their claims in the Probate Action, and (2) the inability of the Co-Executors to continue to administer the Epstein Estate, the amounts in question and benefits to the Epstein Estate (including the Epstein Victims' Compensation Program) obtained through the Co-Executors' success are substantial.

The nature of the Probate Action likewise has a substantial impact on the Co-Executors' counsel. Given Mr. Epstein's notoriety, the administration of the Epstein Estate has negative reputational consequences for Co-Executors' counsel—particularly USVI counsel, who work in a small community where Mr. Epstein is infamous. This notoriety both makes it

difficult for the Co-Executors to obtain other representation and necessitates a higher hourly rate for their legal services.

Moreover, while the Co-Executors seek in this application only those fees associated with legal work performed on the GVI Motions and GVI Appeal, the Court cannot evaluate that work without considering the larger legal requirements of the Epstein Estate. Administration of the Epstein Estate is a massive, multi-jurisdictional task that requires complex and specialized legal work. Not only would it have been fundamentally unreasonable to bring in different counsel separate from those working on the Epstein Estate's legal issues at large in order to address the GVI Motions and GVI Appeal, responding to those applications required a thorough understanding of the Epstein Estate. The reasonable rates appropriate in successfully litigating the GVI Motions and GVI Appeal cannot be separated from the reasonable rates appropriate for attorneys involved in administering and litigating the complex issues relating to the Epstein Estate. In considering the required skill, time and labor involved in litigation of the GVI Motions and GVI Appeal, the Court should consider the substantial amount of skill, time and labor involved—and the reasonable rates associated with that work—in the Epstein Estate's larger legal work.

CONCLUSION

WHEREFORE, Co-Executors respectfully request that the Court issue an award reimbursing them for their attorneys' fees incurred on the GVI Motions and GVI Appeal in the amount of \$112,216.90.

Respectfully,

Dated: March 4, 2022

/s/ Shari N. D'Andrade
SHARI N. D'ANDRADE, ESQ.
CHRISTOPHER ALLEN KROBLIN, ESQ.
MARJORIE WHALEN, ESQ.
V.I. Bar Nos. 1221, 966, & R2019
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802
Telephone: (340) 779-2564
Facsimile: (888) 316-9269
Email: sdandrade@kellfer.com
ckroblin@kellfer.com
mwhalen@kellfer.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of March 2022, I caused a true and exact copy of the foregoing **Motion for Award of Attorneys' Fees and Incorporated Memorandum of Law** to be served via VIJEFS upon:

Denise N. George, Esq., Attorney General
Carol Thomas-Jacobs, Esq., Deputy Attorney General
Ariel M. Smith, Esq., Chief, Civil Division
Virgin Islands Department of Justice
34-38 Krondprinsdens Gade
GERS Complex, 2nd Floor
St. Thomas, Virgin Islands 00804
denise.george@vi.gov
carol.jacobs@vi.gov
ariel.smith@vi.gov

Linda J. Singer, Esq.
Motley Rice LLC
402 9th Street NW, Suite 1001
Washington, D.C. 20004
lsinger@motleyrice.com

/s/ Shari N. D'Andrade