SAM GLASSCOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

April 22, 2014

Vincent Branson, *pro se*
7008 Braeburn Court
Bethesda, MD 20817

Shannon Owens, Esquire
Moore & Rutt, P.A.
122 West Market Street
Georgetown, Delaware 19947

Re: *In the Matter of Estate of Dorothea Branson*
Register of Wills No. 260-S

Dear Litigant and Counsel:

This letter represents the final installment, at least in its current incarnation, of protracted and unfortunate litigation involving the real property and estate of Dorothea Branson. On April 30, 2013, at Oral Argument on Mr. Branson's Exceptions to the Final Accounting of the Estate, I found that Mr. Branson lacked standing to prosecute exceptions, and that, for reasons expressed in that bench ruling, his litigation was vexatious and frivolous. At that time, counsel sought a ruling that attorney's fees and expenses be shifted from the estate to Mr. Branson. Since I found that Mr. Branson's Exceptions were frivolous and that he lacked standing to proceed, I deemed it appropriate to shift fees under the bad faith

exception to the American Rule.[1] I asked counsel for the estate to submit an affidavit of reasonable fees in connection with defending Mr. Branson's Exceptions.

Counsel for the estate filed an Affidavit of Fees on May 3, 2013, requesting $5,252.50 in fees and expenses. Mr. Branson did not respond to counsel's request.

Meanwhile, Mr. Branson pursued an appeal of my decision that he lacked standing to bring Exceptions to the Final Accounting. That matter was pending until March 18, 2014, at which point Mr. Branson's appeal was dismissed as interlocutory, in light of the fact that the fee issue referred to above remained pending.

On April 3, 2014, I directed Mr. Branson to notify me of any opposition to the fees requested by April 18, 2014. This Court received a response, dated April 16, in which Mr. Branson takes the position that *he* is entitled to attorney's fees due to the executor's purported misconduct. In his letter, however, Mr. Branson does not contest the amount of fees requested by counsel for the estate, despite being afforded the opportunity to do so.[2]

[1] *See, e.g.*, *Kaung v. Cole Nat'l Corp.*, 884 A.2d 500, 506 (Del. 2005) ("One well-recognized exception to the American Rule is where the losing party has acted in bad faith, vexatiously, wantonly, or for oppressive reasons. The purpose of this so-called 'bad faith' exception is to deter abusive litigation in the future, thereby avoiding harassment and protecting the integrity of the judicial process.") (citations and internal quotation marks omitted).

[2] Rather, in his letter, Mr. Branson requests "that a default judgment be entered against [the executor], that an evidentiary hearing be held concerning [the executor's] misconduct, that an

The only remaining issue is thus whether the fees requested by the attorney for the estate are reasonable. Upon review of counsel's Affidavit of Fees and the attached breakdown, I find that the attorney's fees requested are reasonable. "Under settled Delaware law, a court is to consider the factors set forth in Delaware Lawyers' Rule of Professional Conduct 1.5 in assessing the reasonableness of attorneys' fees,"[3] which include:

> (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.[4]

I find, after consideration of those factors relevant to the matter before me, that the fees requested here are reasonable. Counsel for the estate, who entered her appearance in this matter in April 2013, and who has an hourly rate of $225.00,

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award of attorney's fees be entered in [his] favor and that [the executor's] request for fees be denied."

[3] *Concord Steel, Inc. v. Wilmington Steel Processing Co., Inc.*, 2010 WL 571934, at *3 (Del. Ch. Feb. 5, 2010), *aff'd*, 7 A.3d 486 (Del. 2010); *see also Mahani v. Edix Media Grp., Inc.*, 935 A.2d 242, 245-46 (Del. 2007) ("To assess a fee's reasonableness, case law directs a judge to consider the factors set forth in the Delaware Lawyers' Rules of Professional Conduct . . . .") (citation omitted).

[4] Del. Lawyers' R. Prof'l Conduct 1.5(a).

spent over twenty hours preparing for Mr. Branson's Exceptions to the Final Accounting. This included time spent reviewing the unwieldy and protracted procedural history of this and related litigation in the Court of Chancery and Supreme Court, legal research, as well as preparing for and attending oral argument. I note in particular the hours for which fees are sought are objectively reasonable in light of the issues presented and the history of the litigation, and that the hourly rate sought is modest for the type of work performed. I also note that counsel is an experienced practitioner in the area of decedents' estates and probate, and that she enjoys an excellent reputation in the bar.

For the foregoing reasons, it is equitable that Mr. Branson be ordered to pay attorney's fees and expenses incurred on behalf of the estate in the amount of $5,252.50. An appropriate Order accompanies this Letter Opinion.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III