

In *Fulton County I*, the Supreme Court found Petitioners (collectively, Fulton County or County) in contempt of its January 27, 2022 Injunction Order, and also found that both the County and its counsel, Attorney Thomas J. Carroll, were “guilty of dilatory, obdurate, **and** vexatious conduct, as well as conduct in bad faith.” *Id.* at 1013 (emphasis in original). On those bases, the Supreme Court imposed sanctions against the County and Attorney Carroll. First, it directed the Special Master to oversee impoundment of the Voting Equipment (Impoundment Proceeding) that is the subject of this dispute with a neutral agent, which the Special Master accomplished by order in *County of Fulton v. Secretary of the Commonwealth* (No. 277 M.D. 2021/3 MAP 2022, Mem. Opinion & Preliminary Appointment Order of Special Master, filed September 15, 2023) (*Fulton County II*), and Final Appointment Order, filed October 27, 2023, *Appl. for Relief & Rev. denied* (Pa., 3 MAP 2022, filed February 21, 2024), *pet. for cert. pending* (U.S., No. 23-1237, filed May 21, 2024). Second, the Supreme Court ordered the County to “compensate the Secretary [of the Commonwealth (Secretary)] for all protective-order and sanctions-related counsel fees in the Commonwealth Court and th[e Supreme] Court from December 17, 2021, forward. Attorney Carroll shall be jointly and severally responsible for those fees from April 13, 2022, forward.” *Fulton I*, 292 A.3d at 1020. The Supreme Court also specified that Intervenor Dominion Voting Systems, Inc. (Dominion) is entitled to recover its reasonable counsel fees to the same extent, for the same time periods, and against the same persons as the Secretary. *Id.* at 1019. Having imposed these liabilities for fees and costs, the Supreme Court then directed the Special Master as follows:

Assessing legal fees and the costs of litigation requires a fact-intensive inquiry assisted by the Secretary[’s] [and Dominion’s submissions. Accordingly, we return this case to [the Special Master] to collect and

review the parties' submissions, including the County's disputes, if any, of the amounts claimed. Once the Special Master has completed this task, she will return to th[e Supreme] Court findings and recommended fee awards along with an accounting of all relevant data and calculations employed in the task, separating the counsel fees incurred by the Secretary and Dominion between December 17, 2021, and April 12, 2022, and those incurred by each party thereafter.

Id. at 1020-21. The Special Master sets forth herein the requisite findings, accounting of amounts and calculations, and recommended fee awards for the Supreme Court's use in finally awarding fees and costs as contemplated in its *Fulton County I* opinion.^{1,2}

I. BACKGROUND OF FEE PROCEEDING & PARTIES' FILINGS

The Supreme Court's opinion in *Fulton County I* was issued April 19, 2023. On April 28, 2023, the Special Master issued an order directing the Secretary and Dominion to file and serve submissions documenting legal fees and costs of litigation incurred between December 17, 2021, and April 12, 2022, and then from April 13, 2022, and ongoing. The Order also directed the County to file and serve any response to the Secretary's and Dominion's submissions within 30 days of service thereof. The Order specifically warned the County that "[i]f no response is timely filed, the Secretary's and Dominion's submissions **will be considered unopposed.**" (Special Master's April 28, 2023 Order ¶ 2 (emphasis added).) On May 30, 2023, Dominion and the Secretary filed and served their initial fee

¹ The factual and procedural background of this matter set forth in the opinions of the Supreme Court and the Special Master in *Fulton County I* and *Fulton County II*, respectively, is incorporated by reference herein and will not be reproduced further. The Special Master will use terms defined in those opinions without redefining them here where appropriate.

² Appended to the Special Master's Report are various exhibits, which are referenced herein. Because the Special Master's Report exhibits contain various exhibits labeled by the parties, to avoid confusion, each of the Special Master's exhibits are bates stamped with the relevant exhibit and page number.

submissions, indicating and documenting fees and costs incurred from December 17, 2021, through April 30, 2023. (See Secretary’s Application for an Award of Fees and Costs Pursuant to the Special Master’s Order Dated April 28, 2023 (Secretary’s Initial Submission); Dominion’s Bill of Costs and Related Fees and Expenses (Dominion’s Initial Submission), (collectively with the Secretary’s, the Initial Submissions).)

The County filed no response to the Initial Submissions.

By June 2, 2023 Order, the Special Master granted the Secretary leave to file a supplemental bill for costs incurred after April 30, 2023, and extended the deadline for the County’s response to all fee submissions—including the Initial Submissions—to be “within 30 days of service of the Secretary’s Supplemental [Submission].” (Special Master’s June 6, 2023 Order at 2.) That Order **again** stated again that “[i]f no response is timely filed, the Secretary’s and Dominion’s submissions **will be considered unopposed.**” (*Id.* (emphasis added).) On June 9, 2023, the Secretary filed and served a Supplemental Application for an Award of Fees and Costs Pursuant to the Special Master’s Order Dated June 2, 2023 (Secretary’s First Supplement), documenting fees and costs incurred during May 2023.

The County filed no response to the Secretary’s First Supplement.

Following the Initial Submissions and the Secretary’s First Supplement, the parties continued to negotiate, and then to litigate before the Special Master, the issue of the impoundment of the Voting Equipment. Because the fees and costs incurred in the Impoundment Proceeding were part of the amounts to be accounted and awarded per the Supreme Court’s sanction in *Fulton County I*, final accounting and recommendation as to fees and costs could not occur until after the impoundment

of the Voting Equipment was finally completed, which occurred on January 19, 2024, following several status reports filed after the Special Master's October 27, 2023 Final Appointment Order. For a detailed history of the impoundment proceeding, see generally the Special Master's opinion in *Fulton County II*.

On February 16, 2024, after the impoundment was completed, the Secretary filed and served a Second Supplemental Application for an Award of Fees and Costs Pursuant to Supreme Court's Decision Issued April 19, 2023 (Secretary's Second Supplement), documenting fees and costs incurred from June 1, 2023, through January 31, 2024 (i.e., through the end of the impoundment proceeding). By February 23, 2024 Order, the Special Master directed Dominion to file and serve a similar supplemental submission to bring its documents fees and costs current through January 31, 2024. The Order directed the County to file a response, if any, to the Secretary's Second Supplement by March 18, 2023, and to serve a response to Dominion's supplemental submission within 30 days of service thereof. For a third time, the Special Master's Order stated that "[i]f any response herein directed is not timely filed, the submission to which such response would have been responsive **will be considered unopposed.**" (Special Master's February 23, 2024 Order at 2 (emphasis added).) Dominion filed its First Supplemental Bill of Costs and Related Fees and Expenses on March 19, 2024 (Dominion's First Supplement).

As was the case the with the Initial Submissions, the County filed no response to either the Secretary's Second Supplement or Dominion's First Supplement.

The Secretary's and Dominions fee and cost submissions, to which the County has never filed any response, are now ripe for the Special Master's consideration and recommendation.

II. DISCUSSION

A. Time Periods & Liable Parties

Per the Supreme Court's opinion and order in *Fulton County I*, the fee awards in this matter are to be for the legal fees and litigation costs of the Secretary and Dominion "for all protective-order and sanctions-related counsel fees," but those awarded fees are to be divided across time on a per-liable-party basis. 292 A.3d at 1020. Fees incurred by the Secretary or Dominion during the period from December 17, 2021 (the date the Secretary filed the first Emergency Application to enjoin inspection of the Voting Equipment) through April 12, 2022 (the day Attorney Carroll was appointed counsel for the County) will be assessed against the County (which as defined herein refers to the County of Fulton, Stuart Ulsh, and Randy Bunch, jointly and severally). Fees incurred on or after April 13, 2022 (the first full day after Attorney Carroll's appointment) are assessed against the County, and Attorney Carroll also bears personal joint and several liability for those fees. *See id.* at 1020-21.

Although the Special Master ordered the parties' final supplemental fee submissions to bring their fees and costs current through January 31, 2024, the awards of fees recommended here will also include the Secretary's and Dominion's fees and costs incurred after that date that were incurred for preparing and filing the Secretary's First and Second Supplements and Dominion's First Supplement. *See Fulton County I*, 292 A.3d at 1018 (explaining that fees to be recommended by the Special Master shall "includ[e] proceedings necessary to determine the reasonable fees to which the Secretary [and Dominion are] entitled"). Both the Secretary and Dominion included the costs of preparing their final supplemental fee submissions in the claimed amounts. (*See* Secretary's Second Supplement at 7 & Ex. E within Ex. C; Dominion's First Supplement at 7 n.2.) But as explained below, the fee

awards recommended for amounts incurred after January 31, 2024, will be limited to the expenses of fee-related filings only. (*See* Dominion’s First Supplement at 7 n.2 (noting that Dominion incurred fees and costs for fee-related filings after January 31, 2024).) After that date, anything related to the Impoundment Proceeding had concluded, and other proceedings (such as for Dominion’s Emergency Application discussed below) are not properly the subject of fee awards here.

B. Exclusions

Some amounts of fees and costs that would otherwise fall into those the Supreme Court has awarded must be excluded from the amounts the Special Master recommends here. First, in *Fulton County I*, the Supreme Court explained that the Special Master had already awarded fees on a limited basis during the contempt proceeding, as follows:

While we held this matter under advisement, on November 18, 2022, the Secretary filed with the Special Master a petition seeking counsel fees associated with the depositions that Attorney Carroll and his client failed to facilitate consistently with the Special Master’s direction and the Secretary’s notices. The County did not oppose the petition. On December 29, 2022, the [Special] Master issued an order granting the Secretary’s petition in the amount specified. We adopt this order as our own, but consistently with our imposition of joint and several responsibility for all counsel fees after April 13, 2022, we modify it to make Attorney Carroll jointly and severally liable for the amounts specified. We further observe that **the Special Master should take care not to incorporate fees already awarded in calculating the larger award of counsel fees on the referral associated with this Opinion. As well, this award should not be held against Dominion, which, as set forth below, is entitled to its own counsel fees associated with the depositions.**

Fulton County I, 292 A.3d at 1018 n.159 (emphasis added). The Secretary was careful to exclude from his Initial Submission the fees and costs the Special Master

has already awarded, as well as any fees and costs related to the litigation of the preliminary objections to the County's Amended Petition for Review. (Secretary's Initial Submission at 21.) However, the Secretary included the costs of preparing the filing requesting that earlier fee award, as that amount was not previously awarded. (*Id.*) This division is consistent with the Supreme Court's directive in *Fulton County I*, and the Special Master will not modify the amounts of the Secretary's requested fees on this basis.

Second, in ruling on, and referring back to the Commonwealth Court, Dominion's January 10, 2024 Emergency Application to Enforce Supreme Court Order and for Hearing to Hold Petitioners in Contempt (Emergency Application), the Supreme Court stated that

because these protective-order proceedings arise independently of the apparent scope of th[e Supreme] Court's prior sanction orders in this litigation, the parties shall bear their own costs and fees associated with these proceedings unless the lower court or th[e Supreme] Court shall direct otherwise at some future time.

(Pa., No. 3 MAP 2022, Order filed Mar. 12, 2024 at 2.) Thus, the Special Master excludes any claimed fees and costs that apparently pertain only to Dominion's Emergency Application, although Dominion claims such fees and costs alongside the fees and costs already awarded pursuant to *Fulton County I*.

The Emergency Application stems from a motion of the County's commissioners which carried on December 27, 2023. *County of Fulton v. Sec'y of the Com.* (Pa. Cmwlth., No. 277 M.D. 2021, filed June 11, 2024) (single-judge op.), slip op. at 7. Therefore, the Special Master will only include, here, those fee entries submitted after December 27, 2023, that unambiguously relate to matters other than

the Emergency Application. To the extent an entry is ambiguous, the Special Master resolves any doubt in favor of exclusion.

C. Accounting of Amounts Claimed

The amounts of fees and costs requested by the Secretary and Dominion, respectively, are set forth in the following table, together with the portions of those requested fees and costs that will be excluded from the Special Master's consideration as discussed above, where such properly excluded fees and costs were not already excluded in the relevant submission.³

Incorporated by reference as part of the required accounting, and attached as exhibits, are the following filings: Appended to this Report as Exhibit A is the Affidavit of Robert A. Wiygul (Attorney Wiygul), including its exhibits, filed May 30, 2023; as Exhibit B, the Affidavit of Attorney Wiygul, including its exhibits, filed June 9, 2023;⁴ as Exhibit C, the Affidavit of Attorney Wiygul, including its exhibits, filed February 16, 2024; as Exhibit D, Dominion's Initial Submission, including its exhibits; and as Exhibit E, Dominion's First Supplement, including its exhibits.⁵

³ For example, as discussed, the Secretary excluded the fees and costs already awarded by the Special Master in connection with the County Commissioners' depositions from the Secretary's fee submissions, so those amounts are not reflected as exclusions in the table.

⁴ Exhibit B also includes the updated exhibit the Prothonotary was directed to attach by Order dated June 15, 2023, thereto and is denominated as Exhibit B Part II.

⁵ Exhibit E includes highlighting by the Special Master of fees not to be awarded because they relate to the Emergency Application.

Requested Fees and Costs				
Party	December 17, 2021 to April 12, 2022 (County liable)	April 13, 2022 to January 31, 2024⁶ (Attorney Carroll & County Jointly & Severally Liable)		
Secretary	\$128,272.00 Fees \$21,026.89 Costs ⁷	\$472,255.00 Fees \$89,698.32 Costs ⁸		
Dominion	\$136,407.16 Fees & Costs ⁹	Requested \$200,994.22 ¹⁰	Less \$12,728.50 exclusions ¹¹	Total \$188,265.72 Fees & Costs

The parties' submissions claiming the above fees and costs include supporting documentation. Beginning with the Secretary's submissions, the Secretary's Initial Application attaches affidavits of all counsel—including counsel at two private law firms retained by the Secretary, as well as counsel employed by the Commonwealth—describing the extent and nature of work each attorney performed in the aspects of this matter that are subject to fee awards. The lead affidavit, of Attorney Wiygul, attaches itemized time and fee records for all attorneys who worked on the matter, as well as receipts and other documentation of costs incurred. (See Ex. A.) The Secretary's first supplement attaches a similar lead affidavit of Attorney Wiygul documenting timekeeping and fees for all counsel, including outside counsel, and litigation costs, including fees and costs incurred by the Secretary's expert witness. (See Ex. B and Ex. B Part II.) Finally, the Secretary's

⁶ The Secretary claimed fees and costs through January 31, 2024, and the Special Master directed Dominion to update its fee and cost submission through that date also. See Secretary's Second Supplement at 1; Special Master's February 23, 2024 Order. Dominion claimed fees and costs through approximately March 19, 2024. See Dominion's First Supplement at 14. Thus January 31, 2024, is the latest date through which both the Secretary and Dominion made claims.

⁷ See Secretary's Initial Submission at 31.

⁸ See Secretary's Initial Submission at 31; Secretary's First Supplement at 6-7; Secretary's Second Supplement at 13.

⁹ See Dominion Initial Submission at 14.

¹⁰ See Dominion Initial Submission at 14; Dominion First Supplement at 17-18.

¹¹ See Dominion First Supplement at Ex. 1, pages 5-6.

Second Supplement also attached a lead affidavit from Attorney Wiygul that documents timekeeping, fees, and costs in a similar manner to the Initial Submission. (See Ex C.) Each of the Secretary's fee submissions, either within their principal text, within the text of the attached affidavits, or both, identifies where in the filing each fee or cost item can be found and avers that each attorney's work indicated was actually and necessarily performed in connection with the sanction proceedings here at issue and was billed at an hourly rate consistent with, or lower than, the market rate for the relevant legal professional.

Dominion's Initial Submission attaches supporting documentation that is structured similarly to the Secretary's. The lead affidavit is of Attorney Shawn N. Gallagher, which in turn attaches itemized time and fee records for all attorneys who worked on the matter, as well as receipts and other documentation of costs incurred. (See Ex. D. at Ex. A.) The submission then attaches affidavits from all counsel whose fees are claimed in the submission. Dominion's First Supplement has the same structure, with a lead affidavit and supporting documentation plus affidavits from each billing attorney. In both submissions, each affidavit avers that each attorney's work indicated was actually and necessarily performed in connection with the sanction proceedings here at issue and was billed at a reasonable market rate for the relevant legal professional.

Both the Secretary's and Dominion's fee submissions are painstakingly detailed in enumerating the relevant fees and costs, describing where in the attachments to the submissions' documentation for the fees and costs may be found, and are undisputed by the County.

C. Legal Standard

“The party seeking attorneys’ fees bears the initial burden of demonstrating the reasonableness of the fees by submitting evidence supporting the hours worked and the rates claimed.” *Richards v. Ameriprise Fin., Inc.*, 217 A.3d 854, 866 n.14 (Pa. Super. 2019). Factors to be considered when assessing reasonableness include

the amount of work performed; the character of the services rendered; the difficulty of the problems involved; the importance of the litigation; . . . ; the degree of responsibility incurred; whether the fund involved was ‘created’ by the attorney; the professional skill and standing of the attorney in his profession; the results he was able to obtain; the ability of the client to pay a reasonable fee for the services rendered; and, very importantly, the amount of money or the value of the property in question.

In re LaRocca’s Tr. Est., 246 A.2d 337, 339 (Pa. 1968). See also *Arches Condo. Ass’n v. Robinson*, 131 A.3d 122, 131-32 (Pa. Cmwlth. 2015) (applying *LaRocca* factors); *Township of South Whitehall v. Karoly*, 891 A.2d 780, 784 (Pa. Cmwlth. 2006) (same). “There is no requirement that a trial court do a line-by-line analysis of a legal invoice to determine its reasonableness.” *Township of Millcreek v. Angela Cres Tr. of June 25, 1998*, 142 A.3d 948, 962 (Pa. Cmwlth. 2016). Where a party opposing a fee petition “does not challenge the accuracy and reasonableness of the hours charged, or the facts asserted in the affidavits submitted by counsel,” that party “waive[s] his right to challenge the reasonableness of the fees charged.” *Karoly*, 891 A.2d at 785 (citing *Blum v. Stenson*, 465 U.S. 886, 892 (1984)). Thus, to prevail against a fee claim, the responding party has not only the general duty to “object to the hourly rates charged” or other aspects of the reasonableness of the fees, but then it must also “present[] . . . evidence by way of affidavit or otherwise to challenge the accuracy and reasonableness” of the claimed amounts. *Id.*; *Uniontown Newspapers, Inc. v. Pa. Dep’t of Corr.*, 197 A.3d 825, 837-38 (Pa. Cmwlth. 2018) (Simpson, J.,

single-judge op.)¹² (“[U]nless there is insufficient evidence ([e.g.], amounts without explanation) to support the fees claimed, [the court will] only reduce the fees based on the challenges [the responding party] raised” and “[b]ecause [the responding party] did not otherwise object to the reasonableness of the fees claimed (e.g., as to time spent or hourly rates), [that party] waived any challenge to the reasonableness of counsel’s rates.”), *aff’d*, 243 A.3d 19 (Pa. 2020).

D. Analysis

The County has waived any objections to the accuracy or reasonableness of the claimed fee and cost amounts. In three separate orders setting a time period for the County to respond to the fee submissions, the Special Master explicitly ordered that failure to timely respond would cause the relevant fee submission to be considered unopposed. The Secretary identified the County’s waiver of objections on the record during the impoundment proceedings when fees were tangentially discussed. (*See* 8/31/23 Tr. at 354-56.) And the Supreme Court contemplated that the Special Master’s assessment of the claimed fees would depend not only on the Secretary’s and Dominion’s submissions, but also on **“the County’s disputes, if any, of the amounts claimed.”** *See Fulton I*, 292 A.3d at 1021 (emphasis added).

In sum, the Special Master entered three separate Orders reminding the County that failure to respond to the Secretary’s and Dominion’s submissions would result in those submissions being considered “unopposed.” (*See* Orders 4/28/23 ¶ 2; 6/2/23 at 2; 2/23/24 at 2.) “[The County] presented no evidence by way of affidavit or otherwise to challenge the accuracy and reasonableness of the hours charged.

¹² This Court’s Internal Operating Procedures provide that “[e]xcept as provided in subsection (d) (relating to single-Judge opinions in election law matters), a single-Judge opinion of this Court, even if reported, shall be cited only for its persuasive value and not as a binding precedent.” 210 Pa. Code § 69.414(b).

This Court concludes that [the County] waived [its] right to challenge the reasonableness of the fees charged.” *Karoly*, 891 A.2d at 785.

III. FINDINGS

1. The County filed no response to any of the Secretary’s or Dominion’s submissions regarding legal fees and litigation costs.

2. The Secretary properly excluded the amounts of fees and costs previously awarded by the Special Master from its fee and cost submissions now at issue.

3. The amounts the Special Master has identified in Dominion’s First Supplement as being fees and costs incurred for the Emergency Application total \$12,728.50 and are to be segregated from the other fees and costs charged in Dominion’s Initial Submission and First Supplement and not recommended as an award in this Report.

VI. RECOMMENDED AWARDS OF FEES AND COSTS

Based on the Secretary’s and Dominion’s fee submissions, the County’s failure to respond thereto, and the foregoing accounting, analysis, and findings of fact, the Special Master recommends the following awards of fees and costs be made:

1. An award in the amount of \$128,272.00 in legal fees and \$21,026.89 in litigation costs in favor of the Secretary and against the County, for fees and costs incurred by the Secretary between December 17, 2021, and April 12, 2022;

2. An award in the amount of \$472,255.00 in legal fees and \$89,698.32 in litigation costs in favor of the Secretary and against the County and Attorney Carroll, jointly and severally, for fees and costs incurred by the Secretary between April 13,

2022, and the filing of the Secretary's Second Supplement;

3. An award in the amount of \$136,407.16 in legal fees and litigation costs in favor of Dominion and against the County, for fees and costs incurred by Dominion between December 17, 2021, and April 12, 2022;

4. An award in the amount of \$188,265.72 in legal fees and litigation costs in favor of Dominion and against the County and Attorney Carroll, jointly and severally, for fees and costs incurred by Dominion between April 13, 2022, and the filing of Dominion's First Supplement.

The Special Master recommends that all awards of fees and costs be made without prejudice to the Secretary and Dominion to seek further awards of fees and costs incurred.

VII. EXCEPTIONS

The Secretary or Dominion may file Exceptions within 30 days of the filing of this Report to point out any mathematical miscalculation or other issue of form not going to the merits or reasonableness of the findings and recommendations. This report shall become **FINAL** upon either (i) expiration of the period to file exceptions, or (ii) if Exceptions are timely filed, disposition by the Special Master of those Exceptions.

/s/ Renée Cohn Jubelirer

RENÉE COHN JUBELIRER, President Judge of the
Commonwealth Court of Pennsylvania Appointed as
Special Master