

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46
Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.’S
RESPONSE TO REQUESTS TO
ESTABLISH OR MODIFY ESTATE
PROTOCOLS**

INTRODUCTION

In a series of filings made during August 2021, Sharon Nelson, Norrine Nelson, John Nelson, L. Londell McMillan, and Charles Spicer (“SNJLC”) requested that the Court modify or set various protocols related to information sharing, the transition and closing of the Estate, and related topics. The Court addressed multiple of the requests in its August 27, 2021 Order for Mediation Regarding Motion to Amend Protocols (“August 27 Order”) and November 22, 2021 Findings & Order Approving Fourth Interim Accounting (“November 22 Order”). Other requests were resolved as part of the Court-ordered mediation process with Justice Gilbert or are otherwise moot or inapplicable. For the limited requested protocols that remain, and with the exception of the proposed protocol regarding accountings, they are all either premature or otherwise should be denied by the Court.

BACKGROUND

I. SNJLC’S AUGUST 6 RESPONSE AND MOTION.

First, in their August 6, 2021 Response to Stipulation and Proposed Order and Memorandum in Support of Motion Amend Protocols, SNJLC requested that the Court order the Personal Representative to provide Mr. McMillan and Mr. Spicer the same access to Estate

information as the Court-recognized Heirs. Specifically, when Primary Wave was recognized as an interested person as a result of its status as an assignee of the expectancy interests held by certain Heirs, the Court approved modified information sharing protocols that, in certain instances, limited the information to which Primary Wave was entitled. (3/26/20 Order.) Although Mr. Spicer, in his role as Heir Representative, received the same information as the Heirs, upon entry of the Court's May 3, 2021 Order recognizing Mr. McMillan and Mr. Spicer as interested persons, the Personal Representative began providing Mr. McMillan the same level of access as Primary Wave.

Once Primary Wave obtained Court recognition of the completion of its acquisition of the entirety of the expectancy interests held by Alfred Jackson and Omarr Baker, thus becoming the largest stakeholder in the Estate, Primary Wave requested and the Personal Representative agreed to modify the existing protocols to eliminate any differentiation between Primary Wave and the Heirs. (7/20/21 Stipulation.) In their August 6, 2021 Response and Motion, SNJLC requested that those modifications also apply to Mr. McMillan and Mr. Spicer. In its August 17, 2021 response to that Motion, the Personal Representative asked the Court to enforce its May 3, 2021 Order, which required the parties to consult with one another and, if necessary, engage in mediation to discuss any necessary changes to the Court's information sharing protocols. (8/17/21 Response.)

II. SNJLC'S AUGUST 10 MOTION TO ENFORCE EXISTING PROTOCOLS.

On August 10, 2021, SNJLC submitted a Motion to Enforce Existing Court Ordered Protocols on Communications and Establish Protocols on Communications to Future Transition. In their Motion, SNJLC requested that the Court "reaffirm[] and enforc[e]" its prior protocols, including requiring negotiation prior to mediation. (8/10/21 Mem. at 7.) Specifically, SNJLC asserted that all efforts should be made to avoid mediation, because it is "a slow-moving and

inefficient process.” (*Id.* at 6.) Additionally, SNJLC requested that the Court hold biweekly or monthly status conferences with the parties. (*Id.*)

III. SNJLC’S AUGUST 13 RESPONSES TO COMERICA’S INTERIM ACCOUNTING AND MOTION.

On August 13, 2021, SNJLC filed a memorandum that addressed both objections to Comerica’s Fourth Interim Accounting and sought new Court-ordered protocols. With respect to the new protocols, first SNJLC requested that the Court issue protocols for the parties to negotiate a timeline and schedule for the necessary actions to be completed prior to the closure of the Estate, specifically:

(a) Within seven (7) days of this Order, Comerica shall provide the Heirs and Interested Persons with a timeline including the revised list of all tasks and actions to be completed by the parties in order to close the Estate, and proposed deadlines as to when each such action shall be completed and by which parties.

(b) Within three (3) business days of receipt of Comerica’s list, the Heirs and Interested Persons shall provide their written comments and/or objections.

(c) Comerica, the Heirs’ and Interested Persons shall engage in direct, good faith discussions concerning the Heirs and Interested Persons objections and revisions to the list.

(d) To the extent that there remain individual issues that have not been resolved through direct discussions within seven (7) days following Comerica’s receipt of the Heirs’ and Interested Persons’ objections and responses, each such issue shall be placed into mediation with Justice Gilbert, which shall conclude no later than fourteen (14) days following Comerica’s receipt of the Heirs’ and Interested Persons’ objections.

(e) All issues to which the parties have reached a resolution through either direct discussion or mediation shall be submitted to the Court as a proposed Stipulation and Order within seven (7) days of the conclusion of mediation, or within seven (7) days of the parties’ final agreement, if no mediation is required.

(f) All issues which the parties are unable to resolve following mediation shall be submitted to the Court within seven (7) days following the conclusion of mediation. The Court shall thereafter enter an Order resolving any remaining disputes.

(g) Any deadlines herein may be extended only by mutual agreement of the Heirs, Interested Persons and Comerica and Primary Wave, and upon application to the Court.

(h) The Heirs, Interested Persons and Comerica shall meet on a bi-monthly basis, at a time and in a manner mutually convenient to all parties, for the purpose of providing updates and discussing issues related to closure of the Estate.

(8/13/21 Response at 6-7.)

Second, SNJLC asked the Court to engage law and accounting firm to advise the Heirs on tax matters, including the Estate's negotiations with the IRS and Minnesota Department of Revenue. Similarly, they requested that the Court compel the Personal Representative to produce all settlement communications with those taxing authorities. (8/13/21 Response at 10-15, 20-21.)

Third, SNJLC asked the Court to force the Estate to immediately terminate Troy Carter and Trevor Guy. (8/13/21 Response at 15-17.)

Fourth, SNJLC asked the Court to create protocols related to "proposed transactions involving newly-created assets," specifically:

(a) For all proposed transactions arising after the date of this Order that involve newly created assets, the Heirs and Interested Persons shall be provided relevant business information from Comerica in the same manner that the Heirs receive information in connection with Significant Entertainment Transactions under the Court's April 23, 2019 Order.

(b) The Heirs and Interested Persons may submit written objections to Comerica within five (5) days of receipt of Comerica's full and complete disclosure of information concerning a proposed transaction involving newly-created assets.

(c) In the event that a majority of the Heirs and Interested Persons object to a proposed transaction involving newly-created assets, as determined by the percentage of expectancy interest controlled by each objecting party, those Heirs and Interested Persons may bring the issue before the Court on an expedited basis, within three (3) business days of providing such written objections to Comerica.

(8/13/21 Response at 17-20.)

Finally, SNJLC asked the Court to create a framework for subsequently filed accountings. They requested that the Court order:

(a) All accounting disclosures filed by the Personal Representative going forward shall indicate that the Heirs and Interested Persons have fourteen (14) days to file their written responses.

(b) No later than five (5) days after the filing of each interim accounting disclosure, the Heirs and Interested Persons may submit written questions to the Personal Representative concerning information disclosed in the interim accounting.

(c) No later than five (5) days after the Personal Representative's receipt of any written questions, it shall provide written answers in response to each such question.

(8/13/21 Response at 20-21.)

The Personal Representative responded to each of SNJLC's requests in its August 27, 2021 Reply in Support of Petition to Approve Interim Accounting and Opposition to Motion to Institute Protocols. (8/27/21 Reply.)

ARGUMENT

I. THE COURT ADDRESSED MULTIPLE REQUESTS MADE BY SNJLC IN ITS AUGUST 27, 2021 AND NOVEMBER 22, 2021 ORDERS.

On August 27, 2021, the Court entered an order addressing SNJLC's request that the Court dispense with mediation as a prerequisite to the Court addressing disputes between the parties. Specifically, the Court referred to mediation all issues set forth in SNJLC's August 6, August 10, and August 13 filings. (8/27/21 Order.)

Because SNJLC combined their August 13 request for protocols with their opposition to the Personal Representative's Fourth Interim Accounting, the Court addressed and rejected multiple of their requests in its November 22 Order. First, the Court rejected SNJLC's assertion that the Personal Representative should be forced to terminate Mr. Carter and Mr. Guy. (11/22/21 Order at 3-4.) Second, the Court denied SNJLC's attempt to insert themselves into the Estate's negotiations with the taxing authorities. (*Id.* at 3.) Finally, the Court rejected SNJLC's argument that the Court should impose new limitations or protocols related to the creation of "new assets." (*Id.*)

II. MULTIPLE REQUESTS WERE RESOLVED IN MEDIATION OR ARE OTHERWISE MOOT.

SNJLC agreed to mediate with the Personal Representative and the other members of the Heir Group following the Court's August 27, 2021 Order. Justice Gilbert conducted multiple separate sessions with the parties, a live session on October 18, 2021, and otherwise worked to limit or resolve all issues raised by SNJLC. (January 7, 2022 Declaration of Joseph J. Cassioppi ("Cassioppi Dec."), ¶ 2.)

In advance of the mediation process, the Personal Representative created and provided to the Heir Group a detailed checklist of items that the Personal Representative believes must be completed prior to closing of the Estate. (Cassioppi Dec., ¶ 3.) The Personal Representative has updated the checklist since and, after the Court determines the manner in which the assets of the Estate will be distributed, will update the checklist again to address new and outstanding items. (*Id.*, Ex. A.)

Additionally, as a result of the mediation, the Personal Representative agreed to provide Mr. McMillan and Mr. Spicer the same level of information as the other members of the Heir Group and has been doing so now for several months. (Cassioppi Dec., ¶ 4.)

To the extent that they were not resolved in the Court's November 22 Order, SNJLC's request that the Court require the Personal Representative to produce its settlement communications with the taxing authorities and that the Estate retain an attorney to advise SNJLC related to the tax settlements are both now moot in light of the Personal Representative's finalization, subject to Court approval, of its settlements with both the IRS and Minnesota Department of Revenue.¹

¹ The Personal Representative also addressed the merits of these requests in August 27, 2021 Reply.

III. THE COURT SHOULD DECLINE TO ADOPT THE REMAINING PROTOCOLS REQUESTED BY SNJLC.

Following mediation and other developments in this matter that have rendered moot multiple of SNJLC's request, only a few items remain outstanding. The Personal Representative has no objection to SNJLC's proposed protocols related to the Personal Representative's accountings. Otherwise, none should be adopted by the Court.

First, SNJLC have not withdrawn their request that the Court engage an accounting firm to advise the Heirs on tax matters. As set forth in greater detail in its August 27 Reply, the members of the Heir Group are free to retain whichever advisors they choose, but the fees of those advisors are not an Estate expense. (8/27/21 Reply at 28-29.) Indeed, the Personal Representative recently entered into a non-disclosure agreement with a tax advisor retained by SNJLC and has done the same with respect to advisors for other members of the Heir Group. (Cassioppi Dec., ¶ 5.) The costs and fees associated with those advisors are now, and should remain, solely the responsibility of the individuals or entities retaining the advisors.

Second, SNJLC requested biweekly or monthly status conferences with the Court. While the Personal Representative does not object to holding status conferences with the Court, as needed, it does not believe it is necessary or prudent to schedule such conferences at this time. The parties currently have three hearings scheduled between January 14 and February 4, 2022. There is also substantial uncertainty regarding when and how the parties will be able to transition the Estate in light of the Heir Group's continuing analysis of the manner in which they would like the assets of the Estate to be distributed. Until the parties have clarity on that issue, the scheduling of additional conferences would be premature. Instead, the Personal Representative recommends that the parties schedule conferences with the Court on an as-needed basis depending on resolution of how the assets of the Estate are to be distributed and when that distribution can be accomplished.

Third, SNJLC's request for bi-weekly meetings is also premature. The parties have negotiated, at length, regarding the subjects and frequency of transition meetings that the parties could hold in the event that they are able to agree to the terms of a collaborative closing and discharge process. In the event that the parties are not able to reach agreement on the terms of a collaborative closing and discharge process, the Personal Representative intends to follow a process substantially similar to the process utilized by Bremer Trust, N.A. during the transition of the administration of the Estate to the Personal Representative. Specifically, once the parties have clarity regarding the form of distribution that will be approved by the Court, the Personal Representative will prepare materials tailored to that distribution method and hold planning and transition meetings with the individuals designated by the Heir Group to operate the assets of the Estate following the closing of the Estate. In other words, the Personal Representative intends to follow the standard method utilized by personal representatives in Minnesota to efficiently and effectively transfer assets to the beneficiaries of the Estate. In the meantime, the Personal Representative will continue holding its regular meetings with the Heir Group, providing regular written updates, and/or responding to the information requests provided by the Heir Groups and their advisors.

Finally, as set forth above, SNJLC requested that the Court enter protocols related to a transition timeline and checklist. The Personal Representative created and has updated that checklist, but received minimal feedback from the members of the Heir Group. The Personal Representative will again update the checklist when it receives guidance from the Court regarding distribution. However, for the reasons set forth above and those in its December 31, 2021 Motion Regarding Estate Cash Reserve, for Consideration of a Distribution Plan, and to Set a Process for a Petition to Approve a Final Accounting and Discharge, the Personal Representative believes that any additional protocols related to transition must await the Court's order approving a distribution plan.

CONCLUSION

For the reasons set-forth herein, the Personal Representative respectfully requests that the Court deny SNJLC's request to enter those protocols that have not already been addressed, resolved, or which are moot.

Dated: January 7, 2022

/s/ Joseph J. Cassioppi

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