

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Deceased.

Case Type: Special Administration
Court File No.: 10-PR-16-46
Judge: Kevin W. Eide

**MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO QUASH
SUBPOENA DUCES TECUM AND
FOR ENTRY OF PROTECTIVE
ORDER**

INTRODUCTION

Sharon Nelson, Norrine Nelson, and John Nelson (“Sharon”, “Norinne”, and “John”, or collectively referred to as “SNJ”), respectfully submit this Memorandum of Law in Support of their Motion to Quash the Subpoena Duces Tecum to L. Londell McMillan and for the entry of a Protective Order, pursuant to Rules 26 and 45 of the Minnesota Rules of Civil Procedure. Despite the Court’s previous Order denying a motion to compel records from L. Londell McMillan and the lack of any additional claims or defenses in the above-referenced matter since then justifying invading the privacy of SNJ, Omarr Baker (“Omarr”) and his counsel continue to burden them and this Court with unnecessary and unfounded discovery requests.

FACTS

L. Londell McMillan is an attorney who currently resides in the state of New York. As referenced by Omarr Baker in previous pleadings, he is an advisor to Sharon, Norrine, and John. (Sayers Aff. at ¶ 4). In the course of that relationship, they have exchanged personal and confidential information with Mr. McMillan. (*Id.* at ¶ 3.)

Omarr Baker and his attorneys previously sought to compel information and documents from Mr. McMillan. The motion to compel was filed on the eve of the previous hearings on personal representative appointment and the former Special Administrator's accounting. After hearing argument and evidence during the hearing, the Court denied the motion to compel. (Jan. 23, 2017 Order for Transition from Special Administrator to Personal Representative, ¶ 9.) In the time since the previous Order and proceedings, Omarr Baker continues to challenge the accounting, but there have been no additional proceedings that would implicate Mr. McMillan. Indeed, the present issues appear to be limited. (*See* Feb. 22, 2017 Scheduling Order Relating to Approval of Attorneys' Fees, Final Accounting and Extension of Powers, ¶ 8.)

Despite the previous denial and lack of significant change in the procedural posture in this matter, Omarr Baker filed Notice of a Subpoena Duces Tecum to L. Londell McMillan with this Court on March 3, 2017. (Mar. 3, 2017 Notice to the Parties in this Action of Subpoena Duces Tecum to Third-Party.) He included a copy of a subpoena issued in the State of New York directing Mr. McMillan to make a production on March 20, 2017 in Minnesota. (*Id.*) Of note, the New York Subpoena was dated

February 28, 2017 and served upon Mr. McMillan in advance of the Notice to the parties in this action.

The Subpoena seeks voluminous documents, specifically including electronic information in the possession of Mr. McMillan or any entity controlled by Mr. McMillan.

The requests included the following without limitation:

1. All documents sent to or received from Norrine, Sharon, and/or John Nelson.
2. All documents sent to or received from Tyka Nelson, Alfred Jackson, and/or Omarr Baker.
3. All documents sent to or received from any Music Business Entity relating to Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, Tyka Nelson, and/or Omarr Baker.
4. All documents sent to or received from any Music Business Entity relating to Prince Rogers Nelson.
5. All documents in the possession or control of L. Londell McMillan relating to Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, Tyka Nelson, and/or Omarr Baker.

(Id.) As evidenced in the document, the request provides no date limitation, subject matter limitation, or really any limitation of any kind with respect to documents exchanged between those individuals or regarding those individuals. Exhibit A to the Subpoena references a time frame referring to documents created after April, 2016, but the requests themselves make no reference to any date limitation. Regardless, the requests provide no exception with respect to protection of confidential business information or communications related to actions directed by counsel.

I. The Subpoena to L. Londell McMillan Should be Quashed and Omarr Should be Precluded from Issuing Similar Requests.

The Minnesota Rules of Civil Procedure limit discovery and these Rules are not meant to be used for fishing expeditions. Discovery must be limited to matters that would enable a party to prove or disprove a claim or defense or to impeach a witness. Minn. R. Civ. P. 26.02(b). In addition, discovery requests must “comport with the factors of proportionality, including without limitation, the burden or expense of the proposed discovery weighed against its likely benefit, considering the needs of the case, the amount in controversy, the parties’ resources, the importance of the issues at stake in the action, and the importance of the discovery resolving the issues.” *Id. State v. Hunter*, 349 N.W.2d 865, 866 (Minn. Ct. App. 1984). Indeed, information that has no bearing on the merits of the action is outside the scope of discovery. *See Medtronic, Inc. v. Carmichael*, No. 02-CV-10-9080, 2012 WL 4767057 (Minn. Dist. Ct. Aug. 14, 2012) (citation omitted) (unpublished).

Minnesota Rule of Civil Procedure 45 governs the issuance of subpoenas to non-parties. Of note, use of a subpoena other than to compel attendance at a trial is improper unless prior notice is provided to all parties to the action. Minn. R. Civ. P. 45(e). Attorneys who engage in such conduct are subject to sanctions. *Id.* Rule 45(c) provides for quashing or modification of a subpoena upon a timely motion if the subpoena fails to allow reasonable time for compliance, requires improper travel, requires disclosure of privileged or otherwise protected matter, or subjects a person to an undue burden. Moreover, a subpoena will not be enforced without demonstration of substantial need if it

seeks disclosure of trade secret or other confidential information. Minn. R. Civ. P. 45(c)(2).

Omarr should not be allowed to engage in a fishing expedition from a non-party to explore SNJ's private communications including information exchanged with their advisor, L. Londell McMillan. There are no present claims warranting Omarr's request.

A. Omarr Baker's Subpoena is not Reasonably Calculated to Lead to the Discovery of Admissible Evidence.

The current issues in this matter relate to Omarr's ongoing objections to the accounting, requesting attorney fees, and protocol for the Personal Representative. To date, Omarr has failed to establish good cause or any other basis justifying such intrusion upon Sharon, Norrine, and John. Like the previous motion to compel filed in advance of the January 12, 2017 hearing, this appears to be another attempt to burden Sharon, Norrine, and John, and likely L. Londell McMillan. Given the lack of significant developments since the Court's previous Order addressing the previous Motion to Compel, the Subpoena should be quashed as well. Moreover, the Court has likely received all evidence that will be considered with respect to approving the final accounts and fee statements of Bremer Trust and its counsel. (*See* Feb. 22, 2017 Scheduling Order.)

As indicated above, Sharon, Norrine, and John have all engaged in communications with L. Londell McMillan regarding their confidential and private affairs. This Subpoena appears to be explicitly designed to obtain those communications without regard for their privacy and the burden imposed by responding to this Subpoena.

Indeed, there appears to be no claim or defense currently before the Court justifying any of the request. (*See* Feb. 22, 2017 Scheduling Order Relating to Approval of Attorneys' Fees, Final Accounting and Extension of Powers, ¶ 8.) Accordingly, the subpoena should be quashed and Omarr should be precluded from issuing such requests.

B. Omarr Baker's Requests are Overly Broad and Unduly Burdensome.

As noted above, the subpoena seeks unlimited access to communications with Sharon, Norrine, and John. Complying with the request would require careful review of potentially voluminous records and electronic documents to ensure a responsive production and preserving any applicable privilege and/or confidentiality. Moreover, there is nothing in the record to suggest justifying compelling L. Londell McMillan to incur the expense of making production in Minnesota at this time. Accordingly, they are overly broad and burdensome on their face.

C. Omarr Baker's Subpoena Seeks Production of Privileged Communications.

Under Minnesota Rule of Civil Procedure 26.02, information is only discoverable if it is not privileged. Aside from the other multitude of defects in the blanket request in the subpoena, it is clear from the circumstances that the subpoena seeks to compel production of documents that may be protected by attorney-client privilege or the work-product doctrine. Moreover, the requested materials may contain sensitive communications regarding business dealings of non-parties.

D. Omarr Baker Fails to Make a Required Heightened Showing to Justify Demanding Production of Documents Protected by the Constitutional Right to Privacy.

Minnesota has a recognized constitutional right to privacy. *Jarvis v. Levine*, 418 N.W.2d, 139, 147-48 (Minn. 1988). That right permits protection of one's personal, private affairs in the prying eyes of others and the absence of a compelling interest necessitating such a disclosure. *See In re Agerter*, 353 N.W.2d 908, 913-915 (Minn. 1984). Indeed, Minnesota courts require the party seeking discovery of private information to make a heightened showing of relevance. *See id.* As noted above, Sharon, Norrine, and John have exchanged personal financial and business information with Mr. McMillan. Production of such information is highly improper absent a compelling interest.

E. The Subpoena is Defective Because Omarr Failed to Provide Requisite Notice to Parties.

As plainly provided in Rule 45.01(e), Omarr is required to provide prior notice to all parties to this action of his intent to issue a subpoena before any "use" of the subpoena. In this case, the file materials indicate the subpoena was issued, or "used," before he provided notice to the parties on March 3, 2017. Accordingly, the Subpoena is defective and should be quashed.

CONCLUSION

For the foregoing reasons, Sharon, Norrine, and John respectfully request that this Court issue an Order quashing the Subpoena and prohibiting Omarr Baker from seeking further discovery from L. Londell McMillan.

Respectfully submitted,

Dated: March 16, 2017

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