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5/8/2017 6:46:50 PM
Carver County, MN

STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF CARVER | FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Estate of Prince Rogers Nelson,
Decedent.

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

REPLY MEMORANDUM OF LAW IN SUPPORT OF MOTION TO QUASH SUBPOENA DUCES TECUM

L. Londell McMillan ("McMillan") respectfully submits this reply memorandum in support of the Motion to Quash Subpoena Duces Tecum and in response to Omarr Baker, Alfred Jackson, and Tyka Nelson's Memorandum in Opposition to Motions to Quash the Subpoena Duces Tecum to L. Londell McMillan ("Opposition Brief") and the Personal Representative's Response to Motions to Quash Subpoena Duces Tecum to L. Londell McMillan.

INTRODUCTION

The Opposition Brief by Omarr Baker ("Baker"), Alfred Jackson ("Jackson"), and Tyka Nelson ("Tyka[1]") in response to the motion to quash the subpoena duces tecum ("Subpoena") demonstrates not only why the Subpoena should be quashed but also the propriety and necessity of McMillan's intervention in the Estate litigation. The Opposition Brief continues a pattern of harassment and defamation of McMillan, first in his role as an entertainment industry advisor for the Estate of Prince Rogers Nelson ("Estate"), and now in his role as business advisor and manager for several non-excluded heirs. As explained below, the latest filings seem to be aimed more at damaging McMillan's reputation than in addressing the need for documents, and

[1] Several non-excluded heirs have the surname "Nelson." To avoid confusion, when we refer to any of the non-excluded heirs in this brief, we will use their first names.

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

illustrate why he needs to be allowed to intervene in this proceeding in order to protect his interests and defend his reputation.

The chronology here is significant. In late 2016, counsel for Baker and Tyka repeatedly attempted to informally, and without serving discovery requests, obtain information from McMillan which related to a motion for McMillan and Comerica to be appointed as co-personal representatives ("co-PRs") of the Estate. As this Court is well aware, there was a competing motion to appoint Anthony "Van" Jones and Comerica as co-PRs. At the time, Van Jones was counsel of record for Baker and Tyka.

Although they never formally served McMillan or anyone else with discovery requests, on January 11, 2017, Baker and Tyka nevertheless moved to compel the information from counsel for Sharon Nelson, Norrine Nelson, and John Nelson. (Omarr Baker and Tyka Nelson's Notice of Motion and Motion to Compel L. Londell McMillan to Produce Information Necessary to Facilitate the Appointment of a Personal Representative, filed January 10, 2017, Ex. B.) Presumably, the desire for information related to McMillan's proposed appointment as co-PR. When the Court signed an order appointing Comerica as the sole PR, the Court also denied Baker's and Tyka's motion to compel production of the sought discovery. (Order for Transition from Special Administrator to Personal Representative, at p. 4, ¶ 9, dated January 18, 2017 ["January 18, 2017 Order"].)

Despite this, counsel for Baker next served the Subpoena on McMillan. This overbroad Subpoena is unconnected to any claim against McMillan – as he presently is not a party to this litigation, and it does not appear to be tailored to the issues that are currently pending in the Estate. The Subpoena and attack on McMillan call for a practical solution – that the Subpoena be quashed and that McMillan be allowed to intervene as an interested party in the Estate litigation. Then Baker, and, now, apparently Tyka and Jackson can state claims against

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

McMillan if they can survive a Rule 11 challenge – and then seek relevant documents from McMillan in conformity with Minn. R. Civ. P. 26 and 34. Progressing in this fashion, rather than serving a subpoena that rehashes discovery requests for which the Court has already denied a motion to compel, will have the commensurate benefit of preserving Estate and heir assets by avoiding the incursion of legal fees and costs in fighting over amorphous discovery requests untethered to any actual claim. Lastly, the desires of each of the heirs who entered confidential agreements with McMillan (other than Tyka and Baker) should be protected and their confidential personal, professional, and business information should not be available for review of Tyka, Baker, or the general public.

ARGUMENT

I. BAKER, TYKA, AND JACKSON HAVE FAILED TO ESTABLISH THAT THE INFORMATION SOUGHT FROM MCMILLAN IS RELEVANT AND SUBJECT TO DISCOVERY.

In their opposition, Baker, Jackson, and Tyka argue, without explanation or citation, that the information sought in the Subpoena is relevant to the Estate litigation for two reasons: (1) McMillan entered into "management agreements" with Sharon Nelson ("Sharon"), Norrine Nelson ("Norrine"), and John Nelson ("John") (collectively "SNJ"), which allegedly raises a potential conflict of interest, and (2) a *separate* lawsuit by Jobu Presents, LLC, ("Jobu") makes allegations against McMillan related to the Tribute Concert. But Baker, Jackson, and Tyka fail to establish that any inquiry into McMillan's business relationships with SNJ or his interactions with Jobu will lead to admissible evidence relevant to any issue in *this* litigation. Therefore, they are not entitled to the records they seek.

A party seeking to compel discovery must make a threshold showing of relevance to justify its discovery demands. *See Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992). Parties are not permitted to engage in fishing expeditions under Rule 26.02, and a Court

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

therefore must manage the breadth and depth of discovery. *See Milk Indirect Purch. Antitrust Litig.*, 588 N.W.2d 772, 776 (Minn. App. 1999). Courts have warned against the citation of broad policy objectives of the discovery rules as a pretext for engaging in abusive discovery practices:

> [T]his often intoned legal tenet [i.e., that information relevant to claims and defenses are discoverable] should not be misapplied so as to allow fishing expeditions in discovery. Some threshold showing of relevance must be made before parties are required to open wide the doors of discovery and to produce a variety of information which does not reasonably bear upon the issues in the case.

Hofer, 981 F.2d at 380. Likewise, in *Archer Daniels Midland Co. v. Aon Risk Services, Inc.*, the Court stated its unwillingness to "allow any party to roam in the shadow zones of relevancy and to explore matter which does not presently appear germane on the theory that it might conceivably become so." 187 F.R.D. 578 at 589 (D. Minn. 1999) (holding that the party seeking discovery had not made the predicate showing of relevance necessary to warrant discovery into the subject matter in question); *see also Upsher-Smith Labs. Inc.*, 944 F. Supp. 1411, 1446 (D. Minn. 1996) (denying motion to compel under *Hofer* on grounds that discovery requests were not reasonably calculated to lead to the discovery of admissible information).

A. The Information Sought by the Subpoena is Irrelevant to the Estate Litigation.

Here, Baker, Jackson, and Tyka have failed to offer any legal authority or factual citation suggesting that the information requested will lead to admissible evidence in the Estate litigation. That is because none exists. While McMillan was previously considered as a candidate for co-personal representative of the Estate, the Court has already ruled that neither McMillan nor Baker's and Tyka's proffered co-personal representative candidate, Van Jones, will act as co-personal representatives. (January 18, 2017 Order, at p. 4, ¶ 9.) Accordingly, McMillan's qualification as a personal representative is no longer at issue. Further, Baker's, Jackson's, and Tyka's new, far-reaching allegations that McMillan has alleged conflicts of interest or somehow

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

acted improperly with respect to the Tribute Concert are based on nothing more than allegations of a loan by Charles Koppelman to Jobu that McMillan knew nothing about.

1. McMillan did not enter into management agreements with any of the heirs until after the Court decided that neither he nor Van Jones would be appointed co-personal representative.

Up to the point that the Court decided that neither McMillan nor Van Jones would serve as co-PR, McMillan did not enter into any management agreements with any of the heirs. (McMillan Dec., ¶¶ 3-4.)[2] While McMillan was nominated by a majority of the non-excluded heirs to be appointed co-personal representative, when he was not appointed, these heirs quickly requested to formalize their relationship with him so that he would become their entertainment and business advisor and manager. *Id.* at ¶¶ 3, 10. The Court signed its order declining to appoint McMillan as co-personal representative on January 18, 2017; confidential management agreements were signed with Sharon, Norrine, and John on January 20 and with Jackson on February 6, 2017. (McMillan Dec., ¶ 3.) The management agreements do not create any conflicts of interest.[3]

Baker's, Jackson's, and Tyka's vague references to unspecified conflicts of interest are insufficient to establish that the records sought in the Subpoena are likely to lead to the discovery of admissible evidence. Although they state that McMillan's "management agreements" with SNJ and Jackson "suggest McMillan is attempting to exercise an undue influence over select Non-Excluded Heirs, and is potentially damaging the value of the Estate" (Opposition Brief, p. 18), they are unable explain how or why entering into "management agreements" with certain non-excluded heirs, in any capacity, is improper, or evidences "undue influence." They fail to

[2] "McMillan Dec." refers to the Declaration of L. Londell McMillan in Support of Motion to Quash Subpoena Duces Tecum.

[3] These management agreements contain confidentiality provisions. Counsel for Jackson, Baker, and Tyka violated the provision in Jackson's agreement by attaching the agreement as an unsealed exhibit to the Kane Affidavit.

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

cite any legal authority regarding undue influence under Minnesota law. Nor do they offer any affidavit or testimony of these heirs alleging improper or undue influence by McMillan. They further fail to offer any evidence or even specific argument as to how the Estate has been allegedly damaged by these relationships.[4]

In another misguided effort to create an alleged conflict of interest, the Opposition Brief wrongly states that Sharon testified on January 12, 2017 that she "retained McMillan as a business advisor." (Opposition Brief, p. 4.) In fact, when asked what her current relationship with Mr. McMillan was, she testified, "I have him as a business manager -- not manager, advisor." (January 12, 2017 Transcript, p. 109, line 25.) This is entirely consistent with Mr. McMillan's representation that, prior to the Court's ruling on the appointment of co-PRs, he gave all the non-excluded heirs some advice and support. (McMillan Dec., ¶ 4.) Interestingly, Attorney Silton did not cross-examine Sharon on this or any other point and, in fact, made a joke that his one question to her ("Hey, Sharon, how are you doing today?") constituted a cross-examination in open court. (January 12, 2017 Transcript, p. 111, lines 7-11.)

2. McMillan's interactions with the non-excluded heirs while he was an advisor to Bremer and the Estate do not constitute conflicts of interest.

The Opposition Brief also (wrongly) claims that McMillan's interactions with the non-excluded heirs while he was an advisor for Bremer and the Estate raises "numerous potential conflicts of interest." (Opposition Brief, p. 18.) But, they don't indicate why any of McMillan's interactions raise conflict questions. McMillan had occasion to discuss business transactions with and provide advice to the non-excluded heirs at one time or another while he was acting as advisor to the Estate`. (McMillan Dec., ¶ 4.) For example, he assisted Tyka with the Paisley

[4] They also allege that McMillan offered a $10 million loan to Tyka. McMillan did not offer this loan to Tyka. The details of the communication between McMillan and Tyka are contained at paragraph 11 of the McMillan Declaration.

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

Park Memorial for Prince, and he expressed concern to Tyka about the terms of a $10 million loan being offered to her by a third party. (*Id.*, ¶11.) To assist Jackson with his financial situation, McMillan loaned Jackson $50,000. (*Id.*, ¶9.) He also gave business advice to Sharon, Norrine, and John. (*Id.*, ¶10.) He helped all the heirs generate income from Paisley Park and the Tribute Concert. (*Id.*, ¶8.) None of these actions posed a conflict of interest. In fact, the non-excluded heirs' interests were entirely consistent with the Estate's – to maximize the value of Estate assets. And it is ironic that Tyka and Baker saw no conflict of interest when they nominated their own lawyer, Van Jones, to serve as co-PR of the Estate with Comerica.

The Opposing Brief fails to establish even one specific conflict of interest. Instead, the argument is based solely on mere speculation:

> **If** McMillan was working with Sharon, Norrine, and John Nelson while he was still Bremer's agent, he had conflicting interests. **It is possible** he shared confidential business information relating to the Estate with Sharon, Norrine, and John Nelson. **It is possible** his negotiation of the entertainment deals and/or his advice to Sharon, Norrine, and John Nelson was impacted by his conflicting interests.

(Opposition Brief, p. 18) (emphasis added.) Baker, Jackson, and Tyka fail to identify what confidential information may have been shared, or why they believe it was. They fail to explain why sharing information with putative beneficiaries of an estate -- who have the same interest as the estate itself (to maximize the estate's value) -- presents a conflict of interest at all. And they fail to identify how McMillan's negotiation of entertainment deals or provision of advice could have been -- or was -- impacted by his (unspecified) alleged conflicting interests.

The contention that the subpoenaed records could be relevant on the basis of McMillan's relationship with certain heirs is not tailored to address any present issue in this litigation. Frankly, the Subpoena and these filings appear to be nothing more than an effort by one group of non-excluded heirs to trample the rights and preferences of another group. This brush fire could easily swell to a conflagration, for if Sharon's, Norrine's, and/or John's interactions with their

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

business advisors is discoverable, so shouldn't be Jackson's, Tyka's, and Baker's? To be sure, allegations of conflict of interest potentially could be made by many sides of this litigation. Van Jones negotiated the 2014 Prince/Warner Brothers contract. (January 12, 2017 Transcript, p. 32, lines 13-24; p. 34, lines 20-24; p. 35, lines 1-18.) Should the parties now investigate Van Jones' allegiances and involvement in the UMG deal? If Attorney Silton has ties to Sony, should there be an investigation of his involvement in the UMG deal? According to an internet report, in Autumn 2016, Tyka and her husband met with Jay Z about buying unreleased Prince music. (McMillan Dec., Exh. B.) Should parties do discovery about whether Tyka has a conflict of interest regarding the UMG deal?

Minnesota courts do not allow burdensome discovery, not limited as to time or subject matter, on a mere hunch that it could potentially reveal information to support claims not yet at issue. *See Archer Daniels Midland Co. v. Aon Risk Services, Inc.*, 187 F.R.D. at 589-90; *Prokosch v. Catalina Ltg., Inc.*, 193 F.R.D. 633, 635 (D. Minn. 2000). On this basis, the Subpoena should be quashed.

B. The Jobu Lawsuit Does Not Support Enforcement of the Subpoena.

The second argument – that the information sought in the Subpoena is discoverable because Jobu makes allegations against McMillan in a separate lawsuit – is also specious. At the outset, the Opposition Brief misrepresents the allegations in the Jobu Complaint. The Opposition Brief states that "the allegations regarding McMillan in [sic] Complaint relate to McMillan's involvement in *all* of the music transactions regarding the Estate, not just the transaction with Jobu Presents." (Opposition Brief, pp. 18-19.) This is simply, unequivocally false. The only allegations in the Jobu Complaint against McMillan involve his alleged actions in the Tribute Concert. There is no reference to any other transaction involving McMillan (*See* Counts I and II, which are the only counts against McMillan).

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

Further, although they insist that the Jobu Complaint implies that McMillan was aware of or involved in Koppelman's alleged loan to Jobu, there is zero support for this proposition in the Complaint. The Jobu Complaint refers only to Koppelman's involvement in the alleged loan. The broad brush employed by Baker, Jackson, and Tyka is obvious -- they fail to cite any specific paragraph in the Jobu Complaint, or any other document, supporting the specious allegation that McMillan was involved in the alleged loan. In fact, McMillan had zero knowledge of the alleged Koppelman-Jobu loan. (McMillan Dec., ¶12.) McMillan's work on the Tribute Concert created a forum in which Prince's family, friends, and fans could celebrate this music legend. The heirs also profited from it. Of note, Tyka thanked McMillan publicly while on stage at the Tribute Concert. (*Id*., ¶13.)

Moreover, Baker, Tyka, and Jackson fail to explain why Jobu's allegations against McMillan in that lawsuit bear any relation to the information sought by the Subpoena, much less how the information could lead to admissible evidence in this litigation. Four of the five requests in the Subpoena involve documents that were exchanged between McMillan (or anyone else – the subpoena contains no limits) and some or all of the non-excluded heirs, or documents related even more generally to the non-excluded heirs. (Subpoena, Request Nos. 1-3, 5.) These requests do not reference the Tribute Concert, Jobu, or Koppelman's alleged loan to Jobu, and they are certainly not limited to any documents related to the Tribute Concert. Further, while the fourth request could conceivably include documents related to the Tribute Concert, it is not reasonably limited in time or scope. (*See* Subpoena, Request No. 4.)

Moreover, even if the requests could be read as somehow leading to discovery relevant to the Jobu lawsuit and/or the alleged loan by Koppelman to Jobu, Baker, Tyka, and Jackson still fail to explain why they are relevant in this separate litigation. As in their Supplemental Objections dated April 19 and April 24, 2017, they again vaguely refer to McMillan's

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

commission from the Tribute Concert, but they again fail to explain why they claim the commission was improper. And while they claim that "the lack of information regarding McMillan's competing roles is part of a larger problem in this action" (Opposition Brief, p. 20), they fail to even identify the alleged competing roles they complain of, much less explain why they are relevant.

They also fail to explain whether they have ESP, such that the Affidavit of Vaughn Millette, filed on April 19, 2017 in support of Baker's and Jackson's Supplemental Objections to Bremer's discharge, echoed much of the language in the Jobu Complaint, filed one day later. (*Compare* Affidavit of Vaughn Millette, paragraphs 3, 4, 6, 7, and 8 with April 21, 2017 Jobu Complaint, paragraphs 24, 25, 27, 28, and 30.) If Tyka, Baker, and/or Jackson are working with Jobu to bring a clam against the Estate, the Estate's former personal representative, or the Estate's advisors, they too have a conflict of interest. At a minimum, they are requiring the Estate to expend legal fees to defend itself.

C. The Subpoena – and motion practice surrounding it – should not be used as a vehicle for a press release.

Last, it is becoming readily apparent that briefs and supporting documents filed in this matter are now a ready substitute for press releases and provide a forum through which innuendo and speculation enter the public record. This is unfair to the participants and is causing the Estate and numerous other parties to incur unnecessary legal fees.

Since the filing of the Supplemental Objections on the alleged loan to Jobu, and continuing through the filing of the Opposition Brief, members of major national news organizations regularly reach out to McMillan for comment on the proceedings and the allegations made against him, often within hours of the filings. (McMillan Dec., ¶9.) McMillan is also the subject of Tweets. (*Id.*) In addition to fielding press inquiries, McMillan is procedurally at a disadvantage in responding to Court filings; as a non-party he does not have

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

ready access to material filed under seal. Rather than trying the vague and spurious allegations in the court of public opinion, McMillan should be allowed to intervene in the litigation as an interested party, learn the actual claims against him (ones that must pass Rule 11 muster), and then participate in discovery related to those claims.

In sum, Baker, Tyka, and Jackson fail to establish that the documents requested in the Subpoena will lead to admissible evidence in this litigation. Under the most basic principles governing discovery, the Subpoena must be quashed.

II. THE SUBPOENA IMPOSES AN UNDUE BURDEN ON MCMILLAN, IN VIOLATION OF MINN. R. CIV. P. 26.02 AND 43.02.

Notably, even requests that are directed to relevant information should be rejected when "the burden or expense of the proposed discovery outweighs its likely benefit." Minn. R. Civ. P. 26.02(b)(3). In interpreting Rule 26.02, the Minnesota Supreme Court has made clear that discovery should not "be used in bad faith or in such a manner as unreasonably to annoy, embarrass, oppress, or injure the parties or witnesses." *Baskerville v. Baskerville*, 75 N.W.2d 762,769 (Minn. 1956). Minnesota courts have routinely used Minn. R. Civ. P. 26.02(b) to control excessive discovery by preventing discovery on the ground of burden on the producing party. *See Cons. Justice Ctr. P.A. v. Trans Union L.L.C.*, 2006 WL 920182, at *3 (Minn. App. 2006) (reversing the lower court's order granting motion to compel the production of every case file that the non-movant worked on during a ten-year period).

This is especially true in the context of non-parties, such as McMillan, which is what he is at this juncture. To this end, the rules governing non-party subpoenas place an affirmative duty on the party issuing the subpoena to "avoid imposing undue burden or expense" on the non-party witness. Minn. R. Civ. P. 45.03(a),(c); *see Baskerville*, 75 N.W.2d at 769 (stating that a court "shall exercise its power with liberality" when justice requires "for the protection of parties or witnesses from unreasonable annoyance, expense, embarrassment, or oppression").

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

Accordingly, a subpoena that imposes an undue burden upon a non-party must be quashed. Minn. R. Civ. P. 45.03 (a),(c)(1)(D). In addition to the sanctions permitted under Minn. R. Civ. P. 26.07, a party who fails to comply with this affirmative duty to avoid unduly burdensome non-party subpoenas may also be subject to sanctions. *See* Minn. R. Civ. P. 45.03, Advisory Committee Comment-2006 Amendment.

A. Without Time Limits, the Subpoena Seeks Documents That are, in Some Instances, Decades Old.

On its face, the Subpoena is overly broad and unduly burdensome. Comerica seems to believe that Request No. 4 is temporally limited to post-April 2016.[5] To the contrary, the (poorly drafted) Subpoena does not contain any time limitation, in that it fails to incorporate the "time frame" definition into any request, as one would typically expect in discovery requests. Request No. 4, the request for communications received by any "Music Business Entity," would encompass Mr. McMillan's dealings on behalf of Prince throughout the 1990s.

Moreover, Baker, Jackson, and Tyka do not intend the Subpoena to be limited in time. For example, they state:

> The only documents that would presumably exist before the Decedent's death would be communications with the Music Business Entity relating to the Decedent before his death. . . . However, even these documents would be severely limited as relating to specific transactions.

(Opposition Brief, p. 14.) And although they state they are seeking only documents relating to communications with the non-excluded heirs "since the Decedent's death" (*Id*.), this appears to

[5] By order on March 27, 2017, this Court directed Comerica to "investigate and make an informed decision regarding whether any action should be pursued for the return of the commission paid to L. Londell McMillan in connection with the agreement with Jobu Presents to conduct the Tribute Concert." In its memorandum accompanying the order, the Court stated that it "has no expectations that further proceedings in this regard are necessary or prudent, rather that the Court is requiring this investigation in light of the concern raised by the heirs." Comerica relies on this language to argue that McMillan should produce documents pursuant to Request No. 4. Of course, Request No. 4 seeks documents well beyond those addressing McMillan's commission for the Tribute Concert.

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

be because they presume no pre-death documents exist. Accordingly, the Subpoena is not limited to any specific time frame, and extends to documents created years ago. The Subpoena requires McMillan to search all of his electronic and paper files to provide responsive documents on a wide variety of topics related to Prince, the Estate, and the non-excluded heirs. If McMillan were a party to this case, the documents would have been sought through a Rule 34 document request, McMillan would be able to provide responsive documents or objections, and the Court would then rule on those objections in a manner that would tie his obligations to his role in the litigation. As it stands now, however, it is overly broad and unduly burdensome on its face, and it must be quashed. Minn. R. Civ. P. 45.03 (a),(c)(1)(D).

B. The Subpoena Improperly Infringes on SNJ's Business Dealings.

Given the lack of legal merit and this Court's prior denial of the motion to compel, it appears that the sole purpose of the Subpoena is to harass SNJ and McMillan while further distancing McMillan from Jackson. SNJ have elected to have McMillan act on their behalf as advisor in music industry transactions and other business matters. Jackson did the same. They are entitled to select business representatives of their choosing without unwarranted interference, and no party has offered any legal authority to the contrary. This Subpoena appears to be an attack on these important and confidential relationships.

Most, if not all, of the documents exchanged between McMillan and SNJ would only relate to their personal, confidential business and financial dealings. As the Minnesota Supreme Court has acknowledged, discovery of such information "is extremely personal, and [allowing discovery in this case] would result in an intrusive invasion into this very private area." *Shetka v. Kueppers, Kueppers, Von Feldt & Salmen*, 454 N.W.2d 916, 921 (Minn. 1990). SNJ should not have to disclose personal information regarding their business dealings, absent good reason – and particularly to parties who purport to be co-heirs but act more like their adversaries. As set forth

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

in detail above, Baker, Jackson, and Tyka have failed to make the threshold showing that they are entitled to this information.

III. THE SUBPOENA IS AN IMPROPER ATTEMPT TO CIRCUMVENT THIS COURT'S ORDER.

This Court has already rejected a similar attempt to burden McMillan with unreasonable discovery requests. Presumably recognizing the burden of such discovery, and that such discovery could not be relevant if McMillan was no longer being considered as co-personal representative to the Estate, the Court denied Baker's and Tyka's motion to compel production of McMillan's records from SNJ. (January 18, 2017 Order.) The January 18, 2017 Order remains in effect.

If Baker, Nelson, and Jackson were inclined to seek relief from the January 18, 2017 Order, the proper course of action would be to request leave to move for reconsideration, or to seek to amend or clarify the order. They did not do so. Instead of requesting relief or permission from the Court, Baker simply served the Subpoena. And he did so despite the fact that the Court had disposed of the only proffered reason to seek information from McMillan in the first place – to address his suitability as co-personal representative. In addition to all of the reasons set forth above, this disregard or violation of the Order is yet another basis to quash the Subpoena. (*See* Minn. R. Civ. P. 37.02).

CONCLUSION

The oppositions to this Motion to Quash demonstrate not only why McMillan should be granted relief from the burdensome Subpoena, but also why he should be allowed to intervene in this litigation. In their Supplemental Objections and in this latest Opposition Brief, Baker, Jackson, and Tyka continue to levy unsupported and damaging accusations against McMillan and his character, which smear his reputation. Yet, presently, as he is a non-party, he is prevented from officially responding to and defending himself against these accusations – and he

Filed in First Judicial District Court
5/8/2017 6:46:50 PM
Carver County, MN

does not have ready access to documents filed under seal that directly relate to the accusations against him. Allowing McMillan to intervene will facilitate resolution of factual issues and the exchange of relevant information, all of which is in the best interest of the Estate.

For all of the foregoing reasons, McMillan respectfully requests that this Court quash the Subpoena.

BASSFORD REMELE
A Professional Association

Dated: May 8, 2017

By: /s/ Alan I. Silver

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