

STATE OF MINNESOTA
COUNTY OF CARVER

FILED
APR 05 2017
CARVER COUNTY COURTS

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

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

Estate of Prince Rogers Nelson,
Decedent.

**ORDER REGARDING THE SHARING OF
PRIVILEGED AND CONFIDENTIAL
INFORMATION BY HENSON & EFRON**

Comerica Bank & Trust, N.A., as Personal Representative of the Estate of Prince Rogers Nelson (“Personal Representative” or “Comerica”) seeks confidential and privileged information in the possession of the law firm of Henson & Efron (“H&E”). The Personal Representative understands H&E previously represented Prince Rogers Nelson (the “Decedent”). H&E does not object to entry of this Order.

Comerica is represented by Mark Greiner, Karen Sandler Steinert, and Joseph Caissioppi of the law firm of Fredrikson & Byron, P.A.; H&E is represented by Lisa T. Spencer, Esq. and Bruce C. Recher, Esq.

BACKGROUND

1. H&E previously served as counsel for Prince Rogers Nelson and might possess confidential information potentially relevant to the determination of the appropriate beneficiaries of the Decedent’s estate and other matters before the Court in the above-captioned probate proceeding.

2. On July 6, 2016, the Court entered an Order authorizing the sharing of confidential and privileged information regarding the Decedent by H&E with the former special

administrator of the Estate, Bremer Trust, N.A., to assist it in fulfilling its duties. In its Order, the Court noted that the Minnesota Office of Lawyers Professional Responsibility has recognized a testamentary exception to the duties of attorney-client privilege and confidentiality. *See Jorgensen, Testamentary Exception to Privilege, Confidentiality, Reprinted from Minnesota Lawyer (May 14, 2001)*. The commentary cited by the Court notes that implied authority to disclose otherwise protected information exists “if disclosure of confidential information would ‘promote the client’s estate plan, forestall litigation, preserve assets, and further family understanding of the decedent’s intention.’” *Id.* (quoting the American College of Trusts and Estate Counsel’s commentary to the Rules of Professional Conduct).

3. Effective February 1, 2017, Comerica has been appointed by the Court to serve as the Personal Representative of the Estate of Prince Rogers Nelson.

4. As Personal Representative, Comerica is charged with the responsibility to manage, among other things, the legal affairs of the Decedent. *See Minn. Stat. § 524.3-703*. Therefore, it is appropriate that Comerica be permitted to access confidential and privileged information from H&E insofar as it will assist Comerica in fulfilling its duties as Personal Representative.

5. H&E respects the responsibilities of the Personal Representative, but wishes to take care to honor its professional obligations to the Decedent, particularly with regard to information protected by the attorney-client privilege and work product doctrine which was generated and acquired during the decedent’s lifetime. H&E looks to the Court for direction in this circumstance, as H&E is not in a position to unilaterally waive the attorney-client privilege and it desires to take care to honor its professional obligations regarding sharing confidential

information acquired in its representation of the decedent during decedent's lifetime with the Personal Representative.

6. Comerica believes, and the Court concurs, that it is in the best interest of Decedent and his estate for H&E to share such confidential and privileged information with Comerica and its counsel to facilitate its administration of the Estate. The Court appreciates that Comerica intends for any such disclosure to be performed in a manner which maintains and preserves the attorney-client privilege and work product doctrine protections afforded to Decedent during his lifetime and now attended to the Personal Representative standing in Decedent's stead at the Court's direction.

7. While the sharing of the above-referenced confidential and privileged information generated and acquired during decedent's lifetime by H&E with Comerica and its counsel will assist Comerica in fulfilling its duties as Personal Representative, it recognizes that any subsequent decision to waive those protections requires a separate determination as to whether "the waiver is in the interest of the client's estate and would not damage the client's reputation." *See United States v. Yielding*, 657 F.3d 688, 707 (8th Cir. 2011).

8. Accordingly, the Court believes it to be prudent under these circumstances that in the event Comerica finds it reasonable and necessary to waive the attorney-client privilege and work product doctrine protections afforded any or all of the confidential and privileged information shared by H&E, Comerica should obtain the permission of the Court to do so, with H&E provided with notice and an opportunity to address the issue with the Court in a manner which preserves the privilege protections pending the Court's determination.

ORDER

THEREFORE, the Court HEREBY ORDERS that:

1. H&E is authorized to share confidential and privileged information from its prior representation of Decedent with Comerica and its counsel, with the Court affirming that such a disclosure will not waive the attorney-client privilege and work product doctrine protections afforded that information and such a sharing of confidential and privileged information by H&E is consistent with its responsibilities under the Minnesota Rules of Professional Conduct and the duties delegated to the Special Administrator under Minnesota law and this Court's Letters of Special Administration.

2. In the event Comerica determines it to be reasonable and necessary to waive the privileged protections to the information shared by H&E, it shall seek the Court's permission to do so, with notice and an opportunity to be heard extended to H&E.

3. In the event Comerica seeks permission from the Court to waive said privileges, Comerica and H&E shall make their submissions to the Court under seal, and the Court will conduct an in camera review of those submissions to preserve their privilege and confidentiality protections pending a Court determination.

ITS IS SO ORDERED.

BY THE COURT:

Dated: April 5, 2017



The Honorable Kevin W. Eide
District Court Judge

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.