

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

Case Type: Special Administration

In the Matter of:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,

Decedent,

and

Tyka Nelson,

Petitioner.

**MEMORANDUM IN SUPPORT OF
MOTION TO APPROVE PAYMENT OF
SPECIAL ADMINISTRATOR'S FEES
AND COSTS, ATTORNEYS' FEES AND
COSTS AND TO
ESTABLISH A PROCEDURE FOR
REVIEW AND APPROVAL OF
FUTURE FEES AND COSTS**

Bremer Trust National Association, as Special Administrator of the Estate, by and through its counsel, hereby submits this memorandum in support of its motion for an order approving payment of its fees and costs, approving payment of attorneys' fees and costs, and establishing a procedure for review and approval of future fees and costs.

FACTUAL BACKGROUND

The Special Administrator was appointed by Order dated May 2, 2016 and Letters of Special Administration dated April 27, 2016. Since that time, the Special Administrator, with assistance of its legal counsel, has exercised its authority to carry out its fiduciary duties to assess, manage, and supervise the Estate's assets and to determine the identity of Decedent's lawful heirs. Given the unique nature and size of the Estate, the Special Administrator has managed significant undertakings involving highly sophisticated transactions requiring specialized expertise. More specific details of the unique and complex tasks performed by the

Special Administrator and the attorneys assisting the Estate are described in the following affidavits and the attached exhibits thereto, namely: the Affidavit of Craig Ordal dated June 2, 2016; the Supplemental Affidavit of Craig Ordal dated June 6, 2016; the Affidavit of Craig Ordal dated July 29, 2016; and the Affidavit of Laura E. Krishnan dated July 29, 2016.¹

LEGAL ANALYSIS

I. Minnesota Law Supports Payment of the Special Administrator's Fees, Costs and Expenses

Pursuant to Minnesota law, a Special Administrator is vested with the power of a general personal representative, except as limited by an order of the court. By the terms of the May 2, 2016 Order, the Special Administrator was granted the "authority to manage and supervise the Decedent's assets and determine the identity of Decedent's heirs". Minnesota Statutes § 524.3-719(a) provides that a personal representative is entitled to reasonable compensation for its services. The Special Administrator is therefore clearly entitled to reasonable compensation for the services rendered on behalf of the Estate.

Minn. Stat. § 524.3-719(b) provides that the reasonableness of a personal representative's compensation depends upon: (1) the time and labor required; (2) the complexity and novelty of problems involved; and (3) the extent of the responsibilities assumed and the results obtained. Allowance of personal representative (and attorney fees) is a matter largely within the discretion

¹ Portions of the affidavits and their supporting material are properly designated as being "under seal" because they contain sensitive, confidential information and information protected by the attorney-client privilege and work product doctrine. Minn. R. Gen. Prac. 11.06; *See In re Estate of Thomas D. Riley*, Nobles County No. 53-PR-12-543 (Minn. Dist. Ct. Nov. 15, 2013) (ordering attorney billing records to be filed under seal and preserving any privilege or work-product protections) *Krishnan Aff. Ex. G. ACT South, LLC v. Reco Electric Co.*, 299 P.3d 505, 509-10 (Ok. Civ. Ct. 2012) *cert. denied* (Ok. Mar. 11, 2013) (affirming order to file billing records under seal); *McClure & O'Farrell, P.C. v. Grigsby*, 918 N.E.2d 335, 342-43 (In. Ct. App. 2009) (same). That conclusion is particularly appropriate given the Court's role supervising the administration of business affairs of an estate, rather than ruling on a petition arising from litigation in which an adverse party is facing a potential fee judgment.

of the district court, and the reasonable value of such services is a question of fact. *In re Estate of Baumgartner*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966).

As the supporting affidavits confirm, Bremer Trust has managed and supervised a wide array of business and legal challenges across many disciplines. Its percentage fee, although calculated on an interim basis, is reasonable and customary, with allowance made for a later adjustment once the value of the Estate is determined.

II. Minnesota Law Supports Payment of Attorneys' Fees, Costs and Expenses

Minnesota law also clearly provides for the payment of attorney's fees for services rendered on behalf of the Estate. Absent an agreement with the testator, the following factors are used to evaluate the reasonableness of attorney fees:

1. The time and labor required;
2. The experience and knowledge of the attorney;
3. The complexity and novelty of problems involved;
4. The extent of the responsibilities assumed and the results obtained; and
5. The sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b) (2006). The determination of reasonable fees is a fact question which will not be disturbed unless clearly erroneous. *In re Conservatorship of Mansur*, 367 N.W.2d 550, 552 (Minn. Ct. App.1985), review denied (Minn. July 11, 1985).

The Court is well aware of the unique and extraordinary nature of this proceeding and legal work performed on behalf of the Estate. The scope and sophistication required to represent the Estate may be unlike any other estate administration proceeding in Minnesota's history. The attorneys for the estate are well-qualified and have performed admirably, with civility and professionalism along the way. The time demands of the work required have also underscored the importance of close coordination of lawyers and others across many areas of law and

business. As detailed and supported in the affidavits that accompany the motion, the legal fees, costs and expenses charged to the Estate are fair and reasonable. Where, as here, the Court has extensive experience with a probate matter and there is a voluminous court file recording the work of counsel, the Court is on firm ground to exercise its discretion to determine an award for the reasonable fees and costs. *In re Bush's Estate*, 230 N.W.2d 33, 38-42 (Minn. 1975) (affirming attorney fee award where the Court was intimately familiar with the estate dispute and work performed by the attorneys); *In re Estate of Weisberg*, 64 N.W.2d 370, 372 (Minn. 1954) (affirming attorney fee award and holding that the size of the total estate is important factor when determining reasonable fee awards).

III. It Is In the Best Interests of the Estate and Its Beneficiaries to Establish a Procedure for Review and Approval of Future Fees and Costs

The Special Administrator and its counsel believe that it is necessary to adopt a protocol for periodic review and payment of fees, costs and expenses expected to be incurred by the Special Administrator, its legal counsel, and by attorneys performing work on behalf of or for the benefit of the Estate and its beneficiaries. It is customary for such fees, costs and expenses to be paid by the Special Administrator on an ongoing basis and for the approval of such fees to be made (if at all) at the conclusion of the administration. Given the size, nature, and complexity of the Decedent's assets, the time that will likely be required to complete the administration, and the number of interested persons involved in this matter, it is reasonable to request that such review and approval be made on a periodic and ongoing basis. *See, e.g., In re Estate of Thomas D. Riley* (ordering Special Administrators to submit fee petitions accompanied by billing records filed under seal for an *ex parte* review on a quarterly basis) *Krishnan Aff. Ex.H.* In addition, the periodic review and approval of such fees by the Court, and the ongoing and consistent sharing of information related to such fees, costs and expenses with the necessary interested persons,

should minimize the prospect of an unnecessary contest regarding the payment of these obligations at the time the Estate is poised to close.

CONCLUSION

For all the foregoing reasons, the Special Administrator respectfully requests that its motion be granted, and that it be authorized to use the Estate's available funds to pay the Special Administrator's fees, costs and expenses through June 30, 2016, and to pay the outstanding attorney's fees, costs and expenses incurred through June 30, 2016.

Respectfully submitted,



Dated: July 29, 2016

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