

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
PROBATE DIVISION  
FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In Re: Estate of  
Prince Rogers Nelson,  
Deceased.

AFFIDAVIT OF SERVICE OF  
NOTICE OF MOTION FOR RELIEF FROM ORDER AND  
JUDGEMENT OF COURT; AMENDED SCHEDULING  
ORDER REGARDING THE CLAIMS OF BRIANNA NELSON  
AND V.N. AND COREY SIMMONS TO BE HEIRS OF THE  
ESTATE; MOTION FOR RELIEF FROM ORDER AND  
JUDGEMENT OF COURT (RULE 60.02); AFFIDAVIT OF  
COREY D. SIMMONS SUPPORTING MOTION FOR RELIEF  
FROM ORDER AND JUDGEMENT OF COURT (RULE 60.02);  
AFFIDAVIT OF CAROLYN R. SIMMONS; AFFIDAVIT O  
COREY D. SIMMONS; AND CORRESPONDENCE FROM  
ERIC C. DAMMEYER

COUNTY OF DAKOTA )  
 ) ss.  
STATE OF MINNESOTA )

Karen M. Vander Sanden, being first duly sworn on oath deposes and says that on October 5, 2016, in West St. Paul, Minnesota in said County and State, she mailed a copy of the following: **NOTICE OF MOTION FOR RELIEF FROM ORDER AND JUDGEMENT OF COURT; AMENDED SCHEDULING ORDER REGARDING THE CLAIMS OF BRIANNA NELSON AND V.N. AND COREY SIMMONS TO BE HEIRS OF THE ESTATE; MOTION FOR RELIEF FROM ORDER AND JUDGEMENT OF COURT (RULE 60.02); AFFIDAVIT OF COREY D. SIMMONS SUPPORTING MOTION FOR RELIEF FROM ORDER AND JUDGEMENT OF COURT (RULE 60.02); AFFIDAVIT OF CAROLYN R. SIMMONS; AFFIDAVIT O COREY D. SIMMONS; AND CORRESPONDENCE FROM ERIC C. DAMMEYER**, hereto attached to each interested party whose name and address are known to affiant, after exercising due diligence in ascertaining the correctness of said name and address, by placing a true and correct copy thereof in a sealed envelope, postage prepaid and depositing the same in the U.S. Mails at West St. Paul, Minnesota and addressed to the following named persons:

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STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT

In re Estate of Prince Rogers Nelson,  
Decedent. Court File No. 10-PR-16-46  
NOTICE OF MOTION FOR RECALL OF  
FROM ORDER AND JUDGMENT OF

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PLEASE TAKE NOTICE that on October 21, 2016 a hearing on the undersigned's motion for recall of the Court's Amended Scheduling Order Regarding the Heirship Claims Following the Death of Prince Rogers Nelson will be held at the Court's Office, 1050 West St., Suite 1000, St. Paul, MN 55101, on July 29, 2016. Please also find attached and a copy of the Court's Amended Scheduling Order Regarding the Heirship Claims Following the Death of Prince Rogers Nelson and Corey Simmons To Be Heirs Of The Estate, attached hereto as Exhibit A. The hearing on this matter will take place at the Court's Office, 1050 West St., Suite 1000, St. Paul, MN 55101, on July 29, 2016 at 10:00 AM. Dated October 4, 2016

Dammeyer Law Firm, P. A.

Lehner Law Firm, P. A.

/ s / Eric C. Dammeyer

/ s / Andrew M. Lehner

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STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT

Court File No. 10-PR-16-46

In re Estate of Prince Rogers Nelson,  
Decedent.

**MOTION FOR RELIEF FROM ORDER AND  
JUDGMENT OF COURT (RULE 60.02)**

Motion

Corey D. Simmons hereby moves IRUUHOLHIIURPWKH ~~BY~~ *Motion Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*, which was filed July 29, 2016. Mr. Simmons respectfully requests that the Court amend that order to include him in WKHVHFWLRQW ~~BY~~ *WORLDWIDE* ~~BY~~ *SRQ* ~~BY~~ *DLPV2* ~~BY~~ *PH* ~~BY~~ *QWR* ~~BY~~ *HOVRQ*

Relationship to Decedent

Corey D. Simmons is a nephew of his uncle, Prince Rogers Nelson. He was born to Duane Joseph Nelson, Sr., who was his father, and Carolyn Renee Simmons, his mother. Accompanying the filing of this motion, Corey D. Simmons has also filed his fully prepared Court Ordered Protocol information form and two affidavits, one from himself and one from his mother to support his submission as an heir. He has also filed herewith a third affidavit from himself in support of this motion.

Carolyn Renee Simmons met Duane Joseph Nelson, Sr. when they were both attending college at University of Wisconsin Milwaukee. They began dating and became sexually intimate. Corey D. Simmons was conceived by that union with Duane Joseph Nelson, Sr. See, Affidavit of Carolyn Renee Simmons.

The situation became stressful for Duane Joseph Nelson, Sr. and his grades suffered, which resulted in him leaving college and going back to Minnesota when Ms. Simmons was five months pregnant. *Id.*

Ms. Simmons did not see Duane Joseph Nelson, Sr. again for three years. Three years later, Mr. Nelson returned to visit with Ms. Simmons and his son, Corey D. Simmons. He remarked how much his son resembled him. *Id.*

~~OUHORO~~ ~~OMP~~ ~~HO~~ ~~BS~~ ~~NO~~ ~~EPR~~ ~~BY~~ ~~EPR~~

became strained after that and inconsistent on his part, but there were more visits. He received pictures of his son which he kept in his wallet. After a year of visits, Mr. Nelson



again stopped connecting with them, for years. Thereafter, in 1989 he called Carolyn Renee Simmons indicating he was in rehabilitation in New York. This was the last contact with Mr. Nelson. *Id.*

When his father, Duane Joseph Nelson, Sr. died in 2011 Corey D. Simmons became introduced to KLVIDWKHUYIDP as a result of 0U1HOVRQSDWKDORUDO For the first time Corey D. Simmons met his sister, Brianna Nelson, and aunts he had previously not met. His IDWKHUY family remain connected to this day. His relationship with Brianna Nelson is a happy and affectionate one, in which Brianna Nelson acknowledges him as her brother. See, Affidavit of Corey D. Simmons.

After the death of Prince Rogers Nelson, Mr. Simmons again spent quality time with his family, including his sister Brianna and his aunts Norrine and Sharon during this last summer of 2016, particularly at the funeral and gathering of family and friends of Prince Rogers Nelson which was held on August 12, 2016. *Id.*

Mr. Simmons never received any correspondence or notice regarding the estate of his uncle, Prince Rogers Nelson. See, Affidavit of Corey Simmons Supporting Motion for 5HOLHI IURP 2UBU DQPHO RI RMX KHUHLQIWHU \$LQYLW RI RUIH\6LPPRQ SupSRUWLORWLRQ

The Court record shows that he is not listed on the petition for Special Administration filed by Tyka Nelson, nor is his father listed in the petition.

Mr. Simmons knew of the estate proceedings unfolding in the last few months. Although he knew of the death of his uncle and the proceedings, he has never received notice of any hearings or other Court proceedings relating to the estate. Mr. Simmons thought the Special Administrator should be doing something about his rights to the estate of his uncle, Prince Rogers Nelson. Affidavit of Corey D. Simmons Supporting Motion. Then, after urgings from his family, Corey D. Simmons contacted attorneys for the Special Administrator and talked to attorney Lauren Routhier, at Stinson Leonard Street. She said that her firm only represented the Special Administrator and could not represent him. She also sent him a follow-up email, a copy of which is attached to his Affidavit of Corey D. Simmons Supporting Motion. Ms. Routhier also attached to her email the form for the Protocol and the Court 2UBU \$SURYLQWKH 3URWRFRS She properly indicated that these documents should be reviewed and filed by an attorney of 0U6LPPRQ choosing, thus inviting him to make his claim. *Id.*

However, she did not mention nor inform him ~~RIWKLV&XWY~~ July 29th *Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*. Mr. Simmons then promptly engaged the undersigned counsel.

Corey D. Simmons Affidavit establishes his relationship to his family ~~DPROKLVIDWKHU~~ children and siblings, including his sister Brianna Nelson, demonstrating that he was not an unknown son of Duane Joseph Nelson, Sr. He also establishes that he reached out to Tyka Nelson, the petitioner who knew of his claim to relationship with Prince Rogers Nelson and Duane Joseph Nelson, Sr.

~~7ND1HOVRQSHWLWLRQRUWKHDSSRLQPHWRIS6SHFLDO\$LDWUDWRURISULO~~ does not list or refer to Duane Joseph Nelson, Sr., nor to any of his descendants. Although Corey D. Simmons was never given notice, he remains an interested person and an heir of Prince Rogers Nelson.

The July 29<sup>th</sup> Order Should Be Amended

~~7KLV&XWY~~ *Order Regarding Genetic Testing Protocol and Heirship Claims Following the June 27, 2016 Hearing and Judgment*, of July 29, 2016 (hereinafter, the ~~HLUVKLS~~ ~~DLPV2UBU~~) should be amended. In the Heirship Claims Order, Corey D. Simmons would have been included in the class the Court referred to as <sup>3</sup>Applications Based Upon Claims Of Being A Descendant of Duane Nelson', beginning on page 13 of the Order ± but only if the Court had known of his existence and had he had notice of the opportunity to submit his information for the Protocol. He would clearly qualify for the same analysis and treatment by the Court as Brianna Nelson and the child V.N., since he was also a descendant of Duane Joseph Nelson, Sr.

The Court ruled that Brianna Nelson and the child V.N. had made satisfactory *prima facie* showing that they were potential heirs of Prince Rogers Nelson. This could also apply then to Corey D. Simmons, had his application preceded the Heirship Claims Order.

Further, the Heirship Claims Order is silent as to limiting the time for the claims of any other persons as to heirship who had not yet appeared at the time the order was issued. Such a time limitation has not yet been Ordered by the Court nor is ~~RUH6LPPRQ~~ application precluded by any procedural court rule or statutory deadlines, the Heirship Claims Order which authorizes the testing of only Brianna Nelson and the child V.N. should now include Corey D. Simmons.

**On motion and upon such terms as are just, the court may relieve a party or the party's legal representatives from a final judgment (other than a marriage dissolution decree), order, or proceeding and may order a new trial or grant such other relief as may be just for the following reasons:**

**(a) Mistake, inadvertence, surprise, or excusable neglect;**

(b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial pursuant to Rule 59.03;

(c) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(d) The judgment is void;

(e) The judgment has been satisfied, released, or discharged or a prior judgment upon which it is based has been reversed or otherwise vacated, **or it is no longer equitable that the judgment should have prospective application; or**

**(f) Any other reason justifying relief from the operation of the judgment.**

**The motion shall be made within a reasonable time,** and for reasons (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A Rule 60.02 motion does not affect the finality of a judgment or suspend its operation. **This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified** as provided in Rule 4.043, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action. [emphasis of pertinent provisions added]

Closest in logical application to this complex situation, Rule 60.02 should apply and the Court should grant Mr. Simmons the right to now be recognized and participate, primarily for the failure of the initial petition to properly identify him and secondarily because he was never legally served.

Minnesota Writs of Review and Bills of Review. Minn.Stat. §524.1-401. In this case, the initial petition of Tyka Nelson should have indicated the existence of descendants of Duane Joseph Nelson, Sr., a class now clearly identified by the Court. It would be clear that the heirs of Prince Rogers Nelson would include descendants of such predeceased sibling. Not only was the entire class of descendants of Duane Joseph Nelson, Sr. excluded from the petition, but investigation into the identity of his descendants has been dealt with only passively by the Special Administrator. The Order of the Court appointing the Special Administrator specifically charges them with finding and determining heirs of the estate. Parties known by the Special Administrator and by Tyka Nelson, knew or should have known of the existence and nature of the descendants of Duane Joseph Nelson,

Sr. They were apparently never questioned for the family branch of Duane Joseph Nelson, Sr. has been entirely cut off. Those members of that family who have spoken up on their own, without the benefit of the notices required by law, include Brianna Nelson and the mother of V.N. These are descendants of Duane Joseph Nelson, Sr. now identified by the Court. Tyka Nelson and the Special Administrator should have discovered this information and given legal notice.

Any Implied Limitation in the Heirship Claims Order Does Not Bind Corey D. Simmons

Interested persons who are not served legal notice may nonetheless be bound by subsequent orders *but only if*

"(a) The pleadings appropriately and reasonably identify affected interests by name or by class. Minn.Stat. §524.1-403(1);

or

"(b) An unascertained person who is not otherwise represented to the extent that substantially identical interest in the proceedings. Minn.Stat. §524.1-403(2)(iii).

The name or class related to Duane Joseph Nelson, Sr. was not appropriately or reasonably identified. Rather, Duane Joseph Nelson, Sr. and his descendants were entirely omitted. Brianna Nelson and the child V.N. appeared as interested persons despite not being identified in the pleadings commencing this estate. The fact that Corey D. Simmons has not been adequately represented in this matter by any other party is demonstrated by the fact that his existence is not included in the July 29<sup>th</sup> Heirship Claims Order, nor in the Court records up until this filing. He is therefore not bound by the Heirship Claims Order under the foregoing statute provisions because (a) the pleadings did not appropriately nor reasonably identify his affected interests by name or by class and (b) his interests were not at all adequately represented by anyone else. It appears to the undersigned that no limitation of this class of heirs was intended by the Heirship Claims Order. Corey D. Simmons should now be allowed to participate in the process, step into the testing requirement, which is still underway, and proceed.

Lack Of Due Process And Legal Notice Is Not Resolved By Actual Knowledge

As to lack of legal service of process and notice to Corey D. Simmons, no defense of *laches* or some other similar assertion asserting delay in this filing will stand, since the

statutory scheme in probate requires *actual legal notice*. Minn.Stat. §§524.1-401, 524.3-401, 524.3-403(a), and 524.3-614(2). The procedural history that has excluded Corey D. Simmons was fatally flawed by those who initiated it and by lack of a reasonably thorough investigation for heirs. Both the Minnesota Probate Code and Minnesota case law demonstrate that principles of due process and notice standards are strict and jurisdictional. Participation as an heir should not be precluded simply because he did not act prior to this current motion. This is not to say that the entire Heirship Claims Order is void, but rather that it does not yet bind him and that it is not equitable that the judgment should have prospective application. The situation and lack of notice justifies giving him relief from the operation of the Heirship Claims Order. It should be amended so that he would now be entitled to join in with his other family members in the process.

Had he been served and had he an opportunity for counsel, he would have been a co-plaintiff proceeding towards genetic testing with his sister, Brianna Nelson and his niece, V.N. Rule 60.02 provides his right to request relief from the failure of other parties in identifying and serving him as required by these rules of law.

The Due Process Clause of the United States Constitution, which can also only be precluded by prescribed procedural actions.

In *Estate of Kotowski*, 704 N.W.2d 522, 526 (Minn.App. 2005) the Minnesota Court of Appeals cited with approval the due process principle that actual knowledge of an estate, or of a proceeding in probate, does not itself supply sufficient notice to its creditors to preclude their claims under the Uniform Probate Code. Legal notice is required. *Citing, Armstrong v. Armstrong*, 130 F.R.D. 449, 453 (D.Colo.1990) and *Bank of Commerce*, 606 N.W.2d at 756.

The Minnesota Court of Appeals, in *Estate of Thompson*, 484 N.W.2d 258, 261 has also held that the Due Process Clause of the United States Constitution requires the personal representative of an estate to provide legal notice of probate proceedings to known or reasonably ascertainable creditors. The mere publication of notice in a legal newspaper alone is not a constitutional basis to preclude such a claim. *Citing, Tulsa Professional Collection Servs., Inc. v. Pope*, 485 U.S. 478, 489-90, 108 S.Ct. 1340, 1347, 99 L.Ed.2d 565 (1988). The strict requirements of legal notice apply to creditors, how much more are they important and applicable to heirs at law?

Corey D. Simmons therefore seeks relief from any effect of the Heirship Claims Order that would preclude him from now being included in the class of purported heirs who should participate in the estate of the decedent, including the child V.N.

No prejudice would be demonstrable by any other party, since the Court is still in the process of determining heirs and has yet to rule on the complete and closed class of heirs for this intestate estate.

Therefore, Corey D. Simmons moves that the Court amend its Order to include him and genetic testing, along with Brianna Nelson and the child V.N.

Dated September 26, 2016

Dammeyer Law Firm, P.A.

Lehner Law Office, LLC

\_\_\_\_\_  
/s/ Eric C. Dammeyer  
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## Fwd: Corey Simmons: Prince R. Nelson Heirship claim

---

Corey Simmons <coreydsimmons@gmail.com>

Thu, Sep 15, 2016 at 4:26 PM

To: Andy Lehner <andy@lehnerlawoffice.com>

Just for your records for contact information.

Corey D. Simmons

(414)292-7230

coreydsimmons@gmail.com

Integrity~Not WHO's right;but WHAT's right!

Begin forwarded message:

**From:** "Routhier, Lauren" <lauren.routhier@stinson.com>

**Date:** September 12, 2016 at 10:10:46 AM CDT

**To:** "coreydsimmons@gmail.com" <coreydsimmons@gmail.com>

**Cc:** "Halferty, Laura" <laura.halferty@stinson.com>, "Crosby, David" <david.crosby@stinson.com>

**Subject:** Corey Simmons: Prince R. Nelson Heirship claim

Dear Mr. Simmons,

As a follow up to our telephone call this morning, I attach the Order approving the attached Protocol Prior to Potential Genetic Testing which applies to your claim.

Please note that we represent Bremer Trust, N.A. as the Special Administrator of the Estate of Prince Rogers Nelson. Stinson Leonard Street does not and cannot represent you in this matter. Your claimed relationship to Mr. Nelson involves significant legal rights, and we recommend that you engage your own attorney to represent you regarding these rights.

If you have any questions regarding the attached protocol, please contact Laura Halferty at 612-335-1763 or David Crosby at 612-335-1627.

Best,  
Lauren

Lauren Routhier | Attorney | Stinson Leonard Street LLP

150 South Fifth Street, Suite 2300 | Minneapolis, MN 55402

T: 612.335.1440 | F: 612.335.1657

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This communication (including any attachments) is from a law firm and may contain confidential and/or privileged information. If it has been sent to you in error, please contact the sender for instructions concerning return or destruction, and do not use or disclose the contents to others.



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**2 attachments**

**0124 Protocol Prior to Potential Genetic Testing.pdf**  
245K

**0135 Order Approving Protocol.pdf**  
48K











**EXHIBIT A**

**EXHIBIT B**

**EXHIBIT C**



**EXHIBIT D**

**EXHIBIT E**

**EXHIBIT F**

<p><b>F1</b></p>	<p><b>F2</b></p>
<p><b>F3</b></p>	<p><b>F4</b></p>

**EXHIBIT F**  
**(continued)**

<p><b>F5</b></p>	<p><b>F6</b></p>
<p><b>F7</b></p>	

**Exhibit G**



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Eric C. Dammeyer, Attorney at Law

September 26, 2016  
eFile Only

District Court  
Carver County Justice Center  
604 East 4th Street  
Chaska, MN 55318

Dear Clerk of Court

With the eFiling today by Mr. Lehner and I, we are appearing for Corey D. Simmons, a nephew of Prince Rogers Nelson.

Unless the Court grants our request and supplements or amends its July 29<sup>th</sup> Order, and there must be a hearing on our motion, we are requesting to have that consolidated with the other matters scheduled for October 21<sup>st</sup>. Please advise if the matter will be heard telephonically or require in-person appearances.

Please also advise if we should file any other documents the Court requires.

Sincerely,  
**Dammeyer Law Firm, P.A.**

/s/ Eric C. Dammeyer

Eric C. Dammeyer, Attorney  
encl.  
ec: Andrew M. Lehner





