

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

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

Estate of Prince Rogers Nelson,
Decedent,

And

Tyka Nelson,
Petitioner.

**OMARR BAKER AND TYKA NELSON'S
MEMORANDUM IN SUPPORT OF
MOTION TO COMPEL L. LONDELL
MCMILLAN TO PRODUCE
INFORMATION NECESSARY TO
FACILITATE THE APPOINTMENT OF A
PERSONAL REPRESENTATIVE**

INTRODUCTION

Omarr Baker and Tyka Nelson (“Petitioners”) submit this memorandum in support of their motion to compel L. Londell McMillan to produce certain information necessary to facilitate the appointment of a personal representative.

FACTS

The Court has received various motions for the appointment of either a successor special administrator, a corporate personal representative, and/or an individual personal representative or co-representative of the Estate of Prince Rogers Nelson (“Estate”). Among these petitions was a Joint Petition for General Administration of Estate, Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Co-Personal Representative that was filed on December 7, 2016 (“Petition”). In this Petition, Mr. McMillan was requested to act as an individual co-personal representative of the Decedent’s estate. (*See* Petition, ¶ 15.) In support of the Petition, Mr. McMillan submitted an affidavit (filed under seal), which details some—but not all—of the

information needed for the Court to determine whether Mr. McMillan is suitable as a potential co-personal representative to the Estate. *See* Minn. Stat. § 524.3-203(f)(2).

On December 16, 2016, the Court issued an order that the various motions for the appointment of either a successor special administrator, a corporate personal representative, and/or an individual personal representative or co-representative shall be heard before the Court on January 12, 2017, beginning at 9:30 a.m. (“Order”). After the Order was issued, Petitioners negotiated with counsel for the parties who requested Mr. McMillan in order to obtain additional information on Mr. McMillan and make an informed decision. (*See* Affidavit of Thomas P. Kane (“Kane Aff.”), ¶ 3.)

In advance of the January 12 hearing, the Court will need additional information in order to determine Mr. McMillan’s ability and qualifications to serve as a co-personal representative of the Estate, pursuant to Minn. Stat. § 524.3-203(f)(2). As has been previously raised with the Court, there are potential conflicts and questions as to Mr. McMillan’s ability to serve as co-personal representative of the Estate. Before the January 12 hearing, Petitioners respectfully request the Court compel Mr. McMillan—via Randall W. Sayers, counsel for the parties requesting Mr. McMillan as co-personal representative—to provide this information in order to assist the Court and the other putative heirs in making a fully informed decision.

ARGUMENT & AUTHORITIES

The Uniform Probate Code governs appointments of personal representatives. *See* Minn. Stat. § 524.3-203. “No person is qualified to serve as personal representative who is . . . a person whom the court finds unsuitable in formal proceedings.” *Id.*, subd. (f)(2) (emphasis added); *see also In re Estate of James R. Franta*, AS12-0663, 2013 Minn. App. LEXIS 122, at *2 (Minn. Ct. App. Feb. 11, 2013); *Crosby v. Hunt (In re Estate of Crosby)*, 15 N.W.2d 501, 505 (Minn. 1944)

(“Unsuitability is now a ground for refusing appointment, whereas formerly it was only a ground for removal of an executor.”).

In determining suitability as a personal representative, the Court will consider all issues related to the circumstances. *In re Estate of Schorr*, No. C8-02-952, 2002 Minn. App. LEXIS 1287, at *6-8 (Minn. Ct. App. Nov. 26, 2002). The district court has wide discretion to determine whether a representative is unsuitable. *In re Estate of Herman*, No. CX-95-785, 1995 Minn. App. LEXIS 1574, at *6-7 (Minn. Ct. App. Dec. 26, 1995).

“Suitable” is not defined by the UPC and “has no fixed and inflexible meaning.” *Crosby*, 15 N.W.2d at 506. Suitability is determined by analyzing a person’s “temperament, experience and sagacity to discharge [the estate] with fidelity, prudence and promptness . . . having regard to the special conditions of each estate and those interested in it as creditors, legatees and next of kin.” *Id.* (quotations omitted). The named personal representative must be “willing, suitable, and competent,” in order to be appointed. *Id.*

A district court judge has “wide discretion to issue discovery orders,” and will not be reversed unless it makes findings unsupported by the evidence or if it improperly applies the law. *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009); *see also* Minn. R. Civ. P. 26.02.

Generally, parties may obtain discovery by deposition, written interrogatories, production of documents, for inspection, physical and mental examinations, and requests for admission pursuant to Rule 26 of the Minnesota Rules of Civil Procedure. Parties may also subpoena non-parties to the litigation pursuant to Rule 45. Given the time before the January 12 hearing is less than the regular time allotted pursuant to Rule 26 for responses to discovery or pursuant to Rule 45 for responses to subpoenas, Petitioners respectfully request the Court compel Mr. McMillan and counsel for the putative heirs who are proffering Mr. McMillan to produce documents

responsive before the hearing date. This will assist the Court in determining Mr. McMillan's suitability to serve as co-personal representative. Petitioners' instructions and requests are detailed in **Exhibits A and B**.

I. The Court Will Need the Information Regarding Mr. McMillan to Determine His Suitability to Serve as Co-Personal Representative

Mr. McMillan seeks to serve as co-personal representative of the Estate. In the Affidavit of Mr. McMillan filed with the Court on December 7, 2016, Mr. McMillan stated that he is "uniquely qualified to work with the corporate personal representative and provide value to the Estate and the heirs." (See Affidavit of L. Londell McMillan, ¶ 14.) He seeks to act as personal representative for an estate with complex issues to address. The Court has the inherent power to order counsel and Mr. McMillan to produce this information and there is no reason the Court cannot order Mr. McMillan to produce the information that Petitioners request. Counsel for the parties who requested Mr. McMillan act as personal representative—Randall Sayers—should be able to readily produce this information.

The documents and materials requested is information that will satisfy the Court's needs in order to properly determine Mr. McMillan's suitability to act as co-personal representative. The Petitioners understand if Mr. McMillan, counsel, or the Court objects on the basis that a subpoena has not been served, and that can be remedied. However, Petitioners wish to preserve the record by requesting this information via motion. Moreover, a subpoena (and the likely objection from Mr. McMillan) would expend close to 90 days before Petitioners receive the information needed. This is a matter of expediting the process.

This case involves complex issues. A proper review of Mr. McMillan's qualifications to act as co-personal representative warrants adequate information. The Petitioners have attempted to negotiate to obtain the information in order to minimize the number of submissions to the Court.

However, these negotiations were unsuccessful. For these reasons, the Petitioners ask the Court to compel Mr. McMillan to produce the information requested in Exhibit B via Randall Sayers, counsel for the parties requesting Mr. McMillan act as co-personal representative. Petitioners believe that this additional information will aid the Court in determining whether Mr. McMillan is suitable to act as co-personal representative, pursuant to Minn. Stat. § 524.3-203(f)(2).

CONCLUSION

For all the foregoing reasons, Omarr Baker and Tyka Nelson respectfully request the Court grant their Motion to Compel L. Londell McMillan to produce certain information necessary to facilitate the appointment of a personal representative in advance of the hearing on January 12, 2017.

Dated: January 6, 2017

COZEN O'CONNOR

/s/ Thomas P. Kane
Steven H. Silton (#260769)
Thomas P. Kane (#053491)
Armeen F. Mistry (#397591)
33 South Sixth Street, Suite 4640
Minneapolis, MN 55402
Telephone: 612-260-9000
ssilton@cozen.com
tkane@cozen.com
amistry@cozen.com

Jeffrey Kolodny, *pro hac vice*
277 Park Avenue
New York, NY 10172
Telephone: 212-883-4900
jkolodny@cozen.com

Attorneys for Omarr Baker and Tyka Nelson