

STATE OF MINNESOTA

FILED

FIRST JUDICIAL DISTRICT

DISTRICT COURT

COUNTY OF CARVER

JAN 20 2017

PROBATE DIVISION

CARVER COUNTY COURTS

Estate of:

Court File No. 10-PR-16-46

Prince Rogers Nelson,

**ORDER FOR TRANSITION FROM
SPECIAL ADMINISTRATOR TO
PERSONAL REPRESENTATIVE**

Decedent.

On January 12, 2017, the Court held a public hearing on Bremer Trust, N.A.'s ("Bremer Trust") Petition for Discharge, Petitions for appointment of personal representatives by the non-excluded heirs, and transitioning the administration of this Estate from Bremer Trust as special administrator to one or more personal representatives. Appearances were noted on the record.

Based upon the evidence introduced during the hearing, as well as the parties' filings and argument, the Court finds:

1. Bremer Trust's Petition is under advisement as set forth in this Court's January 12, 2017 Order.
2. Bremer Trust is continuing to serve as Special Administrator of the Estate of Prince Rogers Nelson (the "Estate") through January 31, 2017 as set forth in this Court's January 13, 2017 Order.
3. The non-excluded heirs agree to the appointment of Comerica Bank & Trust N.A. ("Comerica") as Corporate Personal Representative of the Estate. Each of the non-excluded heirs has also nominated an individual to serve as a co-personal representative of the Estate. Some of the heirs nominated L. Londell McMillan, and some of the heirs nominated Anthony Jones.
4. The Court heard testimony by and on behalf of L. Londell McMillan and Anthony Jones in support of the petitions for their appointment as co-personal representatives. The Court was impressed with each of them regarding their education, range of experience in the music industry and otherwise, and their prior relationships with Prince Rogers Nelson. However, the Court finds that neither should be appointed as a co-personal representative at this time for the following reasons:
 - i. Neither Mr. McMillan nor Mr. Jones are the unanimous selection of the six non-excluded heirs. From experience in this case, the Court has learned that the heirs are all strong advocates of their positions on how the Estate should be managed and adding another divisive element will cause additional expense and delay in these

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proceedings. The Court will be reluctant to appoint a co-personal representative if he or she is not unanimously endorsed by the heirs.

- ii. Counsel for the newly appointed Corporate Personal Representative agrees that the having a co-personal representative will add expense and delay to the proceedings.
- iii. The primary reason advanced by the heirs for having a co-personal representative is to enhance the communication between the heirs and the corporate personal representative. Comerica is newly appointed and is unanimously endorsed by the non-excluded heirs. The Court hopes and expects that Comerica will make communication with the heirs a high priority. The Court acknowledges that there is much yet to be done in the administration of this Estate, however, the focus of Comerica can hopefully be more refined than could that of Bremer Trust which walked into personal and corporate mayhem where the Decedent's personal and business affairs were in disarray, a criminal investigation was being undertaken, assets and records were voluminous and scattered, and numerous monetary and heirship claims were about to cascade upon them. Hopefully, communication with the heirs can be achieved more easily at this time.
- iv. Several heirs have raised concerns about possible conflicts if Mr. McMillan were appointed as a co-personal representative and as to his suitability to serve the Estate in this capacity. The Court is well aware that Mr. McMillan has served as an entertainment industry expert with the Estate during much of its administration and this Court has approved much of the work he has done in that regard. However, the Court also notes that Mr. McMillan and Mr. Koppelman have been a "lightning rod" for disputes that have erupted during the administration of the Estate regarding the Tribute Concert and newly negotiated music or merchandising agreements. The Court is concerned about continued disagreements and conflicts of interest regarding Mr. McMillan's compensation for these music and merchandising agreements and his role as a co-personal representative.
- v. The Court notes that there has not been a similar concerted effort to defeat the Petition for the appointment of Anthony Jones as a co-personal representative. However, the Court is concerned about the appearance of any favoritism as Mr. Jones has represented Omarr Baker, and now possibly Tyka Nelson, up to this point. The majority of the non-excluded heirs support the competing Petition for the appointment of Mr. McMillan. Finally, the Court is concerned about the newly filed litigation against the Estate and the non-excluded heirs by Phaedra Ellis-Lamkins. Mr. Jones has acknowledged his business relationships and friendship

with Ms. Ellis-Lamkins. The Court is concerned about a possible conflict and the possibility that Mr. Jones could be called as a witness in this litigation.

- vi. This Court shall reconsider the appointment of a co-personal representative in the future if the non-excluded heirs can agree on a co-personal representative, if the Corporate Personal Representative believes that a co-personal representative is necessary for the proper and efficient administration of the Estate, or if the Court is persuaded that a co-personal representative is necessary for the proper and efficient administration of the Estate.
5. Comerica is capable of taking over management of the Estate and has accepted its appointment as personal representative of the Estate.
6. Comerica and Bremer Trust have agreed upon a plan for orderly transition of the Estate.
7. Bremer Trust has begun preparing the estate tax filings that are due on January 21, 2017.
8. Bremer Trust cannot share work product from its counsel or attorney-client privileged communications with Comerica, which is necessary for the orderly transition of the Estate, unless the parties agree that they do not have any conflicts and have a common interest and those two entities execute a Common Interest Agreement. Bremer Trust and Comerica have agreed that, in order to enter into the Common Interest Agreement and to ensure the orderly transition of the Estate, Bremer Trust, Patrick A. Mazorol, and Stinson Leonard Street, LLP, on the one hand, and Comerica and Fredrikson & Byron, P.A., on the other hand, cannot, at any time, be adverse to each other in connection with this Estate.

IT IS ORDERED:

1. Bremer Trust's appointment as Special Administrator is extended through January 31, 2017 as set forth in this Court's January 13, 2017 Order.
2. As soon as practicable, Bremer Trust will submit to the Court all legal and professional fees incurred through January 31, 2017.
3. Bremer Trust is authorized to reserve \$1,000,000 from Estate assets for professional and legal fees through January 31, 2017 and for fees and expenses associated with the transfer of the Estate administration to Comerica and the preparation of final accountings and court submissions.
4. Comerica is appointed as Corporate Personal Representative of the Estate of Prince Rogers Nelson, as of February 1, 2017.

5. Bremer Trust is authorized to distribute the balance of Estate assets, after subtracting the court-approved reserve for incurred and continuing professional and legal fees, to Comerica. Bremer Trust shall submit to the Court a receipt acknowledging the transfer of assets.
9. The Court approves the Common Interest Agreement proposed by Bremer Trust and Comerica, attached as Exhibit A to this Order, which allows them to share otherwise privileged or confidential information without waiving those protections. As a result of the Common Interest Agreement, Bremer Trust, Patrick A. Mazorol, and Stinson Leonard Street, LLP, on the one hand, and Comerica and Fredrikson & Byron, P.A., on the other hand, cannot, at any time, be adverse to each other in connection with this Estate.
6. Comerica is authorized to retain Bremer Trust at an hourly rate of \$220 and Stinson Leonard Street attorneys at their usual hourly rates as consultants to the Estate for up to 60 days from February 1, 2017, to assist in the transition of the Estate.
7. Comerica is authorized to purchase as an expense of the Estate software (e.g., HighQ), that enables document sharing with the non-excluded heirs through an extranet site, or to reimburse its counsel from the Estate for purchase of same.
8. Comerica is authorized to access all documents filed with the Court in this matter, including any documents designated confidential or filed under seal. Access to any documents designated as confidential or filed under seal shall be through the attorneys representing Comerica. Comerica and its attorneys shall not release documents designated as confidential or filed under seal to persons not authorized to view them without prior court approval.
9. Omarr Baker and Tyka Nelson's Motion to Compel L. Londell McMillan to Produce Information Necessary to Facilitate the Appointment of a Personal Representative filed January 10, 2017, is respectfully DENIED.

Dated: January 19, 2017

BY THE COURT:



Kevin W. Eide
Judge of District Court

EXHIBIT A – COMMON INTEREST AND INFORMATION SHARING AGREEMENT

COMMON INTEREST AND INFORMATION SHARING AGREEMENT

This Common Interest and Information Sharing Agreement (this “Agreement”) between Bremer Trust, N.A. (“Bremer Trust”) on the one hand and Comerica Bank & Trust N.A. (“Comerica”) on the other hand (individually “Party” and collectively “Parties”), together with their respective attorneys and affiliates, sets forth the Parties’ agreement with respect to their common interests in, with respect to Bremer Trust, having served as the Special Administrator and, with respect to Comerica, as Personal Representative or successor Special Administrator, for the Estate of Prince Rogers Nelson, Court File No. 10-PR-16-46, pending in Carver County District Court in the State of Minnesota, and all and all related cases and related claims, subsequently filed cases, and appeals thereof (the “Matter”).

RECITALS

- A. The Matter relates to the Estate of Prince Rogers Nelson, Court File No. 10-PR-16-46, pending in Carver County District Court in the State of Minnesota. Bremer Trust served as Special Administrator of the Estate from April 27, 2016 until the present time and anticipates being discharged in the near future. Comerica anticipates being appointed as the Personal Representative or successor Special Administrator of the Estate on or after January 12, 2017. The Parties believe they have common legal interests with respect to many of the issues raised in the Matter.
- B. Therefore, the Parties believe that it is in their mutual interest and reasonably necessary to share information relating to their common interests in the Matter, including but not limited to the exchange of oral and written communications, the sharing of information and documents, and the discussion of legal analysis and strategy among themselves and their counsel while not waiving any applicable privileges, including the attorney-client privilege and the work-product doctrine.
- C. Before any prior communications took place, the Parties agreed that such communications were intended to be confidential, were treated as privileged, were for their common interests, and that this Agreement is intended to formalize such agreement in writing.
- D. Accordingly, the Parties agree as follows:

AGREEMENT

- Information Sharing Group.** The Information Sharing Group includes the following: (i) the Parties (including, but not limited to, each of the Parties’ officers involved in administering the Estate, their supervisors, and staff); (ii) in-house counsel employed by the Parties and their affiliates and their staff (e.g., paralegals, legal secretaries, and other legal professionals), and individuals to whom such attorneys report; (iii) outside counsel retained to advise or represent a Party with respect to the Matter (including, but not limited to, Stinson Leonard Street, LLP on behalf of Bremer Trust and Fredrikson & Byron, P.A., on behalf of Comerica), and their partners, associates, and staff; and (iv) individuals engaged by counsel to assist in the Matter, who shall be required to be bound in writing to the confidentiality obligations of this Agreement.

The foregoing classes of persons are referred to individually as the “Members” of the Information Sharing Group. The term “Information Sharing Group” includes the Parties’ outside counsel and affiliates while the term “Parties” does not.

2. **Communications Concerning the Matter.** The Parties agree as follows with respect to communications concerning the Matter:

2.1 **Application.** This Agreement governs communications between or among the Information Sharing Group regarding the Matter. It also governs information developed jointly by Members of the Information Sharing Group relating to the Matter. Notwithstanding anything contained herein to the contrary, this Agreement does not govern a Party’s privileged communications solely with its own counsel, employees, or staff. The Members of the Information Sharing Group shall have the right and ability (but not the obligation) to share with each other confidential and privileged information for the purpose of furthering the common interest of the Parties in connection with the Matter.

2.2 **Attorney-Client Privilege and Attorney Work Product.** The Parties agree to the following with respect to the maintenance of any applicable privilege, including the attorney-client privilege and the work-product doctrine:

2.2.1 **Privileges Held Jointly by All Parties.** All confidential communications (whether oral or written) between Members of the Information Sharing Group regarding the Matter, including such communications which precede the date of this Agreement, were intended and agreed to be, and shall be subject to the attorney-client privilege, work-product doctrine, common interest privilege, or other applicable privileges. Documents turned over to one Member of the Information Sharing Group by another Member of the Information Sharing Group that are otherwise subject to the attorney-client privilege, work-product doctrine, common interest privilege, or other applicable privileges shall be treated as documents delivered confidentially and privileged for the common interest and defense of the Parties. As such, they shall retain their privileged character, and the privilege shall be held jointly by the Parties who have received such documents. The work-product doctrine shall apply to any work that any attorney performs in connection with the Matter, including review of work product performed by other Members, and the protections afforded to such materials shall be held by the attorney who produced the work product and all other Members of the Information Sharing Group who provided privileged or confidential information from which the work product, in whole or in part, was derived. Notwithstanding anything herein to the contrary, information that is shared only between a Party, corporate affiliates of the Party and their respective counsel, shall not be considered work product of the Information Sharing Group.

2.2.2 **Waiver of Privileges.** Any Party who produces or provides its own privileged or work product document or communication to other Members of the Information Sharing Group retains the sole and exclusive right to waive any and all privileges or protections applicable to such document or communication, with the exception of any appraisals obtained by Bremer Trust or its counsel. Where the privilege or protection applicable to any documents or communication is held originally and jointly by multiple Parties, the privilege or protection may be waived only by a unanimous decision of all such Parties, and all such documents or communications shall remain privileged unless and until such unanimous decision is made.

2.2.3 Privileges Held individually by a Party or Its Counsel. All privileged or confidential communications solely between a Party and his or its own counsel, whether occurring before or after execution of this Agreement, shall remain privileged, regardless of whether they are shared with other Members of the Information Sharing Group, and may be waived at the sole discretion of the Party. Similarly, an attorney's work product on behalf of a Party concerning the Matter that is otherwise privileged, whether created before or after execution of this Agreement, shall remain privileged, regardless of whether they are shared with other Members of the Information Sharing Group. The attorney-client privilege protecting such communications shall be held solely by the communicating Party and the work-product doctrine protecting such work product shall be held solely by the attorney who produced the work product and neither is waivable by any other Member; provided that to the extent such communications or work product contain or derive from information obtained from other Members of the Information Sharing Group, such information shall be subject to the privilege as applied to joint defendants, and shall be held jointly by the Parties (as described in Paragraphs 2.2.1 and 2.2.2).

2.2.4 Agreement Subject to Common Interest Privilege. Prior to the execution of this Agreement, the Parties have, directly and/or through their attorneys, communicated orally and in writing to arrive at this Agreement for the common interest of the Parties. All such privileged communications, have been, are, and shall remain confidential, and are subject to the attorney-client, common interest, or other applicable privilege. The privilege shall be held jointly by the Parties. All such prior communications are subject to the terms and conditions of this Agreement.

2.3 Duty to Maintain Confidentiality. The Members of the Information Sharing Group shall take all reasonable efforts and precautions to protect the confidentiality of the confidential documents or communications exchanged pursuant to this Agreement, and shall under no circumstances use any lesser degree of care than they each would employ in protecting their own respective confidential and privileged information. This duty to maintain confidentiality shall remain in full force and effect after the Matter ends. Nothing in this Agreement shall impose any restriction on the use or disclosure by a Member hereto of any information that (i) is or subsequently becomes publicly available without breach of any obligation by a Member hereunder, (ii) became known to the receiving Member through legally permissible and legitimate means prior to the disclosing Member's disclosure of such information hereunder, (iii) becomes known to a receiving Member from a source other than the disclosing Member hereunder, and not by the breach of any confidentiality obligation owed to the disclosing Member, (iv) is independently developed by the receiving Member, or (v) is disclosed or otherwise legally obtained during the course of discovery. Further, any Party may disclose confidential and privileged information obtained hereunder to its insurance carrier or any other entity who may be obligated to provide indemnity or a defense of that Party related to the Matter.

2.4 Scope of Use. Except as otherwise provided in this Agreement, each Member of the Information Sharing Group Member agrees that confidential information shared pursuant to this Agreement obtained from another Member of the Information Sharing Group, or developed jointly by the Members, shall be used only for the Matter, pursuant to this Agreement, and for no other purpose whatsoever.

3. No Attorney-Client Relationship Created. Nothing in this Agreement shall be construed as creating or otherwise giving rise to an attorney-client relationship, for conflicts

purposes or otherwise, between any Party and counsel for another Party. Further, this Agreement is purely contractual in nature, and shall not be construed as creating or otherwise imposing any fiduciary or other legal duty or obligation on any Party or counsel for any Party, except as expressly provided for in this Agreement.

4. **Inadvertent Disclosure of Confidential Information.** The Parties agree that the inadvertent or unintentional disclosure of privileged or work product materials supplied under this Agreement, regardless of whether the information was so designated at the time of disclosure, shall not be deemed a waiver in whole or in part of any applicable confidentiality, privilege, or immunity, either as to the specific information disclosed or as to any other information relating thereto or on the same or related subject matter (and none of the Parties will assert such a waiver argument). Upon the discovery of the inadvertent error, the Parties shall cooperate to the extent possible to restore the confidentiality, privilege, or immunity to the disclosed material, including retrieval of all copies, if possible.

5. **Modification.** This Agreement may only be modified, amended, or supplemented by a subsequent writing executed by each Party, and any such modification, amendment, or supplement shall expressly reference this Agreement and the fact that a modification, amendment or supplement to this Agreement is being made.

6. **Severability.** The provisions of this Agreement shall be considered severable, such that if any provision or part thereof is held under any law or ruling to be invalid, such provision or part shall remain in force to the extent allowed by law, and all other provisions shall remain in full force and effect.

7. **Governing Law.** This Agreement shall be governed by and interpreted under the laws of the State of Minnesota without reference to its choice of law principles. This Paragraph shall apply only to this Agreement and shall not govern any other actions, transactions or matters between or involving the Parties.

8. **Construction.** Each Party or its counsel has taken part in the negotiation, drafting, and preparation of this Agreement, and therefore any ambiguity or uncertainty in this Agreement shall not be construed against any Party. To ensure that this Agreement is not construed against any Party, the Parties expressly agree that any common law or statutory provision providing that an ambiguous or uncertain term will be construed against the drafter of an agreement is waived and shall not apply to the construction of this Agreement.

9. **Entire and Final Agreement.** This Agreement embodies the entire and final agreement and understanding of the Parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements, understandings, negotiations, representations, and discussions pertaining to that subject matter, whether verbal or written, of the Parties. The Parties acknowledge that there are no representations, promises, warranties, conditions, or obligations of any Party, or counsel of any Party, pertaining to that subject matter other than those contained in this Agreement.

10. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute

but one and the same instrument. This Agreement shall become effective and binding immediately upon its execution by all Parties.

Bremer Trust, N.A.

By _____

Its _____

Signature _____

Date _____

Comerica Bank & Trust, N.A.

By _____

Its _____

Signature _____

Date _____