

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Court File No.: 10-PR-16-46

Estate of Prince Rogers Nelson,

REDACTED

Deceased.

**MEMORANDUM IN OPPOSITION
TO HOLLAND & KNIGHTS'S
MOTION TO APPROVE PAYMENT
OF ATTORNEYS' FEES AND
EXPENSES**

Sharon L. Nelson, Norrine P. Nelson and John R. Nelson (“Sharon,” “Norrine,” and “John”, collectively referred to as “SNJ”) submit this Memorandum in opposition to an additional motion submitted by Holland & Knight LLP (“H&K”), former counsel of record for Tyka Nelson (“Tyka”), seeking approval of payment of attorney’s fees and costs from the Estate of Prince Rogers Nelson. In addition to the \$651,298.89 in expenses already sought on or about December 12, 2016, H&K seek \$415,945 in attorneys’ fees and cost reimbursement for efforts that allegedly benefited the Estate from November 16, 2016 through January 31, 2017. Sharon, Norrine, and John object to these requests as they seek compensation that is not just, reasonable, or commensurate with the benefit, if any, to the Estate.

FACTUAL BACKGROUND

H&K seeks \$415,377.00 in payment for work categorized as entertainment and non-entertainment fees incurred from November 16, 2016 through January 31, 2017. (Mar. 3,

2017 Mem. in Supp. of Mot. to Approve Payment of Atty's Fees and Expenses For Period Nov. 16, 2016 through Jan. 31, 2017, p. 1.) The entertainment fees primarily consist of H&K's time related to [REDACTED]

In addition to participating with the short and long-form agreements, H&K participated in reviewing other entertainment opportunities presented to the Estate since November 16, 2016, such as [REDACTED]

[REDACTED] (*Id.* at 6.)

H&K also participated in Comerica's transition as Personal Representative by preparing charts and summarizing each Executed Agreement. (*Id.* at 6.) For these services, H&K seeks \$187,502.50 for entertainment-related legal fees. (Mar. 3., 2017 Labate Aff. at ¶ 38.)

The non-entertainment fees stemming from November 16, 2016 pertain primarily to the attorneys of H&K's search for a successor to the Special Administrator, and its attorneys' efforts to assist in attempts to pass the PRINCE Act through Minnesota's Legislature. (*Id.* at 8.) H&K seeks \$227,874.50 for non-entertainment legal fees. (Mar. 3, 2017 Nelson Aff. at ¶ 18.)

H&K asserts that it is not claiming any additional legal fees regarding probate and

estate issues after December 26, 2016 because H&K was substituted out as counsel of record for Tyka, in favor of attorneys from Cozen O'Connor. (*Id.* at ¶ 6.) [REDACTED]

[REDACTED] (*Id.*) However, H&K appeared to have been terminated as counsel in the probate matters.

Of note, H&K's submissions on March 3, 2017 omitted attached billing entries. Later on March 9, 2017, the day before objections to fee claims were due and almost a week after the deadline for submitting fee requests, Robert Barton submitted an affidavit in support of the November 16, 2016 through January 31, 2017 non-entertainment fees dated March 3, 2017. To date, counsel for SNJ are not aware of that document being filed previously.

ARGUMENT

I. H&K Fail to Establish that the Attorneys' Fees and Expenses Incurred Benefitted the Estate

SNJ incorporate and rely on the law provided in their Memorandum in Opposition To Omarr Baker's Motions To Approve Payment of Attorney's Fees and Costs as well as the previous response to earlier claims by H&K. (Mar. 10, 2017 Mem. In Opp'n To Omarr Baker's Mot. To Approve Payment of Atty's. Fees and Costs; Dec. 23, 16 Mem. In Opp'n To Mot. To Approve Payment of Atty's Fees and Costs.)

With respect to the recent affidavit submitted on March 9, 2017, it fails to remedy H&K's failure to include billing statements with the prior motion and the late submission fails to allow for proper review by potential objectors due to the approaching response

deadline and excessive redactions that make it near impossible to assess the claimed work. As such, H&K fees to-date should be rejected in their entirety considering the failure to provide detailed work descriptions. Even if the Court considered the additional submission with the excessive redactions, H&K does not provide a detailed valuation for the benefits purportedly obtained through their work, address duplicative work performed by the Special Administrator, Personal Representative, or other non-excluded heirs' counsel, or help determine the nature of each attorney's work.

H&K's reasons for providing excessive redacted billing statements based on attorney client privilege and work-product are overbroad. Billing statements generally do not convey attorney advice subject to attorney client privilege and generally do not contain work product. *City Pages v. State*, 655 N.W.2d 839, 844-46 (Minn. Ct. App. 2003). Other law firms, such as Cozen O'Connor, did not see the need for such heavy redactions.

Additionally, according to the Court's Scheduling Order, request for attorney fees were to be submitted by March 3, 2017. (Feb. 22, 2017 Scheduling Order Relating to Approval of Atty's Fees, Final Accounting and Extension of Powers.) H&K did not submit its redacted billing until March 9, 2017—a day before SNJ's response brief was due on March 10, 2017. H&K has provided no good cause for the late filing. *See generally Brierton v. Brown Deer Apartments Hons. Assocs., LLC*, No. A09-2291, 2010 WL 5071274, at *8 (Minn. Ct. App. Dec. 14, 2010) (holding that the district court was well within its "broad discretion in determining that appellants did not show good cause to justify modifying the scheduling order and permitting their motions"); *Tryggeseth v. Thermogas*, No. A06-208, 2007 WL 656426, at *1 (Minn. Ct. App. Mar. 6, 2007) (The

district court refused to hear respondent's motion in limine "because it was filed after the deadline for such motions specified in the Scheduling Order."); *Ahlberg v. Timm Med. Techs., Inc.*, No. A05-675, 2006 WL 91792, at *3 (Minn. Ct. App. Jan. 17, 2006) (finding that appellants did not have good cause to "move to amend past the deadline for nondispositive motions established by the district court's scheduling order"). Therefore, the Court can deny payment from the Estate for H&K's billing.

With respect to the present request, the services provided by H&K appear to be largely duplicative, vague, and redundant, and any benefit to the Estate is unclear based on H&K's submissions. Like earlier submissions, H&K fails to affirmatively demonstrate how [REDACTED] benefited the Estate any more than the actions already being performed by the Special Administrator. Instead, it continues to suggest that the fees are somehow justified because H&K's attorneys [REDACTED]

[REDACTED] And while a H&K attorney served as Heir Representative, that title alone does not establish that such work benefited the Estate rather than the non-excluded heirs. Making that connection requires more than the generalizations asserted in H&K's pleadings as such generalizations are insufficient to establish benefit to the Estate that warrants forcing the Estate, and therefore other heirs, to share in those fees.

H&K also continues to seek reimbursement for efforts related to obtaining a successor for the Special Administrator and locating a co-personal representative despite Tyka discontinuing use of their services in the probate matter. Attorneys from H&K argue that they interviewed Londell McMillan, and it was through their efforts that Londell was

found to not be a proper co-personal representative. However, that decision was ultimately for the Court to decide and there is no record to suggest that any of H&K's efforts contributed to that result. Tyka was represented by different counsel at the hearing and H&K fails to offer any evidence regarding whether their work product was used in the proceedings or relied upon by the Court. In addition, H&K's materials fail to identify how its efforts facilitated the appointment of Comerica. Indeed, the non-excluded heirs agreed to Comerica's appointment, and there is no suggestion that H&K's efforts helped facilitate that result more than any other counsel's efforts. There is no suggestion that counsel was even necessary for the selection. While H&K attorneys may have participated in the process, participation does not alone benefit an estate. H&K also fails to account for unsuccessful efforts, such as the December 7, 2016 motion to restrict the Special Administrator's authority without Court approval.

In summary, it continues to be the case that awarding attorney fees to Tyka's former attorneys will only encourage additional expense to the Estate, as any interested party will seemingly be entitled to recoup attorney's fees for responsibilities assigned to the Special Administrator and Personal Representative. This is what the courts sought to avoid over half a century ago in noting that awarding fees to individuals unaffiliated with the Personal Representative should be the exception, not the norm. Accordingly, the claims should be denied.

II. H&K seek Payment of Attorney's Fees and Costs that are not Commensurate with the Value of any Benefit to the Estate.

Even if its services provide some benefit, H&K fails to meet its burden to establish benefit to the Estate resulting from their services that is commensurate with the claimed expenses. As noted above, many of the claimed services are for work that was also performed by the Estate, its attorneys, and its expert music industry advisors. Even if one assumes that the work was not in fact duplicative, H&K fails to establish any quantifiable benefit to the Estate due to its efforts. Indeed, H&K seeks \$ 187,502.50 for entertainment services while failing to quantify or place a monetary value on any purported benefits. Regarding non-entertainment fee services, H&K seeks \$219,504.50 for assisting in selecting a Personal Representative despite not participating in the hearing and without any analysis as to why its participation warrants forcing the future heirs to share in that cost despite each retaining counsel.

Finally, much of the work provided was unnecessarily duplicative from a staffing perspective. Multiple attorneys were unnecessarily involved in tasks or issues that simply did not require that type of professional manpower. Here, multiple attorneys met with Personal Representative candidates and attended the same hearings while also expensing meals and travel.

CONCLUSION

For the foregoing reasons, Sharon, Norrine, and John respectfully request that the Court deny H&K's requests for payment of attorneys' fees and costs from the Estate. As with the other previous requests for legal expenses from non-excluded heirs, approving this

request leaves the door open to each non-excluded heir to charge unnecessary expenses to the Estate while each move forward as a pseudo Special Administrator and Personal Representative contrary to Minnesota law. If the Court is inclined to award fees, SNJ respectfully request that H&K be held to its full burden and provide work descriptions that provide meaningful review and explanation justifying over \$400,000.00 in expense while also accounting for any expense incurred by Estate attorneys due to H&K's unsuccessful litigation.

Respectfully submitted,

Dated: March 10, 2017

HANSEN, DORDELL, BRADT,
ODLAUG & BRADT, P.L.L.P.

By s/ Randall W. Savers
Randall W. Sayers, #130746
Nathaniel A. Dahl, #390096
Adam J. Rohne, #392430
3900 Northwoods Drive, #250
St. Paul, MN 55112
(651) 482-8900
rsayers@hansendordell.com
ndahl@hansendordell.com
arohne@hansendordell.com

*Attorneys for Sharon L. Nelson, Norrine P.
Nelson and John R. Nelson*