

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S
MEMORANDUM IN RESPONSE TO HEIRS'
ATTORNEY FEE MOTIONS**

INTRODUCTION

Under Minnesota's Uniform Probate Code, an attorney for an heir is entitled to reimbursement from the estate if, and only to the extent that, the attorney's services benefitted the estate. Five law firms have moved the Court for payment of some or all of their fees incurred in representing two of the Heirs of the Estate of Prince Rogers Nelson ("Estate") from February 1, 2017, through December 31, 2018. Four categories of the Heirs' attorneys' fees include time for services benefitting the Estate, while other services—such as routine correspondence, court appearances, and review of court filings and proposed transactions—were for the benefit of the Heirs individually rather than the Estate as a whole. As a result, Comerica Bank & Trust, N.A., as Personal Representative of the Estate ("Personal Representative") submits this response, requesting that the Court grant the motions to the extent it determines that fees benefitted the Estate and were proportional to the benefit provided and otherwise deny the motions.

BACKGROUND**I. THE HEIRS' ATTORNEY FEE MOTIONS.**

On March 8, 2019, upon request by the Personal Representative, the Court issued an Order that any attorney of record for the Heirs who wishes to request payment of fees or

expenses by the Estate charged from February 1, 2017, through December 31, 2018, shall file a motion seeking such payment by March 31, 2019 (“Heir Fee Motions”). The Court further referred the consideration of the Heir Fee Motions to the Special Master, Judge Richard B. Solum.

In response to the Court’s Order, five law firms that previously represented two Heirs have filed motions for payment of attorneys’ fees. Cozen O’Connor (“Cozen”), which formerly served as counsel of record for Omarr Baker (and later, for Gregg Walker), seeks payment by the Estate of attorneys’ fees and costs totaling \$604,759.83 for February 1, 2017 through December 31, 2017, and \$206,774.50 for January 1, 2018 through June 18, 2018. Cozen seeks payment for ten categories of fees, plus a “general” catch-all category.

Justin Bruntjen, who formerly served as counsel for record for Alfred Jackson (currently counsel for Gregg Walker), seeks payment by the Estate of attorneys’ fees and costs totaling \$359,482.00 for February 1, 2017 through December 31, 2017, and \$296,752.50 for January 1, 2018 through November 2, 2018. Mr. Bruntjen seeks payment for eleven categories of fees, plus a “general” catch-all category.

Frank Wheaton, who formerly served as counsel for record for Alfred Jackson, seeks payment by the Estate of attorneys’ fees and costs totaling \$114,120.00 for February 1, 2017 through March 23, 2017. Mr. Wheaton did not categorize his fees and appears to seek payment of all fees incurred on behalf of Mr. Jackson.

White Wiggins & Barnes, LLP and J. Selmer Law, P.A. (collectively, “Barnes and Selmer”), who formerly served as counsel for record for Alfred Jackson, jointly seek payment by the Estate of attorneys’ fees and costs totaling \$108,040.94 for October 2, 2018 through

December 28, 2018. Barnes and Selmer did not categorize their fees and appear to seek payment of all fees incurred on behalf of Mr. Jackson.

In total, the former attorneys for Mr. Baker and Mr. Jackson seek payment of \$1,689,929.77 by the Estate.

ARGUMENT

I. LEGAL STANDARD.

The Court of Appeals in this matter outlined the four circumstances under Minnesota Statutes § 524.3-720 whereby an attorney for an interested person can obtain reimbursement of a portion of its attorneys' fees:

(1) if an “interested person . . . successfully opposes the allowance of a will”; (2) if “after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate . . . and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”; (3) if “a claim is made against the personal representative on behalf of the estate and any interested person . . . by a separate attorney prosecute[s] or pursue[s] and recover[s] such fund or asset for the benefit of the estate”; and (4) if “the services of an attorney for any interested person contribute to the benefit of the estate, as such, as distinguished from the personal benefit of such person.”

(Jan. 22, 2018 Minn. Ct. App. Order at 8-9.)

The Court of Appeals directed that this Court must make specific findings regarding which of these circumstances apply to the Heir Fee Motions and that the Court should determine the amount of fees that is “just and reasonable” and “commensurate with” the benefit derived by the Estate “from such services.” (*Id.* at 14-15; Minn. Stat. § 524.3-720.) The burden is on the Heirs' counsel to demonstrate an entitlement to fees, including the reasonableness of the fees and/or the benefit to the Estate. (*See generally* Jan. 22, 2018 Minn. Ct. App. Order at 6-8.) Benefits “should be quantified in monetary terms” and “may be measured, for example, in terms of an increase in the estate's assets or income or a decrease in the estate's liabilities or expenses.” (*Id.* at 15.)

To the extent that multiple Heirs' counsel worked toward the same objective, the Court "should make findings concerning the relative proportions of the quantified benefits for which each law firm or attorney is responsible." (*Id.*) In awarding fees commensurate with the benefit conferred, the Court should consider the extent to which the Heirs' counsel have shown that their "related fees are just and reasonable" or "whether the work of [multiple] law offices resulted in any benefit not achievable by the work of just one." (Oct. 4, 2018 Order at 5-6.)

II. FOUR CATEGORIES OF THE HEIRS' ATTORNEYS' FEES ARE ELIGIBLE FOR REIMBURSEMENT.

The Personal Representative believes that services included in four categories of the fees and expenses for which Heirs' Counsel seek payment from the Estate fall within the circumstances outlined by the Court of Appeals as potentially eligible for reimbursement from the Estate.

A. Fees Incurred in Obtaining a Determination of Heirship.

Fees incurred by the Heirs' counsel in obtaining a determination of heirship are reimbursable by the Estate under Minnesota Statutes § 524.3-720 because the Personal Representative instructed the Heirs that they, rather than the Personal Representative, should seek that determination from the Court. Cozen researched, briefed, and argued the Motion to Determine Heirs, which was filed April 12, 2017, and granted by the Court by Order dated May 18, 2017. (Kane Aff. ¶ 20.) This Motion benefitted the Estate by providing certainty regarding the identity of the Heirs and by commencing the one-year limitations period for any additional claims of heirship. (*Id.*)

Certain additional fees incurred by the Heirs' counsel regarding heirship are also payable by the Estate, commensurate with the benefit conferred. Specifically, while it was the Personal Representative's counsel that researched, wrote, and argued the heirship appeals (by Brianna

Nelson, Venita Jackson Leverette, and Darcell Gresham Johnston, et al.), the Personal Representative solicited and considered the input of the Heirs' counsel in briefing the appeals. Because Cozen and Mr. Bruntjen were involved in briefing and arguing the heirship claims at the district-court level (before the Personal Representative was appointed), they had unique knowledge of the subject matter of the appeals and their involvement in the appeals contributed to the Estate's success.¹

B. Fees Incurred Related to the Rescission of the UMG Agreement.

Certain fees incurred by the Heirs' counsel related to the rescission of the UMG Agreement are eligible for reimbursement by the Estate under Minnesota Statutes § 524.3-720 because such services conferred a benefit on the Estate. Immediately after its appointment as Personal Representative on February 1, 2017, the Estate was subject to claims of competing rights by Warner Bros. (under a 2014 agreement) on the one hand, and UMG (under an agreement executed January 31, 2017) on the other hand. After investigating and analyzing the claims, the Personal Representative determined that the most prudent course of action was to seek rescission of the UMG Agreement. Cozen and Mr. Bruntjen supported the Personal

¹ While the Personal Representative believes that the Heirs' attorneys are eligible for reimbursement for certain services related to the determination of the heirs of the Estate, such fees should be paid only to the extent the fees are reasonable and commensurate with the benefit conferred. The Personal Representative does not support payment of all fees categorized as "Heirship" fees by Cozen and Mr. Bruntjen. Several time entries included in the "Heirship" category by Cozen and Mr. Bruntjen appear to either have no relation to heirship (*e.g.* Mr. Bruntjen's entries to "review and respond to emails regarding loans Prince made to other parties during his lifetime" or for "call with Jobu counsel regarding issues with Koppelman" and Cozen's entries relating to a separate lawsuit by Brianna Nelson: "Docket hearing on Defendants' motion to dismiss in Brianna state court matter; review same; review email regarding hearing; communications regarding ECF services; review filings and docket regarding upcoming hearings and deadlines") or appear to relate to multiple other subject matters in addition to heirship. Thus, the Personal Representative requests that the Court exercise its independent judgment in determining which fees, within any given category, including "Heirship," may be properly reimbursed by the Estate.

Representative's Motion to Approve Rescission through their research, filings, and arguments. These services benefitted the Estate by helping to ensure the success of the Personal Representative's Motion and the avoidance of costly and protracted litigation with two of the Estate's most important entertainment partners. For this reason, the "Entertainment" fees by Cozen and Mr. Bruntjen related to rescission of the UMG Agreement are properly payable by the Estate.

The remaining "Entertainment" fees submitted by the Heirs' counsel, however, should not be paid by the Estate for two reasons. First, some of the "Entertainment" time entries relate to transactions by the Heirs individually, such as consulting agreements for their benefit, rather than by the Estate. Second, even the "Entertainment" time entries related to Estate transactions did not benefit the Estate. Unlike during the Special Administrator's term (when the Court appointed Mr. Wheaton and certain other Heirs' counsel to work with the Special Administrator to negotiate entertainment deals), the Personal Representative has held the sole authority and responsibility to negotiate on behalf of the Estate since its appointment on February 1, 2017. While the Personal Representative continued to keep the Heirs apprised of licensing requests and potential entertainment transactions, the Heirs' attorneys' review of such potential licenses and transactions were for the benefit of advising the Heirs and did not benefit the Estate as a whole. This Estate cannot financially sustain the cost of multiple counsel for the often differing interests and perspectives of the six Heirs billing time for each entertainment transaction.

C. Fees Incurred in Opposing the Petition to Remove Comerica as Personal Representative.

Fees incurred by the Heirs' counsel in opposing the removal of Comerica Bank & Trust, N.A. as Personal Representative are reimbursable by the Estate under Minnesota Statutes § 524.3-720 because such services conferred a benefit on the Estate. During October 2017, three

of the Heirs filed a Petition to Permanently Remove Comerica as Personal Representative. Mr. Baker and Mr. Jackson's counsel opposed the Petition alongside Comerica. In December 2017, the Court denied the Petition and determined that one of the driving forces behind the Petition was the desire to have L. Londell McMillan obtain control over the Estate. (Dec. 18, 2017 Order.) Cozen's and Mr. Bruntjen's opposition to the Petition and the affidavit of Mr. Baker assisted the Personal Representative in avoiding what would have been, at minimum, a costly transition and, at worst, a disastrous takeover of the Estate by a self-interested party.

D. Fees Incurred Related to Jobu Presents, Charles Koppelman, L. Londell McMillan, and the Second Special Administrator.

Fees incurred by the Heirs' counsel in objecting to the conduct and compensation of the former Special Administrator's advisors are reimbursable by the Estate under Minnesota Statutes § 524.3-720 because such services conferred a benefit on the Estate. Cozen was instrumental in exposing the misconduct of the former Special Administrator's advisors Charles Koppelman and L. Londell McMillan, particularly as it related to the Estate's agreement and subsequent dispute with Jobu Presents. Cozen's objections eventually led to the appointment of the Second Special Administrator Peter Gleekel, who investigated the conduct of Koppelman and McMillan, among others, and is now in the process of seeking recovery of more than \$3.2 million in commissions paid to McMillan and Koppelman in connection with the terminated Jobu Presents transaction and the rescinded UMG Agreement.²

² The Personal Representative notes that any attorneys' fees related to the wrongful death lawsuit—which Mr. Bruntjen categorized under “Koppelman McMillan Issues”—are not reimbursable by the Estate, as that suit was initiated by and for the benefit of the Heirs, rather than the Estate, and all amounts recovered will go directly to the Heirs.

III. THE REMAINING CATEGORIES OF FEES DID NOT CONFER A BENEFIT ON THE ESTATE.

With the exception of certain fees incurred in connection with the above categories, the Heirs' attorneys have not met their burden of establishing that their services conferred a benefit on the Estate. Based on the volume and substance of the fees for which the Heirs' attorneys are seeking reimbursement, it appears that they have conflated services *related to* the Estate with services *benefitting* the Estate.

For example, all the moving attorneys seek payment by the Estate for services that amount to keeping the Heirs informed of developments in the Estate proceedings. (*See, e.g.*, Bruntjen Aff. ¶¶ 40-42 (seeking fees for keeping Heirs “up to date and knowledgeable about the status of the ongoing legal issues”); Kane Aff. ¶¶ 35-37 (seeking fees for “describ[ing] to the Heirs each proceeding taking place before the district court”); Wheaton Aff. ¶ 21 (seeking fees for “help[ing] the Heirs stay informed”); Selmer Aff. Exs. A-B.) While such services may be important to representing the Heirs, they do not benefit the Estate. As a result, the fees incurred for such services—which includes monitoring court filings, reviewing proposed transactions, and appearing for court hearings and conferences, among other tasks—should be paid by the Heirs and not the Estate, especially in light of the fact that counsel for only two of the six Heirs have requested payment from the Estate.³

Similarly, Cozen and Mr. Bruntjen seek payment by the Estate of more than \$225,000 for the time they spent opposing the discharge, accounting, and fees of the former Special Administrator. The Court has discharged the former Special Administrator and, rather than

³ These services are spread across nearly all of the categories of reimbursement requested but comprise most or all of the services categorized as “Entertainment,” “Paisley Park,” “Preparing and Attending Court Appearances and Court Calls” and “General.”

benefitting the Estate, Cozen and Mr. Bruntjen's filings related to the former Special Administrator led to the Estate paying hundreds of thousands of additional attorneys' fees incurred by the former Special Administrator. (Oct. 17, 2018 Order & Jan. 2, 2019 Order.) To be clear, Cozen and Mr. Bruntjen made their filings against the former Special Administrator based upon a good-faith belief that their actions would ultimately benefit the Estate. But, under the Probate Code, that is not enough—to recover fees for a claim made against the former Special Administrator, counsel needed to actually “pursue and recover such fund or asset for the benefit of the estate.” Minn. Stat. § 524.3-720 (emphasis added). Because they did not recover from the former Special Administrator, Cozen and Mr. Bruntjen cannot be paid by the Estate for this category of fees as a matter of law.⁴

Finally, Mr. Wheaton's and Barnes and Selmer's Motions are deficient because: (1) they have submitted *all* of the fees they incurred in representing Mr. Jackson; and (2) they failed to categorize or otherwise specify which of the services they have submitted for payment provided a benefit to the Estate. While the Personal Representative recognizes that Mr. Wheaton provided services that benefitted the Estate prior to February 1, 2017,⁵ and Barnes and Selmer have

⁴ Cozen and Mr. Bruntjen also seek payment for the time they spent in preparing a complaint against the former Special Administrator. That Complaint, however, was dismissed with prejudice because it was not filed with the Court within one year of being served. (*See* July 16, 2018 Bremer Trust's Reply at 7-8.)

⁵ In accordance with the Court's prior orders, the Estate has paid Mr. Wheaton for services rendered during 2016 and January 2017.

provided services that benefitted the Estate since December 31, 2018,⁶ they have not established that any fees set forth in the present Heir Fee Motions benefitted the Estate and are eligible for reimbursement.

CONCLUSION

For the reasons set forth herein, the Personal Representative respectfully requests that the Court grant in part and deny in part the Heir Fee Motions.

Dated: April 15, 2019

/s/ Joseph J. Cassioppi

Mark W. Greiner (#0226270)

Joseph J. Cassioppi (#0388238)

Emily A. Unger (#0393459)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street

Suite 4000

Minneapolis MN 55402-1425

612-492-7000

612-492-7077 fax

mgreiner@fredlaw.com

jcassioppi@fredlaw.com

eunger@fredlaw.com

Attorneys for Comerica Bank & Trust, N.A.

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⁶ During February 2019, Barnes and Selmers helped to expose the actions of two “advisors” for certain Heirs who committed massive breaches of their confidentiality obligations to the Estate, enabling the Personal Representative to take steps to prevent any further confidentiality breaches. The Personal Representative anticipates that the fees related to those services will qualify for reimbursement from the Estate when the Heirs submit their next round of requests for reimbursement.