

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re: Estate of:

Court File No. 10-PR-16-46

Prince Rogers Nelson,

**ORDER ON CONTEMPT
AND RELATED MOTIONS**

Deceased.

The above entitled matter came before the undersigned on May 20, 2019 pursuant to Comerica Bank & Trust, N.A.'s motion for an order finding Gregg Walker in contempt of court, Michael Lythcott's motion for return of a flash drive, and Omarr Baker and Alfred Jackson's motion to reinstate Mr. Lythcott as their advisor and for an order restricting the use of documents produced in response to the Court's Order filed February 13, 2019. Appearances were noted on the record.

In an Interim Order on Contempt and Related Motions filed May 22, 2019, the Court directed the parties to mediate the issues relating to the confidentiality of Estate documents and information. The parties have since informed the Court that mediation with Mr. Walker was successful and the parties are preparing a settlement agreement. Mediation with Mr. Lythcott, however, was unsuccessful.

On July 16, 2019, Mr. Lythcott filed a letter with the Court asking that it modify its February 27, 2019 Second Order Regarding Estate Confidential Information to preclude Mr. Lythcott from being required to disclose privileged communications with his personal attorneys and to reduce the amount of the surety bond from \$25,000 to \$10,000 to cover special master fees. In response, the Personal Representative requests the Court rule on the motions initially brought before it.

Now, therefore, based upon the file and proceedings herein, the Court makes the following:

ORDER

1. The Personal Representative's motion to turn over the flash drive to its counsel is GRANTED.

2. Counsel for the Personal Representative, or a vendor selected by the Personal Representative, shall review the documents and emails on the flash drive to first:
 - a. Exclude all documents and emails previously disclosed to the Personal Representative;
 - b. Exclude emails between Mr. Lythcott and his counsel, the Davis Shapiro law firm;
 - c. Exclude all other documents and emails which are not responsive to the issue of Mr. Lythcott's fiduciary responsibility to the Estate.

With the exception of those previously disclosed, all excluded documents and emails shall be treated by counsel for the Personal Representative as confidential and not further disclosed.

3. Counsel for Comerica shall review the remaining documents and emails exclusively for the purpose of identifying previously unidentified third-parties (including third-parties for which it has not yet obtained contact information) that received Confidential Information and determining whether there are additional third-parties for whom the Estate needs to take steps related to seeking the return and/or destruction of Confidential Information. All such records identified shall be referred to as the "Third Party Records." No other use, analysis, review, examination or circulation of the remaining documents will be allowed without further order of the Court.

4. Mr. Lythcott shall provide the Personal Representative with contact information (to the extent that he has any contact information) for individuals and entities the Personal Representative identifies as having received Confidential Information and for which it has been unable to determine their contact information.

5. The Court reserves the right to assess the cost of the analysis of the documents and emails on the flash drive after further hearing in the event relevant information has been withheld.

6. Any other motions not specifically granted are respectfully DENIED.

BY THE COURT:

Dated: August 12, 2019

Kevin W. Eide
Judge of District Court

NOTICE: A true and correct copy of this Order/Notice has been served by EFS upon the parties. Please be advised that orders/notices sent to attorneys are sent to the lead attorney only.

MEMORANDUM

The issues presently before the Court stem from the actions of two heirs' advisors, Michael Lythcott and Gregg Walker. Mr. Walker was formally appointed by the Court as an heirs' advisor in this matter, however Mr. Lythcott was not. As noted above, the Estate has resolved its issues with Mr. Walker, therefore this decision and memorandum focus on the issues involving Mr. Lythcott.

Mr. Lythcott was engaged as an advisor to Heirs Omarr Baker and Alfred Jackson. In connection with his engagement, Mr. Lythcott was granted access to privileged Estate documents, subject to a non-disclosure agreement ("NDA"). In early 2019, the Personal Representative became concerned that Mr. Lythcott had disclosed privileged Estate documents and information in violation of his NDA. After a telephone conference on February 13, 2019, the Court issued the following order:

1. Within 10 days, Michael Lythcott and Gregg Walker shall provide counsel for Comerica all communications and related documents with any third-parties (including, but not limited to, the two entities referenced in the February 8, 2019 Letter filed by Alfred Jackson, Omarr Baker, and Tyka Nelson) that included confidential information that belongs to the Estate. Without limiting the foregoing, Mr. Lythcott and Mr. Walker shall provide all communications and documents related to the "pitch book" attached to the February 11, 2019 letter filed by White Wiggins & Barnes, LLP. Mr. Lythcott and Mr. Walker shall also provide an access log to the data site referenced in the White Wiggins & Barnes, LLP letter that discloses all parties who accessed the site and what they reviewed.
2. The Court's appointment of Gregg Walker and Michael Lythcott as Heirs' representatives in its Orders filed May 15, 2018 and May 25, 2018 is hereby revoked pending further order of this Court.
3. This is a temporary order and any party (the Estate or any Heir) can request a hearing to vacate or amend this order or to seek additional remedies for any alleged violation of a Non-Disclosure Agreement (NDA) or duty to the Estate.
4. The Court reaffirms the obligation of anyone who has signed a NDA with the Estate to abide by the terms of the NDA. The Court reserves the right to impose sanctions as

allowed by law on anyone who has gained or disclosed confidential information of the Estate and is found to be in violation of a NDA.

Instead of following the Court's specific order to provide information directly to counsel for the Personal Representative, on February 22, 2019, Mr. Lythcott's attorney, Christopher Madel, filed a letter and flash drive with the Court. In that letter, Mr. Madel stated the flash drive contained over 20,000 emails and attachments and that he was submitting it for in camera review. In response, on February 27, 2019, the Court issued the following order:

1. If Mr. Lythcott believes that some form of review is necessary before the flash drive is turned over to counsel for the Personal Representative, Mr. Lythcott shall do the following prior to March 8, 2019:
 - a. file a motion requesting *in camera* review,
 - b. set forth the basis for a claim of privilege and the factual basis upon which the claim of privilege is being made, and
 - c. file a surety bond of \$25,000 with the Court which shall be used to pay the fee of a special master to review the contents of the flash drive if the Court grants the motion.
2. If the requirements of the paragraph 1 herein are not complied with by March 11, 2019, the Court shall turn the flash drive over to counsel for the Personal Representative in compliance with the Court's February 13, 2019 Order.

Again, instead of complying with the Court's orders, on March 8, 2019 Mr. Lythcott filed a motion for return of the flash drive and seeking almost \$40,000 in fees allegedly relating to "complying" with the Court's orders. Mr. Lythcott argues he complied with the Court's February 13th order on February 25th by providing counsel for the Personal Representative with hard copies of all documents which were not privileged, therefore in camera review of the flash drive is no longer necessary.

In response, the Personal Representative argues Mr. Lythcott has produced less than half of the documents provided to the Court and has refused to produce a privilege log or otherwise substantiate his privilege claims. Therefore, the Court should determine Mr. Lythcott has waived any privilege claims and provide the flash drive to its counsel.

On a parallel track, on February 26, 2019, counsel for Mr. Baker and Mr. Jackson filed a motion with the Court for an order:

1. that receipt and review of all information produced in response to the Feb. 13 Order will be restricted to:
 - a. the Court; and
 - b. to attorneys of Fredrikson & Byron, P.A., counsel for Comerica Bank, upon their execution of a confidentiality agreement.
2. that neither the Court nor any party will use or consider the information produced by Michael Lythcott or Gregg Walker in response to the Feb. 13 Order other than for the Court's determination of whether Michael Lythcott or Gregg Walker violated their non-disclosure obligations to the Estate. Any other use or consideration will not occur absent a hearing for which Mr. Jackson and Mr. Baker have been provided notice and at which they have the opportunity to be heard.
3. Reinstating the appointment of Michael Lythcott as a representative of the Heirs.

The Personal Representative objects to Mr. Baker and Mr. Jackson's motion, alleging Mr. Lythcott has repeatedly violated his NDA and arguing there is no basis for restricting information to counsel only.

Oral arguments on the parties' motions were heard by the Court on May 20, 2019, along with the Personal Representative's motion for an order finding Gregg Walker in contempt of court. On May 22, 2019, the Court issued an Interim Order on Contempt and Related Motions, directing the parties to mediate the issues relating to the confidentiality of Estate documents and information. The parties thereafter informed the Court that while mediation with Mr. Walker was successful, mediation with Mr. Lythcott was not.

On July 16, 2019, Mr. Lythcott filed a letter to the Court asking that it modify its February 27, 2019 Second Order Regarding Estate Confidential Information to preclude Mr. Lythcott from being required to disclose privileged communications with his personal attorneys and to reduce the amount of the surety bond from \$25,000 to \$10,000 to cover special master fees. Mr. Lythcott now asserts:

1. The only basis for privilege he is asserting is at this time is that he retained the law firm of Davis Shapiro to provide him with legal counsel and those communications are privileged.
2. In addition, communications between himself and his lawyer that contain third parties but do not contain or discuss information belonging to the Estate are non—responsive to the February 13th Order.

3. Emails sent to, or received from the Heirs, Virginia Baker, President Nelson, Bruce Jackson, and their respective council are non-responsive to the February 13th Order.
4. His lawyers have already submitted more than 10,000 emails to council for Comerica. To conserve costs for all parties, he requests that the special master's review be limited to those communications in the flash drive that Comerica has not already received.
5. Given his limited financial resources and his alleged attempt to:
 - a. Comply with all the Court's Orders
 - b. Reach a good faith resolution with Comerica
 - c. Reduce the number of emails to be reviewed
 - d. Limit his general claims of privilege,

he now requests that the surety bond be reduced to \$10,000.

In response, the Personal Representative requests the Court rule on the motions initially brought before it.

The Court understands the parties have made a good faith effort to resolve this discovery dispute. The Court will wait no longer, however, for Mr. Lythcott to decide which of the Court's orders he will comply with or which he will ignore. Under a backdrop of concern that Mr. Lythcott may have released confidential Estate information in violation of his Non-Disclosure Agreement, the Court is granting the Personal Representative's motion for possession of the flash drive, with the hope that any further potential damage to the Estate may be minimized.

K.W.E.