

STATE OF MINNESOTA
COUNTY OF CARVER

FILED
JUL 06 2016
CARVER COUNTY COURTS

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION
Case Type: Special Administration

In the Matter of:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,

Decedent,

ORDER

and

RE: HENSON & EFRON

Tyka Nelson,

Petitioner.

Special Administrator Bremer Trust, N.A., ("Special Administrator" or "Bremer Trust") seeks confidential and privileged information in the possession of the law firm of Henson & Efron ("H&E"). The Special Administrator understands H&E previously represented Decedent. H&E does not object to entry of this Order.

Bremer Trust, N.A. is represented by Laura Krishnan, Esq. and Douglas R. Peterson, Esq. of the law firm of Stinson Leonard Street; H&E is represented by Lisa T. Spencer, Esq. and Bruce C. Recher, Esq.

BACKGROUND

1. By Order of May 2, 2016 and Letters of Special Administration of April 27, 2016, Bremer Trust has been appointed by the Court to serve as the Special Administrator of the Estate of Prince Rogers Nelson with "authority to manage and supervise the Decedent's assets and determine the identity of the Decedent's heirs." Letters of Special Administration at ¶ 2.

2. H&E previously served as counsel for Prince Rogers Nelson and might possess confidential information potentially relevant to the determination of the appropriate beneficiaries of the Decedent's estate and other matters before the Court in the above-captioned probate proceeding.

3. By operation of Minn. Stat. § 524.3-617 and this Court's Letters of Special Administration, Bremer Trust is currently charged with the responsibility to manage, among other things, the legal affairs of the Decedent. See Minn. Stat. § 524.3-703; *see, e.g., Prof'l Fiduciary, Inc. v. Silverman*, 713 N.W.2d 67, 71 (Minn. Ct. App. 2006) ("Under Minnesota law, personal representatives may bring suit on behalf of the estate."). As to its role in determining heirs, the Special Administrator is properly exercising the right of a personal representative to access information of the Decedent protected as confidential under the attorney-client privilege and related protections when it is in the best interest of the Decedent and the Estate. *See* Minn. Stat. § 524.3-617.

4. The Minnesota Office of Lawyers Professional Responsibility regularly relies upon commentary from the American College of Trusts and Estate Counsel for guidance on issues of attorney-client privilege as applied to deceased clients. See Jorgensen, Testamentary Exception to Privilege, Confidentiality, Reprinted from Minnesota Lawyer (May 14, 2001). According to ACTEC, a deceased client's personal representative has the power to consent to disclosure of "information regarding a deceased client's dispositive instruments and intent, including prior instruments and communications relevant thereto." ACTEC Commentary, MRPC 1.6; *see also* Restatement (Third) of the Law Governing Lawyers, sec. 81, sec. 86(1)(a) (ALI 2000) ("a personal representative of an incompetent or deceased client . . . may invoke or waive the [attorney-client] privilege, either personally or through counsel or another authorized agent.").

5. H&E respects the responsibilities of the Court-appointed Special Administrator, but wishes to take care to honor its professional obligations to the Decedent, particularly with regard to information protected by the attorney-client privilege and work product doctrine which was generated and acquired during the decedent's lifetime. H&E looks to the Court for direction in this circumstance, as H&E is not in a position to unilaterally waive the attorney-client privilege and it desires to take care to honor its professional obligations regarding sharing confidential information acquired in its representation of the decedent during decedent's lifetime with the Special Administrator.

6. Bremer Trust believes, and the Court concurs, that it is in the best interest of Decedent and his estate for H&E to share such confidential and privileged information with Bremer Trust and its counsel to facilitate the responsibilities of the Special Administration. The Court appreciates that Bremer Trust intends for any such disclosure to be performed in a manner which maintains and preserves the attorney-client privilege and work product doctrine protections afforded to Decedent during his lifetime and now attended to the Special Administrator standing in Decedent's stead at the Court's direction.

7. While the sharing of the above-referenced confidential and privileged information generated and acquired during decedent's lifetime by H&E with Bremer Trust and its counsel will assist Bremer Trust in fulfilling its duties of special administration, it recognizes that any subsequent decision to waive those protections requires a separate determination as to whether "the waiver is in the interest of the client's estate and would not damage the client's reputation." *See United States v. Yielding*, 657 F.3d 688, 707 (8th Cir. 2011).

8. Accordingly, the Court believes it to be prudent under these circumstances that in the event Bremer Trust finds it reasonable and necessary to waive the attorney-client privilege and work product doctrine protections afforded any or all of the confidential and privileged information shared by H&E, Bremer Trust should obtain the permission of the Court to do so, with H&E provided with notice and an opportunity to address the issue with the Court in a manner which preserves the privilege protections pending the Court's determination.

ORDER

THEREFORE, the Court HEREBY ORDERS that:

1. H&E is authorized to share confidential and privileged information from its prior representation of Decedent with Bremer Trust and its counsel, with the Court affirming that such a disclosure will not waive the attorney-client privilege and work product doctrine protections afforded that information and such a sharing of confidential and privileged information by H&E is consistent with its responsibilities under the Minnesota Rules of Professional Conduct and the duties delegated to the Special Administrator under Minnesota law and this Court's Letters of Special Administration.

2. In the event Bremer Trust determines it to be reasonable and necessary to waive the privileged protections to the information shared by H&E, it shall seek the Court's permission to do so, with notice and an opportunity to be heard extended to H&E.

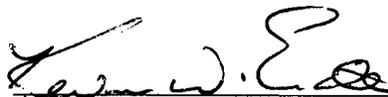
3. In the event Bremer Trust seeks permission from the Court to waive said privileges, Bremer Trust and H&E shall make their submissions to the Court under seal, and the Court will conduct an *in camera* review of those submissions to preserve their privilege and confidentiality protections pending a Court determination.

4. Appreciating that the duration of the Special Administration is limited, neither Bremer Trust, its counsel, nor H&E shall share the confidential and privileged information currently held by H&E with any Co-Special Administrator or Personal Representative later appointed unless permission is obtained from the Court to do so, thus preserving the privilege protections afforded to the Decedent in a manner that is in the interest of the Estate as well as the Decedent.

ITS IS SO ORDERED.

Dated: July 6, 2016

BY THE COURT:



The Honorable Kevin W. Eide
District Court Judge