

STATE OF MINNESOTA  
COUNTY OF CARVER

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

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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  
RESPONSE TO MOTIONS TO APPROVE  
FEES REQUESTED BY HEIRS'  
REPRESENTATIVES**

**REDACTED PUBLICLY-FILED  
VERSION**

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**INTRODUCTION**

The Court appointed Charles Spicer and Gregg Walker as Heirs' Representatives for the limited purpose of "reviewing the proposed entertainment deal currently being proposed to the Court and for future entertainment deals (both short-form and long-form) . . . ." (May 25, 2018 Order at 1.) Recognizing the highly confidential nature of the information the representatives would obtain access to as a result of their roles, the Court required them to execute nondisclosure agreements and prohibited them from providing access to confidential information to anyone who had not executed an NDA with the Estate. (*Id.* at 2.) Mr. Spicer and Mr. Walker were directed to bill their respective clients for their services, after which those Heirs could seek reimbursement from the Estate for any services that "were a benefit to the Estate as a whole, instead of a benefit to individual Heirs." (May 25, 2018 Order at 2.)

The representatives now seek a total of \$582,696.81 in fees to be paid from the Estate. If the Court is inclined to grant payment of any fees at all, it should significantly reduce the amount

sought by Mr. Spicer and deny Mr. Walker's request in its entirety. With respect to Mr. Spicer, he has not submitted anything to substantiate his \$625 hourly rate and the vast majority of the time for which he is seeking reimbursement has nothing to do with the role to which he was appointed by the Court. Instead, Mr. Spicer's clients have demanded that he be included on substantially all communications related to the Estate and it appears that he is attempting to bill the Estate .25 hours for every email he receives. Any compensation provided to Mr. Spicer should be based on a reasonable hourly rate, limited to the time he can establish he spent on the entertainment transactions contemplated under the May 25, 2018 Order, and tied to any benefit Mr. Spicer provided the Estate—i.e., reduced litigation expenses associated with fewer challenges by his clients to entertainment transactions proposed by the Estate.

Mr. Walker should receive nothing. Any marginal benefit he provided the Estate is far outweighed by the damage inflicted as part of the improper scheme he executed with Michael Lythcott to sell the assets of the Estate in an attempt to enrich himself. Mr. Walker was properly removed as an Heirs' Representative by the Court and has forfeited any right to reimbursement by his misconduct. At a minimum, any benefit Mr. Walker could establish is more than offset by the attorneys' fees and costs incurred by the Estate remediating his malfeasance.

## **ARGUMENT**

### **I. STANDARD ON REIMBURSEMENT OF HEIRS' REPRESENTATIVE FEES.**

The Minnesota Probate Code includes specific provisions authorizing the payment of compensation to the personal representative, attorneys and other agents employed by the personal representative, and in certain circumstances attorneys retained by interested persons who contribute to the benefit of the estate. Minn. Stat. §§ 524.3-719, 524.3-720, 524.3-721. The Code does not include an equivalent provision authorizing compensation to non-attorney agents or advisors retained by heirs or other interested persons. To the extent the Court determines that the

Estate should reimburse any fees charged by the representatives, it would need to fall under the Court's equitable authority to supervise the Estate and "to promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to successors." Minn. Stat. § 524.1-102(b)(3); *see also* Minn. Stat. § 524.3-105 ("The court has exclusive jurisdiction of proceedings, to determine how decedent's estates subject to the laws of this state are to be administered, expended and distributed.").

The Court, through its May 25, 2018 Order, set the scope, requirements, and payment and potential reimbursement process related to the appointment of the representatives. The Court explained "Mr. Walker and Mr. Spicer shall jointly serve as Heirs' representatives in reviewing the proposed entertainment deal currently being proposed to the Court [the Universal Pictures transaction] and for future entertainment deals (both short-form and long-form) . . . ." (May 25, 2018 Order at 1.) The Court provided that the purpose of appointing the Heirs' Representatives was to ensure "a greater level of communication of information to the Heirs in a timely manner, allowing the Heirs input into the formulation of entertainment deals, avoiding conflict between the parties and ultimately increasing the level of income or reduc[ing] the expenses of the Estate." (May 25, 2018 Order at 2.) The representatives were directed to work collaboratively with the Personal Representative and were required to execute non-disclosure agreements with the Estate. Both complied with that requirement and agreed, in those NDAs, not to disclose or use confidential information for any purpose unrelated to their roles as Heirs' Representatives or as necessary to advise their clients. (June 29, 2020 Declaration of Joseph J. Cassioppi ("Cassioppi Dec."), Exs. A-B.)

Mr. Walker was required to submit the billing for his services to Omarr Baker and Alfred Jackson. Mr. Spicer was required to submit the billing for his services to Sharon Nelson, John

Nelson, and Norrine Nelson. (May 25, 2018 Order at 2.) Those Heirs then had the ability to “submit the billing to the Court to determine whether the services provided were a benefit to the Estate as a whole, instead of a benefit to individuals Heirs, and should be paid by the Estate.” (*Id.*) Presumably, the Court required the representatives to bill their clients for their services in the first instance as a safeguard against overbilling the Estate—to the extent that the representatives’ clients were unwilling to pay the fees charged, the Estate should not be required to do so either.

That safeguard indisputably was not followed here. Neither of the representatives submitted evidence that they regularly provided invoices to their clients. Instead, it appears from the affidavit submitted by Omarr Baker that the first time he reviewed Mr. Walker’s invoice was on or after May 19, 2020—more than a year after Mr. Walker was terminated as an Heirs’ Representative. (May 19, 2020 Baker Aff.) Similarly, Mr. Spicer attached to his affidavit an email dated April 12, 2020 from Sharon Nelson stating that she approved of his single invoice, covering the time period of May 29, 2018 through March 31, 2020, and asking him to submit the fees to the Court. (Spicer Aff., Ex. A.) More importantly, Mr. Spicer admits in his affidavit that he has not been paid anything by his clients. (*Id.*, at p. 2.) It likewise appears that neither Mr. Baker nor Mr. Jackson prior to his death made any payment to Mr. Walker. There is also no indication in the record that, should the Court deny the fees requested, the Heirs intend to pay the remaining balance.

**II. IF THE COURT DECIDES TO AWARD FEES TO CHARLES SPICER, IT SHOULD GREATLY REDUCE THE AMOUNT HE IS SEEKING AND BASE THE FEES AWARDED ON THE VALUE HE PROVIDED TO THE ESTATE.**

In the event the Court determines that Mr. Spicer qualifies for payment from the Estate under the May 25, 2018 Order and Minnesota law, the Personal Representative does not oppose Mr. Spicer’s request to receive some compensation from the Estate. The amount he is seeking,

however, is excessive and is based largely on Mr. Spicer attempting to charge the Estate for activities that fall far outside of the role to which he was appointed by the Court.

As an initial matter, Mr. Spicer does not provide any explanation for why he chose the hourly rate of \$625 he is attempting to charge the Estate, or how that rate compares to the amount he charges for services to other clients. It is important for Mr. Spicer to establish that the hourly rate he is seeking is reasonable because he billed his time in quarter-hour increments and many of the time entries appear to be based on Mr. Spicer simply reading emails sent by the Personal Representative on which he was copied at the request of his clients.

Next, Mr. Spicer makes no attempt to tie the work for which he is seeking compensation to the narrow role to which he was appointed by the Court—reviewing short and long form entertainment deals. In fact, he readily admits that he is seeking compensation for a wide-range of unrelated topics, including participating in mediations, “Estate business,” and communications with the Heirs. (Spicer Aff., at p. 2-3.) Prior to Mr. Spicer’s appointment as Heirs’ Representative, he frequently contacted the Personal Representative or was included in communications with the Personal Representative, holding himself out as an advisor to Sharon, John, and Norrine Nelson. Since his appointment, it appears that Mr. Spicer has converted his advisory activities for his clients to purported billable activities as Heirs’ Representative. His time entries include amounts related to the Love 4 One Another Charity (*Id.*, Ex. B, 6/5/18), a separate charity launch (6/10/18), consulting with his clients regarding a line of credit unrelated to the Estate (6/27/18), reviewing loan documents for Omarr Baker, Tyka Nelson, and Alfred Jackson (6/28/18); preparing for and attending a hearing related to Omarr Baker’s attorneys’ fees (7/23/18; 7/25/18); and advising regarding street names in the Galpin road development (7/26/19), among many other activities wholly unrelated to Mr. Spicer’s Court-appointed role. Many of Mr. Spicer’s

other entries are so general and unspecific that it is impossible to determine what activities he was undertaking and how they benefitted the Estate—*e.g.*, “Telephone Conference w Gregg Walker” (*Id.*, Ex. B, *passim*), “Teleconference w All Heirs” (12/1/2018), and “Consult SNJ regarding upcoming meeting” (2/20/19). At the request of his clients, Comerica also copied Mr. Spicer on the routine publishing requests it sent and continues to send to the Heirs, usually multiple times per week. Literally dozens of the time entries for which Mr. Spicer is seeking compensation are based on Mr. Spicer “review[ing] licensing request”—*i.e.*, reading emails sent from the Personal Representative. (*See generally, id.*, Ex. B.)

Finally, again at the request of his clients, Comerica permitted Mr. Spicer to attend Heirs meetings, even though the majority of the topics at those meetings did not relate to entertainment transactions within the scope of his role as Heirs’ Representative. At least 48 of the items for which Mr. Spicer seeks payment are for attendance at Heirs meetings, reviewing the agendas for those meetings, or sending related emails. (Spicer Aff., Ex. B, 6/5/18; 6/6/18; 6/15/18; 6/22/18; 6/26/18; 6/29/18; 7/3/18; 7/20/18; 8/1/18; 8/2/18; 8/7/18; 9/4/18; 9/18/18; 9/21/18; 10/1/18; 10/2/18; 10/3/18; 10/16/18; 10/30/18; 11/13/18; 11/27/18; 12/11/18; 1/15/19; 1/17/19; 1/29/19; 3/12/19; 3/26/19; 4/9/19; 4/11/19; 5/7/19; 5/21/19; 6/4/19; 6/18/19; 7/3/19; 7/23/19; 8/13/19; 9/10/19; 9/24/19; 10/8/19; 10/22/19; 11/6/19; 11/19/19; 12/5/19; 12/17/19; 1/14/20; 2/11/20; 3/10/20; 3/24/20.) Entertainment deals reviewed during Heirs meetings attended by Mr. Spicer were also discussed in separate meetings that the Personal Representative conducted with Mr. Spicer and for which he also seeks compensation. (*E.g.*, Spicer Aff., Ex. B, 8/2/18.)

Even for the time entries that relate, at least in part to entertainment transactions, many of the time entries represented attempts by Mr. Spicer to derive a benefit for the Heirs rather than the Estate. For example, Mr. Spicer billed time on June 12, 2018, seeking to ensure the Heirs would

obtain benefits associated [REDACTED]. (Spicer Aff., Ex. B, 6/12/18.) He then billed several hours of additional time during October 2018 to travel to Minnesota to meet with [REDACTED], again related to potential benefits the Heirs could receive personally arising out of the [REDACTED]. (*Id.*, Ex. B, 10/23/18-10/24/18.)

As set forth in certain of the exhibits to Mr. Spicer's Affidavit, the Personal Representative acknowledges that, in certain circumstances, Mr. Spicer has assisted to facilitate communications related to entertainment transactions with his clients. That said, his services did not prevent his clients from bringing an unsuccessful petition to limit Comerica's authority, Sharon Nelson from suing the Personal Representative and its agents for \$10 billion, or Ms. Nelson from appealing from the adverse judgment in that lawsuit. At best, Mr. Spicer's appointment resulted in the reduction of motion practice related to transactions his clients may otherwise have unsuccessfully challenged. That benefit is only a fraction of the \$312,102.81 in fees Mr. Spicer is seeking to be paid from the Estate.

The Personal Representative respectfully requests that, to the extent the Court determines Mr. Spicer is entitled to any compensation from the Estate, the Court limit that compensation to the reasonable time incurred by Mr. Spicer communicating with his clients and the Personal Representative related to entertainment transactions, and that the total amount be commensurate with the benefit the Court determines Mr. Spicer has provided to the Estate.

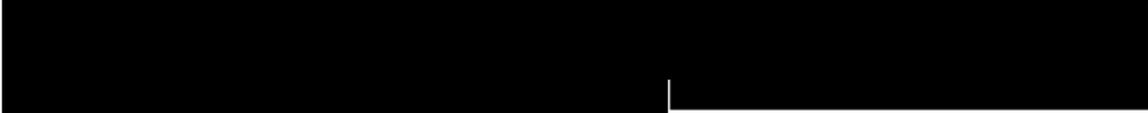
**III. GREGG WALKER'S SERVICE AS HEIRS' REPRESENTATIVE WAS A FAÇADE DESIGNED TO ALLOW HIM TO OBTAIN ACCESS TO THE ESTATE'S CONFIDENTIAL INFORMATION SO THAT HE COULD WORK WITH MICHAEL LYTHCOTT TO ATTEMPT TO SELL THE ASSETS OF THE ESTATE; HIS REQUEST FOR FEES SHOULD BE DENIED IN ITS ENTIRETY.**

Mr. Walker's fee request suffers from the same deficiencies as Mr. Spicer's—he has not justified the \$800 per hour rate he is seeking, time is billed in quarter-hour increments, and Mr.

Walker is attempting to obtain payment from the Estate related to, among many other unauthorized activities, assisting with the unsuccessful petition to limit the authority of the Personal Representative (Walker Aff., Ex. A: 10/5/18; 12/20/18; 1/17/19; 1/18/19; 1/23/19; 1/24/19; 1/28/19; 2/5/19); real estate matters (7/20/18; 8/1/18; 8/14/18; 8/16/18); discussing his own compensation with someone (9/25/18); communicating with the accountant for Omarr Baker (10/2/18; 10/10/18; 10/12/18); “Meeting with Financing Experts Regarding Financing Estates” (7/26/18; 9/6/18; *see also* 6/13/18); and defending his own improper actions (2/5/19; 2/13/19).

But even setting those deficiencies aside, Mr. Walker’s request for compensation from the Estate fails in its entirety based on his pervasive and indisputable misconduct. Mr. Walker, however, has taken the bizarre approach of outright denying that he did anything wrong and attempting to blame Mr. Lythcott for the improper disclosure of the Estate’s confidential information to dozens of unauthorized third-parties. Mr. Walker’s own communications belie that claimed innocence. Frankly, the fact that Mr. Walker is seeking to be paid anything by the Estate after brazenly violating his confidentiality obligations, attempting to cover-up his misconduct, and refusing to comply with the Court’s February 13, 2019 Order, is offensive and demonstrates a conscious disregard for Court and the Estate.

The Personal Representative comprehensively documented Mr. Walker’s misconduct in the April 25, 2019 Report Regarding Disclosure of Confidential Information by Michael Lythcott and Gregg Walker, a copy of which is submitted herewith as Exhibit C to the Declaration of Joseph J. Cassioppi. Examples of instances in which Mr. Walker violated his confidentiality obligations to the Estate include:

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[REDACTED]

- [REDACTED]
- After that failed, the two turned to facilitating onerous loans to three of the Heirs, all with the goal of obtaining substantial fees, as Mr. Walker explained in an email dated December 30, 2016. (Apr. 25 Report, p. 6-7; Cassioppi Dec., Ex. F.)

[REDACTED]

- During April 2018, Mr. Walker created and sent to a third-party lender a “Confidential Investment Memorandum,” that disclosed confidential information regarding the Estate’s taxes. (Apr. 25 Report, p. 11; Cassioppi Dec., Ex. H.)

[REDACTED]

- [REDACTED]

- [REDACTED]

- [REDACTED]

- On August 24, 2018, Mr. Walker confirmed in an email that he was preparing updated information to place in the data room he and Mr. Lythcott were preparing for purposes of disclosing the Estate's confidential information to third-parties. (Cassioppi Dec., Ex. N.)

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

- [REDACTED]

- [REDACTED]

- When the Personal Representative learned of Mr. Walker's improper disclosure of confidential estate information, Mr. Walker lied to the Personal Representative and the

Court to attempt to hide his misconduct. (Apr. 25 Report, p. 28-37; Cassioppi Dec., Ex. R.)

Despite the overwhelming evidence of Mr. Walker's malfeasance, the Personal Representative expects that Mr. Walker, as he has done previously, will respond to this filing by claiming that the Personal Representative has falsely accused him of misconduct.<sup>1</sup> The record speaks for itself. The Personal Representative respectfully requests that the Court emphasize the seriousness of Mr. Walker's failure to comply with the confidentiality obligations imposed by the May 25, 2018 Order and Mr. Walker's non-disclosure agreement with the Estate by denying his request for compensation in its entirety.

Finally, even if the Court determined that Mr. Walker's services provided some benefit to the Estate, any compensation that otherwise could be provided to Mr. Walker is more than offset by the costs, expenses, and attorneys' fees Mr. Walker forced the Estate to expend remediating his misconduct. When it learned of Mr. Walker and Mr. Lythcott's conduct, the Personal Representative immediately took action to attempt to discover the scope of, and remediate that malfeasance [REDACTED]

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<sup>1</sup> Mr. Walker submitted an affidavit in connection with his former counsel's motion for attorneys' fees wherein he asserted that review of his emails, following the parties' mediated settlement agreement, confirmed that he "never provided confidential Estate information to third parties." (Cassioppi Dec., Ex. T.) Mr. Walker, as has been his pattern, is not being forthright. Under the parties' mediated settlement agreement, the Personal Representative was required to limit the records collected and the emails reviewed to those that showed additional instances of improper disclosures of confidential information, beyond the dozens previously identified from reviewing Mr. Lythcott's records as documented in the April 25, 2019 Report. (Sept. 9, 2017 Stip., Ex. B. at 3 [REDACTED].) As set forth above, Mr. Walker's violations of his confidentiality obligations to the Estate are indisputable [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The Personal Representative successfully obtained records from Mr. Lythcott (Mr. Walker refused to provide his communications and records, in violation of the Court’s February 13, 2019 Order), reviewed thousands of records to determine the scope of the misconduct, sent demand letters to all recipients of confidential information the Personal Representative was able to identify, and after negotiations, obtained the cooperation of the majority of those recipients in ensuring the return and destruction of the materials they were improperly provided. (Apr. 25 Report, p. 43-44, Ex. B.) The Personal Representative also engaged in motion practice and participated in numerous court hearings—including based on Mr. Walker’s refusal to comply with the February 13, 2019 Order—prepared the April 25, 2019 Report, and held a mediation with Mr. Walker and Mr. Lythcott, which resulted in a partial settlement, but under which the parties reserved all rights, including [REDACTED]

[REDACTED] (Cassioppi Dec., ¶¶ 22-23; Sept. 9, 2017 Stip., Ex. B. at 5.) Most recently, the Personal Representative was forced to oppose the, ultimately unsuccessful, attempt by Mr. Walker’s former counsel to require the Estate to pay approximately \$100,000 in attorneys’ fees it incurred representing Mr. Walker. (Cassioppi Dec., ¶ 22.) In total, the Estate incurred at least \$239,863 investigating, litigating, and remediating the misconduct of Mr. Walker and his partner Mr. Lythcott. (*Id.*) As a result, even if Mr. Walker could establish a benefit to the Estate, he cannot show that the benefit exceeds the substantial amount the Estate was required to incur investigating and remediating his misconduct.

## CONCLUSION

The Probate Code does not specifically authorize the payment of fees to agents hired by interested persons, but to the extent that the Court utilizes its discretion to award compensation to Mr. Spicer, it should significantly reduce the amount sought based on: (1) Mr. Spicer's failure to justify his hourly rate; (2) the fact that the majority of the time for which he seeks reimbursement is unrelated to the role to which he was appointed by the Court; and (3) the significant disconnect between the amount he is seeking and the benefit Mr. Spicer provided the Estate. Mr. Walker abused the position to which the Court appointed him to orchestrate a scheme to disclose the Estate's most confidential information to third-parties. He should be paid nothing.

Respectfully Submitted,

Dated: June 29, 2020

/s/ Joseph J. Cassioppi

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