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June 1, 2018

**VIA EFS**

The Honorable Kevin Eide  
Judge of the District Court  
Carver County Justice Center  
604 East 4<sup>th</sup> Street  
Chaska, MN 55318

Re: In re the Estate of Prince Rogers Nelson  
**Court File No. 10-PR-16-46**

Dear Judge Eide:

I write in response to the Court's May 23, 2018, Order for Submissions on the motion to appoint The Honorable James H. Gilbert as Special Master to address the remanded fee issues. With no disrespect intended to Justice Gilbert, SNJ are compelled to object to his appointment as a Special Master to decide this issue. There a number of considerations which must be weighed in deciding this issue, not least of which is Justice Gilbert's ongoing appointment as a mediator and moderator of Estate disputes. Due to these issues, SNJ respectfully request that the Court deny the motion and decide the remanded fee issue itself.

Minn. R. Civ. P. 53.01 governs the appointment of special masters. They may be appointed only to: (1) perform duties consented to by the parties; (2) hold trial proceedings or make recommended findings of fact on issues to be decided by the court without a jury if appointment warranted by (a) an exceptional condition, or (b) the need to perform an accounting or resolve a difficult computation of damages; or (3) address pretrial and post-trial matters that cannot be addressed effectively and timely by a district court judge. Minn. R. Civ. P. 53.01(a). None of these criteria are met in this particular case. First, there is no consent to the appointment.



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Second, this is not the type of issue that cannot be addressed effectively and timely by this Court. Finally, while the Court of Appeals' instruction was to make additional findings of fact and to state sufficient reasons for this Court's discretionary decision making, doing so does not require appointment of a special master due to an exceptional condition or to make an accounting or difficult computation of damages. Having already decided this issue, this Court is ideally situated to resolve this matter. It has the tools and the experience to quickly and efficiently resolve this dispute without the need to appoint a special master.

The Court's prior experience with this issue will also control expenses. "In appointing a master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay." Minn. R. Civ. P. 53.01(c). It will cost the Estate a substantial amount of money to have Justice Gilbert serve as a special master over this issue. Justice Gilbert bills a substantial hourly amount for his services. If he were appointed as a special master on this issue, Justice Gilbert would be required to review the initial billing and submissions of the Parties, including the almost 160 pages of statements, the various orders on the attorneys' fees motions, and the Court of Appeals' decision. Not only will it take a huge amount of time to review all of those documents, but the special master would also have to review all the submissions of the parties, which would likely contain substantial additional evidentiary submissions.

While the Court would also have to review some new submissions, it has the benefit of having been involved in this matter from the beginning, and the benefit of Court staff who do not bill at a substantial hourly rate to review the various submissions. The Court is situated to provide the more cost-effective and time-sensitive analysis of this issue. Additionally, "[a]llowance of attorney's compensation rests largely in the discretion of the probate court." *In re Weisberg's Estate*, 64 N.W.2d 370, 372 (Minn. 1954). "The courts



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have a duty to prevent dissipation of estates through allowance of exorbitant fees to those who administer them.” *Id.* In total, it is the Court’s province to decide this issue and the cost/benefit analysis does not weigh in favor of appointment of a special master over this issue.

Justice Gilbert’s ongoing role as a mediator and moderator in this matter also should serve as a bar from him acting as a special master over this issue. In his current role, Justice Gilbert has worked to try to gain the trust of the various parties to this matter. While he has, at times, needed to be direct with one or more parties, he has never had to decide an issue of such importance as three of the Heirs’ attorneys’ fees. If he is appointed as a special master, he will inevitably take one of three actions: (1) deny a substantial portion of the attorneys’ fees; (2) award a portion, but not all of the attorneys’ fees; or (3) grant a substantial portion of the attorneys’ fees. Given the procedural posture of this issue, it seems unlikely that he would effectively reverse this Court’s decision and award substantial fees. However, no matter what decision he makes, it is all but certain that one side will be impacted by the decision, possibly souring the relationship between that side and Justice Gilbert and potentially harming the chances of successful mediation or moderation in the future.

In addition, Justice Gilbert served as a mediator when the parties previously attempted to mediate this dispute. Under the umbrella of the confidential mediation agreement, certain information may have been disclosed to Justice Gilbert that he would not otherwise be privy to and which a special master deciding this issue would not have. Moreover, if he is appointed as a special master on this particular issue, it is not hard to imagine the slippery slope that will lead to him deciding all attorneys’ fees issues.

As the Court can surmise, SNJ disagree with the Court of Appeals’ decision in this matter. The Court and its staff conducted a thorough review of the invoices submitted and determined which were reimbursable under the law and which were not. Given that, it is understandable if the Court is frustrated that its order was



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reversed for failure to make sufficient findings and reasons for the Court's decision making. Nonetheless, the Court of Appeals did not direct this Court to go back and start over, or to award any additional fees. Rather, the Court must simply provide additional support for its conclusions. By contrast, if Justice Gilbert is appointed as a special master on this issue, he will have to start from scratch, without the benefit of a staff who have worked through this issue before. SNJ have the right to have this issue decided by a duly elected judge of the District Court, and while they have respectfully disagreed with some of this Court's decisions in the past, there is no one better situated to decide the issue of the remanded attorneys' fees than this Court.

Since the criteria for appointing a special master have not been met, the appointment of a special master will be substantially more expensive than having the Court resolve the issue, and because Justice Gilbert is still a mediator and moderator over certain Estate controversies, the appointment of Justice Gilbert as a special master is not appropriate and the motion seeking his appointment should respectfully be denied.

Sincerely,  
**SKOLNICK & JOYCE, P.A.**

*/s/ Samuel M. Johnson*

Samuel M. Johnson

SMJ:mac  
Cc: Clients (via Email)