

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In the Matter of:

Case Type: Special Administration  
Court File No.: 10-PR-16-46  
Judge: Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**ADDITIONAL MEMORANDUM IN  
SUPPORT OF COZEN O'CONNOR'S  
MOTION FOR ATTORNEYS' FEES**

Cozen O'Connor ("Cozen") submits this additional memorandum in support of its motion to approve payment of attorneys' fees and costs of the Heirs' representative Gregg Walker of G.A. Walker, LLC from June 18, 2018 through September 28, 2018 incurred for the benefit of the Estate. This memorandum is in response to this Court's February 14th, 2020 Order for Submissions Regarding Motion for Attorney Fees wherein the Court ordered Cozen to submit a memorandum "addressing why the Estate should pay Mr. Walker's legal fees when approval for such was never obtained in advance of their accrual<sup>1</sup>."

Cozen's Motion for an Order to Approve Payment of Heirs' Representative's G.A. Walker, LLC Fees should be granted because it is consistent with the letter and intent of Minnesota Statute Sections 524.3-720 and 524.1-201(33). Those statutes are not so limiting as has been suggested, and specifically provide for the compensation sought by Cozen. In addition,

<sup>1</sup> Cozen is limiting its briefing to the question posed by the Court in its February 14 Order as specifically stated above. Comerica, in its March 6 Memorandum, argued beyond the scope of the Order, including that Walker's conduct abrogated the Estate's obligation to pay his legal fees and that certain fees included by Cozen did not relate to its representation of Walker. To the extent that this Court would like further briefing related to these issues, Cozen is willing to do so. However, Cozen would propose that those issues are more appropriately handled pursuant to prior protocol, specifically, in front of Special Master Solum.

all Parties were on notice of Cozen’s intent to recover legal fees and costs due to Notice of Appearance filed on June 18, 2018.

## BACKGROUND

Gregg Walker (“Walker”) of G.A. Walker, LLC was appointed as an Heirs’ Representative on May 25, 2018. (*See* Order and Memorandum on Proposed Entertainment Deal & the Appointment of Heirs’ Representatives, filed May 25, 2018, at ¶ 2). In this role, Walker was to represent the Heirs’ interests and work with Comerica Bank & Trust and their advisors in the negotiation of a long form agreement related to current and future entertainment deals. (*See id.*) In its May 25, 2018 Order, this Court set a procedure for requesting fees related to the services of Gregg Walker as an Heirs’ representative as follows: “The billing for the services of Gregg Walker shall, in the first instance, be billed to Omarr Baker and Alfred Jackson. They may 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 individual Heirs, and should be paid by the Estate.” (*Id.* at ¶ 2(d)). On June 18, 2018, Cozen filed a Notice of Appearance on behalf of Walker. (Notice of Appearance, filed June 18, 2018.) Cozen then sought an Order to Approve Payment of Heirs’ Representative’s G.A. Walker, LLC Fees on March 6, 2020.

## ARGUMENT

### **I. GREGG WALKER IS AN “INTERESTED PERSON” UNDER THE PROBATE CODE AND FEES FOR LEGAL SERVICES PERFORMED ON HIS BEHALF THAT BENEFITED THE ESTATE MUST BE PAID BY THE ESTATE**

Minnesota’s Probate Code allows for the payment of attorneys’ fees incurred on behalf of an “interested person” in connection with the administration of an estate. *See In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) (“Van Den Boom, as an interested

person, acted for the benefit of the estate by keeping a major asset intact. His attorney is entitled to fees.”). As relevant here, the Probate Code provides:

[W]hen, and to the extent that, 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, such attorney shall be paid such compensation from the estate as the court shall deem just and reasonable commensurate with the benefit to the estate from the recovery so made or from such services<sup>2</sup>.

Minn. Stat. §524.3-720. As defined in the Probate Code, an “interested person” includes:

heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against the estate of a decedent, ward or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative, *and other fiduciaries representing interested persons*. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

Minn. Stat. § 524.1-201(33) (emphasis added).

As an Heirs’ Representative, Walker acted as a fiduciary in representing the Heirs, who are unquestionably “interested persons” as defined by § 524.1-201(33). A “fiduciary” is one who enjoys a superior position in terms of knowledge and authority and in whom the other places a high level of trust and confidence. *See Toombs v. Daniels*, 361 N.W.2d 801, 809 (Minn. 1985); *Vacinek v. First Nat’l Bank*, 416 N.W.2d 795, 799 (Minn. Ct. App. 1987); *see also* Restatement (Second) of Torts § 874, cmt. a (1979) (“A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters

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<sup>2</sup> Minnesota Statute Section 524.3-720, which all parties seem to acknowledge controls, is a broad mechanism for recovering expenses incurred in estate litigation where such services benefited the Estate. In surveying related state laws, this provision is substantially broader than similar provisions. Other states’ Probate Codes provide compensation to attorneys that render services to an estate in its administration.. *See Fla. Stat. §733.106(3)*; *see also* NY CLS SCPA § 2110. Unlike Minnesota and Florida, other states require a party to show that certain services beyond the ordinary representation of the personal representative that benefited the estate are “extraordinary” for an attorney to seek reimbursement from the Estate. *See Cal. Prob. Code § 10811*. Minnesota law, while providing for compensation for such services, requires a substantially lower bar.

within the scope of the relation."); Restatement (Second) of Trusts § 2. Further, Minnesota law specifically defines a "fiduciary" as "[a] person who is required to act for the benefit of another person on all matters within the scope of their relationship." *Swenson v. Bender*, 764 N.W.2d 596, 601 (Minn. Ct. App. 2009) (quoting Black's Law Dictionary (8th ed.)). Here, in his role as Heirs' Representative, Walker was required to represent the Heirs' interests and work with Comerica Bank & Trust and their advisors in the negotiation of a long form agreement related to current and future entertainment deals. Walker was to act for the benefit of the Heirs in his representation of their interests by advising the Heirs and negotiating the deals. Thus, Walker's role fits squarely into the definition of a fiduciary under Minnesota law.

Because Walker represented the Heirs as a fiduciary, Walker is also an "interested person" under the Probate Code. *See* Minn. Stat. § 524.1-201(33). As a result, attorneys' fees on behalf of Walker that contributed to the benefit of the Estate shall be paid by the Estate as the court deems just and reasonable commensurate with the benefit to the estate from the recovery so made or from such services. *See* Minn. Stat. §524.3-720.

Here, Walker's work benefited the Estate by providing 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 and reducing the expenses of the Estate. Further, given the unprecedented complexity of this case, it would not be reasonable to expect Walker to perform the services required in his role as the Heirs' Representative without assistance from counsel. Thus, because of the complexity of the litigation and the entertainment deals the Estate is negotiating, \$95,956.50 in fees and \$510.47 in costs is just and reasonable commensurate with the benefit to the Estate from the recovery so made or from such services.

**II. COZEN FILED A NOTICE OF APPEARANCE ON BEHALF OF WALKER, TO WHICH THERE WAS NO OBJECTION, NOTIFYING THE ESTATE AND ALL OTHER PARTIES OF ITS INTENTION TO PERFORM LEGAL SERVICES FOR THE BENEFIT OF THE ESTATE AND RECOVER FEES**

Cozen filed a Notice of Appearance on June 18, 2018 in the above-captioned matter, notifying all Parties to the case of the fact that Walker had retained Cozen to represent him in his role as the Heirs' Representative. (*See* Notice of Appearance, filed June 18, 2018.) There were no objections to this Notice of Appearance, nor were there any objections to Cozen's representation of Walker in general.

After the Notice of Appearance was filed, all Parties were, or should have been, on notice that Cozen was incurring fees on behalf of Walker, and would seek recovery of fees under Minn. Stat. §524.3-720 for legal fees and costs that were incurred. Cozen would respectfully submit that it was not required to seek or obtain approval in advance of accruing fees to which it is entitled under the Probate Code. No provision provides for this process, and it would have been inefficient and onerous.

**CONCLUSION**

As discussed above, because Cozen performed legal services on behalf of Walker that benefited the Estate, Cozen is entitled to compensation from the Estate for those services as the court deems just and reasonable commensurate with the benefit of the services. Cozen's representation and services were necessary for the benefit provided to the Estate in Walker's role as the Heirs' Representative. After the Notice of Appearance was filed, all Parties were on notice of Cozen's intention to perform legal services on behalf of Walker that benefited the Estate. Further, because of the complexity of this case, the \$95,956.50 in fees and \$510.47 in costs incurred on behalf of Walker is just and reasonable commensurate with the benefit to the Estate

from such services. Thus, Cozen's Motion For Order to Approve Payment of Heirs' Representative's G.A. Walker, LLC Fees should be granted and this Court should award Cozen \$95,956.50 in fees and \$510.47 in costs incurred for the benefit of the Estate.

Further, pursuant to prior protocol, the examination of the Heirs' attorneys' fees has gone through the process of being vetted by Special Master Solum. If this court is concerned about the possibility that some fees were not reasonable or did not benefit the estate, it should not issue a blanket order denying Cozen's motion for attorneys' fees in whole or in part, but should instead allow Special Master Solum to determine the appropriateness of fees as has been the foremost process in this matter.

Dated: March 11, 2020

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