

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

ESTATE OF PRINCE ROGERS NELSON,
DECEDENT.

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

OBJECTIONS OF SHARON, NORRINE &
JOHN NELSON, L. LONDELL
MCMILLAN AND CHARLES SPICER TO
COMERICA'S FEES AND COSTS FROM
FEB. 2021 THROUGH MAY 2021

INTRODUCTION

Comerica has disclosed two sets of fees for which it seeks payment: (1) Fredrikson & Byron's ("F&B") fees for the period of February 2021 through May 2021 (inclusive of other law firms' fees); and (2) Comerica Bank and Trust, N.A.'s ("Comerica") expenses for the same period. In total, F&B requests approval of approximately \$944,674 and Comerica seeks approval to continue receiving \$110,000 per month plus reimbursement of its expenses. This objection respectfully requests this Court to end the excessive billing and payment of legal fees and costs that the lawyers for Comerica continue to pile up to the detriment of the Estate heirs, without sufficient oversight and reduction, as Comerica would likely be more concerned if Comerica was spending its own funds. We also ask the Court to more closely examine how F&B is leading Comerica (handling many matters Comerica should be responsible) with respect to the administration of this Estate as opposed to Comerica properly managing and directing the lawyers on the business and legal affairs of the Estate. Pursuant to the Court's Order Applying Existing Orders and Protocols to the Personal Representative, Heirs Sharon Nelson, Norrine Nelson, and John Nelson ("SNJ") and Interested Persons L. Londell McMillan and Charles Spicer (collectively, "PRN Parties") object to the fees submitted by

F&B and ask that the Court authorize payment of a substantially lesser amount, and order that any excess amount already paid be returned to the Estate of Prince Rogers Nelson (the “Estate”).

FACTS

On June 30, 2021, Comerica, through its attorneys at F&B, filed a declaration reflecting fees and expenses incurred in the amount of \$944,674.32 (plus €52,116.16 and £118,299.90) to F&B and a number of other firms who have performed legal work for the Estate. (Declaration of Mark W. Greiner, Exs. A-I) (hereinafter, “Greiner Decl.”)¹ The amounts sought in the Greiner Declaration and its exhibits are as follows:

Exhibit - Firm	Fees	Costs	Other Firms’ Invoices
Exhibit A – F&B	\$128,282.50	\$17,113.36	
Exhibit B – F&B	\$196,532.00	\$30,064.38	
Exhibit C – F&B	\$148,649.50	\$75,344.01	
Exhibit D – F&B	\$110,972.50	\$16,784.79	
Exhibit E – Aird Berlis			\$357.00
Exhibit F – Boyarski Fritz			\$218,954.28
Exhibit G – Feldman Golinski			\$1,620.00
Exhibit H - Russells			£118,299.90
Exhibit I – Trevisan & Cuonzo			€52,116.16
Total	\$584,436.50	\$139,306.54	\$220,931.28 & £118,299.90 & €52,116.16
Grand Total	\$944,674.32 & £118,299.90 & €52,116.16.		

F&B’s billing statements are separated into different matters for which time is recorded separately for each month. These matters include, for example, “Estate Administration,” “Estate Tax Audit,” “Heirs, Heirs’ Counsel, Heirs’ Advisors and Mediation Matters,”

¹ All information presented from the Declaration of Mark Greiner and its attachments was taken from the redacted, publicly available version of these documents. All cites to the Greiner Declaration and its attachment reference the public version of these documents.

“Intellectual Property,” and “Enforcement.” Additionally, each pending lawsuit is assigned a separate matter, including, for example, “Sharon Nelson Claim,” “Bergonzi Litigation,” and “Madison Dube lawsuit.”

ARGUMENT

The Court established specific protocols in its March 22, 2017 Order regarding the petitioning for and approval of fees for Comerica and its legal counsel. The Court authorized Comerica to pay its legal counsel their fees, costs, and expenses “pursuant to Minn. Stat. §§ 525.515, 524.3-720, and 524.3-721.” *Id.* at ¶ 6. Comerica is authorized to pay for its legal counsel subject to the Heirs’ and other Interested Parties’ ability to object. *Id.*; Minn. Stat. 524.3-721. After consideration of any objections, fee petition, and affidavits, the Court “will order the Personal Representative to reimburse the Estate in an amount that it determines to be reasonable and appropriate, if the Court believes that there was an overpayment of the Personal Representative’s fees or expense reimbursements.” “Similarly, the Court will consider all supporting submissions made by the Personal Representative in connection with the Attorney Fee Affidavits and will order counsel for the Personal Representative to reimburse the Estate in an amount that it determines to be reasonable and appropriate, if the Court believes that there was an overpayment of the attorneys’ fees, costs, and expenses.” *Id.* at ¶ 7 (citing Minn. Stat. § 524.3- 721). Finally, “[n]othing herein shall limit the . . . Heirs from seeking Court review of the . . . reasonableness of an agent’s compensation pursuant to Minn. Stat. § 524.3-721.” *Id.* at ¶ 4.²

² Pursuant to the Court’s March 22, 2017 and April 23, 2019 Orders, the Heirs may file objections to Comerica’s fee statements within fourteen (14) days of their service on the Heirs. However, in this instance, Comerica agreed to an extension of the Heirs’ deadline to object until July 28, 2021, and informed the Court of the parties’ arrangement.

Under Minn. Stat. § 525.515(b), the fairness and reasonableness of attorney's fees is determined based on: (i) The time and labor required; (ii) the experience and knowledge of the attorney; (iii) the complexity and novelty of problems involved; (iv) the extent of the responsibilities assumed and the results obtained; and (v) the sufficiency of assets properly available to pay for the services. "Allowance 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 have a duty to prevent dissipation of estates through allowance of exorbitant fees to those who administer them." *Id.*

It is virtually impossible for the PRN Parties to confirm the propriety of each entry in F&B's billing. Since there are many thousands of entries for relatively small amounts, spread across dozens and dozens of separate matters, it is very difficult to assess and confirm whether each and every one of these fees were reasonably incurred for the benefit of the Estate.³ Nonetheless, this huge volume of small entries has consistently added up to a very substantial sum of money over each four-month period, including this one. Throughout this objection, the PRN Parties have attempted to identify certain entries or blocks of time that raise issues concerning reasonability and excessiveness. By doing so, the PRN Parties do not concede that all other fee entries are appropriate.

I. The Time and Labor Required and the Experience and Knowledge of the Attorneys

³ Additionally, F&B makes substantial use of "block billing" by including vague descriptions of multiple, unrelated tasks in a single time entry for a given day, making it impossible to determine the reasonableness of the time expended on each individual task. *See, e.g., H.J. Inc. v. Flygt Corp.*, 925 F.2d 257, 260 (8th Cir. 1991) (affirming reductions of attorney fee award due to vague billing entries). For *each* item listed in an entry, it must be possible to "attribute a particular attorney's specific time to a distinct issue or claim." *Id.*; *see also Anderson v. Hunter, Keith, Marshall & Co., Inc.*, 417 N.W.2d 619, 629 (Minn. 1988). For example, *see, e.g., Greiner Decl., Ex. A* at 18-20.

F&B billing statements reflect instances where high-rate shareholders were involved in matters in excessive numbers, or were billing consistently for work more properly handled by lower-priced associates. Despite the PRN Parties' reservations regarding the expertise and knowledge of the attorneys who have billed time in these matters, this objection asserts that each such attorney was not properly billing time under the circumstances.

A. Estate Tax Audit

From February 2021 through May 2021, F&B billed \$130,603.50 in connection with the matter entitled "Estate Tax Audit," a number that exceeded all other billed matters by a substantial margin and comprised nearly 25% of F&B's total fees for this four-month period. F&B's billing records show that between three and four F&B shareholders were billing consistently on this matter (Greiner Decl. Ex. A, at 22-24, Ex. B at 136-141, Ex. C at 265-268, Ex. D at 395-397). These included M. Greiner and K. Sandler Steinert, who billed at \$755/hour and \$555/hour, respectively, as well as shareholder S. Nelson, who billed at \$755/hour, and shareholder L. Linne, who billed at \$440/hour and primarily conducted legal research that could more properly have been performed by an associate. This matter should reasonably have been staffed with a tax attorney and an associate, with high level involvement of a supervising shareholder. Instead, it was staffed with up to four high-rate shareholders, at least two of which billed at rates which are at or in excess of the highest prevailing rates charged by Minnesota attorneys. With each of these attorneys reviewing and revising documents, conferring regularly, attending conferences with Comerica and other parties, and/or conducting research that could be handled by an associate, the fees incurred in this matter are excessive and should be reduced.

Fees billed by F&B in connection with the Estate tax audit should also be considered in light of the "results obtained," which to date have been very limited and concerning and have

led to significant additional attorney's fees. As reported in the *Star-Tribune*, the IRS rejected Comerica's initial \$82.3 million valuation of the Estate as undervalued by 50%, and imposed a \$6.4 million dollar "accuracy-related penalty" on the Estate as a result of the valuation. To date, the IRS has compromised on only approximately \$3.7 million of the additional \$80 million it claims, in connection with the Estate's real estate holdings, and the matter is currently being litigated and will be headed to trial if the parties cannot reach agreement. In light of the lack of resolution, Comerica's incurring of substantial additional penalties (literally six times F&B's bill for this period) and the prospect of a highly expensive trial, fees billed for this matter should receive particularly high scrutiny.

B. Sharon Nelson Claim

From February 2021 through May 2021, F&B billed \$71,549.00 in connection with Sharon Nelson's lawsuit against Andrea Bruce and Comerica. This is F&B's second highest billed matter in this period by a significant margin. Since the appellate ruling on July 6, 2020, this lawsuit has consisted of a single claim of civil assault, based on a single, discrete factual circumstance. This claim could, and should, be primarily handled by a litigation associate under the supervision of a shareholder. Instead, the litigation has been nearly exclusively handled by J. Cassioppi, a shareholder billing at \$505/hour. Cassioppi has both managed and handled the day-to-day operation of the case, including performing many tasks that should properly be handled by junior associates or administrative staff, including document review (Greiner Decl, Ex. A at 31, 2/17/21 entry); preparing deposition packets (*Id.*, Ex. A at 32, 2/19/21, 2/23/21 and 2/24/21 entries, Ex. B at 150, 3/16/21 and 3/17/21 entries); preparing deposition notices and subpoenas (*Id.*, Ex. B at 149, 3/7/21 entry); coordinating document production (*Id.*, Ex. C at 278, 4/2/21 and 4/5/21 entries); and preparing errata sheets (*Id.*, Ex. C at 278, 4/12/21 entry).

Even where Cassioppi brought in an associate to work on Comerica's summary judgment brief, he did not actually delegate but merely duplicated the work done by the associate, resulting in further excessive and unnecessary fees. On April 19 and 21, 2021, F&B associate Z. McFarland billed a total of 8.6 hours to drafting Comerica's summary judgment brief in the Sharon Nelson lawsuit. (Greiner Decl., Ex. C at 279-280). Thereafter, J. Cassioppi billed another 9.5 hours researching and drafting the same brief. (*Id.*) Cassioppi and McFarland then billed another combined 5.8 hours each reviewing and revising the brief and preparing the record. (*Id.*) Cassioppi billed an additional 4.3 hours "finalizing" the filing, and McFarland billed 6.1 hours also "finalizing" the filing and drafting a motion to seal. (*Id.*)

In total, F&B billed 34.3 hours and \$14,576 to the summary judgment brief, nearly 20% of its entire billing for this matter during the four-month period. Ms. Nelson did not oppose Comerica's summary judgment motion, so the same result could have been achieved through a five-minute phone call and saved the Estate a considerable amount of money. Regardless, the cost would have been significantly less had there not been two attorneys, including a high-rate shareholder, effectively doubling up on the work.

C. Bergonzi Litigation

F&B has submitted substantial legal fees incurred by multiple law firms in the "Bergonzi litigation," a lawsuit filed against the Estate by Warner Chappell Italiana S.R.L. based on an earlier Italian court ruling concerning Prince's musical composition "The Most Beautiful Girl in the World." F&B has submitted £118,299.90 (roughly USD \$164,441) in fees and expenses generated by London-based law firm Russells from November 2020 through March 2021. (Greiner Decl., Ex. H). However, each invoice contains only brief and cursory descriptions of the work performed (e.g., "necessary advices and attendances as required during the period") and although the invoices reference an "attached ledger," no ledger or

further description of the time incurred has been provided in F&B's submission, rendering it impossible to determine whether these substantial fees are reasonable. (*Id.*) Additionally, F&B has submitted fees from Milan-based law firm Trevisan & Cuonzo in the amount of €52,116.16 (roughly USD \$61,706) (Greiner Decl., Ex. I) as well as F&B's own fees for the "Bergonzi Litigation" in the amount of \$22,566.00 (*Id.*, Ex. A at 9; Ex. B at 126; Ex. C at 254; Ex. D at 383) and several thousand dollars in fees from Boyarski (*Id.*, Ex. F at 1-2, 8, 16-18, 24, 29-30). In total, nearly a quarter of a million dollars has been spent on this matter by four separate law firms, and the majority of fees incurred are incapable of being properly assessed for their reasonableness because no detail has been provided with the billing statements. Regardless, these fees are, in total, excessive and unreasonable and should be significantly reduced.

The preceding examples are symptomatic of the larger issue that, because Comerica is not spending its own money on these attorney's fees, there is little incentive to insist on frugality and judicious use of lower-cost associates and streamlined staffing. In addition to the instances discussed above, there are many other examples in the billing where multiple high-rate attorneys are reviewing, conferring and meeting on the same matters, significantly increasing the expense to the Estate. As an example, on April 15, 2021, F&B included charges under the "Heirs" matter for time incurred in preparation for and attending a meeting with the Heirs by each of M. Greiner (3 hours at \$755/hour), K. Sandler Steinert (2.8 hours at \$555/hour) and J. Cassioppi (2.1 hours at \$505/hour). (Greiner Decl. Ex. C at 263 – 264). In total, this single meeting cost the Estate \$4,879.50. This expense could have been significantly reduced had F&B delegated a single attorney, and not three of F&B's highest-priced attorneys, to attend the meeting. While this amount itself may seem small in comparison with the total

amount of fees sought by F&B, similar examples of overlawying occur throughout F&B's billing, particularly under the "Heirs" and "Estate Tax Audit" matters.

Based on the substantial fees generated to date, and in the interests of preserving the Estate for the benefit of the Heirs, SNJ ask that the Court impose control over these expenses by finding them to be excessive where, as here, the circumstances are warranted.

II. The Complexity and Novelty of the Problems Involved

The Estate's legal matters, while numerous and spread over a variety of legal disciplines, are not novel or overly complex. F&B's focus is primarily on estate administration, litigation, entertainment, real estate, and intellectual property monitoring and protection. (Greiner Dec. ¶ 3). While numerous, few of the specific areas of responsibility disclosed in the Greiner Declaration appear to be overly novel. *Id.* at ¶¶ 4-8. In fact, the primary area of complex or novel law, the entertainment matters, have been handled primarily by an outside firm, Boyarski Fritz LLP ("Boyarski"). *Id.* at ¶ 6. In short, there is little reason that junior or senior associates cannot perform a substantial amount of the required work with supervision from F&B shareholders. However, regardless of any complexity, and as discussed above, even the simple tasks are being performed by high-rate shareholders, driving the fees to excessive levels.

III. The Extent of Responsibilities Assumed and the Results Obtained

Fees incurred in pursuit of a private benefit for Comerica or its legal counsel do not inure to the benefit of the Estate. *In re Bush's Estate*, 230 N.W.2d 33, 44 (Minn. 1975) (citing *In re Estate of Baumgartner*, 144 N.W.2d 574 (Minn. 1966) ("[a]s a general rule, in order to recover [fees] it must be established that such services inure to the benefit of the estate"). Any

time spent by Comerica, its agents, F&B, or its retained counsel in determining fees owed or in pursuit of other private benefits are not properly compensable. *Id.* There are a number of entries in February and early March 2021 that relate to creation of F&B's fee submissions, and which exceed \$10,000 in fees billed. (Greiner Decl. Ex. A at 13-16; Ex. B at 130).

Comerica has delegated administrative matters that it should be handling internally to high-rate outside counsel billing on an hourly basis, resulting in excessive and unnecessary fees. F&B have also billed in excess of \$10,000 for work done in preparation of Comerica's accounting for the period ending January 31, 2021. (*Id.* at Ex. A at 13-16; Ex. B at 130-131; Ex. C at 259-260). Preparing the interim accounting is an administrative obligation of Comerica that should properly be performed by Comerica as part of the services for which Comerica is paid \$110,000 each month, and with the assistance of the Estate's accounting firm. By delegating the preparation of the accounting to F&B, to attorneys charging between \$245 and \$755 per hour, Comerica has created further excessive and unnecessary expense.

A. Boyarski Fritz

F&B has submitted the billing statements of Boyarski Fritz LLP, Comerica's entertainment counsel. (Greiner Decl., Ex. F). Boyarski has billed significant time to reviewing and drafting NDAs⁴ as well as a location agreement for use of the [REDACTED] in a film production⁵. These are not substantive entertainment transactions and are capable of being handled by Comerica's in-house counsel as part of Comerica's administration of the Estate. This is reinforced by the fact that a portion of these fees have been billed in a category entitled "Estate Advisors and Consultants," directly suggesting the nature of this

⁴ See Ex. F at 2, 1/4/21, 1/14/21 and 1/15/21 entries; Ex. F at 16, 3/4/21, 3/5/21, and 3/8/21 entries; Ex. F at 18, 3/6/21 and 3/11/21 entries; Ex. F at 20, 3/1/21, 3/2/21 and 3/12/21 entries; Ex. F at 21, 3/17/21 entry.

⁵ Ex. F at 5-6; 12-14.

work is administrative and Comerica's responsibility. (Greiner Decl., Ex. F at 1-2, 17, 24, 29). By delegating this work to outside entertainment counsel who bill at \$620/hour and \$670/hour, respectively, Comerica has incurred many thousands of dollars in excessive and unnecessary fees.

Boyarski has billed a significant amount of fees to litigation matters, including the Bergonzi litigation, as discussed above, as well as to "Probate Court Matters," totaling more than \$40,000 (*Id.*, Ex. F at 1-2, 8, 16-18, 24, 29-30). However, Boyarski are neither litigation nor estate attorneys, and since both litigation and probate matters are being handled by attorneys at F&B and elsewhere, these fees are excessive and should be scrutinized for potential reduction. Additionally, Boyarski has billed a substantial amount of time, roughly 54 hours, for a total of \$36,720, in connection with a single transaction for a Prince-themed [REDACTED] produced by [REDACTED] [REDACTED]. (*Id.*, Ex. F at 2-3, 9, 18-19, 25, 30-31). On its face, the amount of time and expense incurred on a single transaction of this nature appears unreasonable, particularly in light of the numerous transactions that the Estate and its entertainment counsel have processed at substantially lesser time and expense.

B. Intellectual Property

During the four-month period, F&B has billed a total of \$56,896 to a matter entitled "Intellectual Property," which is billed separately from the "Enforcement," "Copyright," "Trademark," "PRN Licensing," and "Enforcement" matters, as well all the individual trademark prosecution and enforcement matters. There are billing entries occurring throughout the period, always with the description "conduct IP due diligence of copyright catalog." (Greiner Decl., Ex. A at 36-39; Ex. B at 156-157; Ex. C at 282-284; Ex. D at 408-410). In total, \$17,688 has been billed for entries under this description. Based on this information, it is

impossible to assess the reasonability of these charges – in particular, what the work entails, how it is benefitting the Estate, why it is necessary for more than fifty hours to be expended on it, and what its relationship is to the other time entries under this matter, which also seem to be primarily concerned with IP due diligence issues and are set forth in considerably more detail.

IV. The Sufficiency of Assets Properly Available to Pay For the Services

The PRN Parties acknowledge that the Prince Estate is large and complex and requires a significant amount of legal and business expertise to manage properly. The concern shared by the PRN Parties is that there has historically been, and continues to be, a massive amount of money being paid out of the Estate not only to Comerica and F&B, but also to multiple law firms as well as a roster of outside advisors.⁶ Comerica and F&B alone have been paid many millions of dollars by the Estate. Comerica's Interim Accounting from 2/1/20 to 1/31/21, filed on May 12, 2021, appears to show that during this period, the Estate paid \$5,219,518.08 in expenses, including attorney's fees, which comprised \$1,695,561.91 of the total expenses. F&B's fees alone were \$1,318,980.71. During this period, the Estate also generated \$6,718,904.26 in additional revenues. It is clear that, at this, point, the Estate is generating revenues primarily to pay for its significant administration expenses – attorneys, advisors and the Personal Representative. Very few of the attorneys and work reflected in F&B's billing statements have contributed to actually generating income for the Estate.

The PRN parties' concern is two-fold: First, with the bulk of revenue generated each year going to pay these considerable expenses, the heirs are being deprived of the value they would otherwise be receiving through the Estate for revenues created by Estate assets. Second, there is a not insignificant chance that a major future event, such as a lengthy trial and unfavorable ruling on Comerica's tax valuation dispute with the IRS (and MNDOR) will

⁶ The PRN Parties believe that the Estate has already paid out approximately \$20 million in legal fees to date.

greatly increase the Estate's expenses and liabilities and potentially create a situation where the expenses are exceeding the revenues, progressively decreasing the value of the Estate.

CONCLUSION

The PRN Parties believe that portions of the fees requested by both F&B are excessive and unreasonable when considered in light of the factors set forth in Minn. Stat. § 525.515(b). The PRN Parties acknowledge that the Court has approved bills of similar sizes and at similar rates in the past. However, the cumulative impact of the fees and expenses billed over this five-year period is that the lawyers and the Personal Representative have received, and will likely continue to receive, millions of dollars, while the Heirs have, to date, received very little, if anything, and certainly far less than the attorneys, the advisors and the Personal Representative, and face a situation where the revenues created by the Estate assets are largely funneled back into the administration of the Estate, with the risk that the Estate's expenses may at some point potentially exceed those revenues.

For these reasons, the PRN Parties respectfully request that the Court impose meaningful oversight on the amount of attorneys' fees and costs incurred, by thoroughly reviewing F&B's billing to determine the appropriateness and reasonableness of the substantial amounts of billed time. Specifically, the PRN Parties request that the Court review the fees submitted by F&B and approve payment of a substantially reduced amount that accounts not only for the time incurred but also for the reasonableness and necessity of the work actually performed and the importance of managing the Estate so that the Estate can move toward an efficient closure and the remaining Heirs, who are elderly and in need of resources to live, can receive their inheritance.

By: 
Sharon Nelson, Norrine Nelson & John Nelson

By: 

L. Londell McMillan

By: 

Charles Spicer

Dated: July 28, 2021