

STATE OF MINNESOTA
COUNTY OF CARVER

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

In the Matter of:
Estate of Prince Rogers Nelson,
Decedent.

Court File No. 10-PR-16-46
Honorable Kevin W. Eide

**SHARON NELSON,
NORRINE NELSON, JOHN
NELSON, RALPH LOVE
AND L. LONDELL
MCMILLAN'S REPLY IN
RESPONSE TO
COMERICA'S OBJECTIONS
TO *PRO HAC VICE*
ADMISSION OF L.
LONDELL MCMILLAN**

Sharon Nelson, Norrine Nelson, John Nelson, Ralph Love and L. Londell McMillan ("McMillan") submit this reply in response to the "Objection to Admission *Pro Hac Vice* of L. Londell McMillan" (the "Objections") filed by Comerica Bank & Trust N.A. ("Comerica") on November 8, 2019, and in support of McMillan's "Motion for Admission *Pro Hac Vice* of L. Londell McMillan," filed on October 21, 2019. (the "Motion"), which Motion was filed at the request of the Court and with the support of the Appointed Heirs Sharon Nelson, Norrine Nelson and John Nelson ("SNJ"), to serve as legal counsel on certain matters and to represent SNJ's interests in the Estate of Prince Rogers Nelson (the "Estate").

Background

McMillan is an attorney admitted in the state of New York and the state of Connecticut. McMillan is also a business manager, publisher and producer in the entertainment and media industry. For over a decade, McMillan represented the decedent Prince Rogers Nelson (“Prince”), as both an attorney and as Prince’s manager, and their business relationship led to successful achievements and historical precedents in the entertainment business. In 2016, McMillan served as a court-appointed Advisor to the Estate under the former Special Administrator, Bremer Trust (“Bremer”). Since the completion of Bremer's duties in February 2017, McMillan has found himself the subject of numerous legal claims by Comerica, Peter Gleekel, Esq. (“Gleekel”) (the Second Special Administrator operating conterminously with Comerica), and former attorneys of certain Estate Heirs other than SNJ relating to actions by McMillan during Bremer's term as Special Administrator, all of which were approved by Bremer and this Court. Since the inception of Comerica’s appointment succeeding Bremer, Comerica has taken a confrontational and dismissive position with respect to McMillan and the Estate Heirs who desire his representation. Comerica’s latest objection represents its most recent iteration of its plan and pattern of obstructing SNJ from involving McMillan with SNJ in any capacity.

Argument

I. MCMILLAN’S REPRESENTATION OF SNJ WILL NOT VIOLATE MINNESOTA RULE OF PROFESSIONAL CONDUCT 1.7

A. No Conflict Of Interest Exists

Comerica argues that McMillan's representation of SNJ in these proceedings would violate the Minnesota Rules of Professional Conduct under Rule 1.7 (“Rule 1.7”). This is simply not the case. Rule 1.7 prohibits representation of a client if the representation involves a “concurrent conflict of interest.” Comerica argues that McMillan’s representation of SNJ would

constitute a conflict in which the representation of one or more clients will be materially limited by the “personal interest” of the lawyer. Comerica asserts, “McMillan’s representation would constitute a concurrent conflict of interest because he has a personal interest in the Estate proceedings.” (Comerica Objections at p. 2). This argument is not in conformity with the purpose and language of Rule 1.7. The personal interest portion of Rule 1.7 is intended to protect a client from being represented by a lawyer who has a personal interest that would limit the attorney’s independent judgment and ability to represent the client, not an automatic disqualification rule when faced with a theoretical adversarial scenario. As addressed in further detail below, Rule 1.7(b) provides that representation is allowed when there are concurrent conflicts of interest so long as specific requirements are met. Comment 8 to Rule 1.7 addresses the key question regarding whether representation will be materially limited. “The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.” *See* Comment 8 to Minn. R. Prof. Conduct 1.7.

Although it is SNJ’s and McMillan’s position that the claims brought by Gleekel in relation to the UMG and Jobu transactions do not create a conflict, McMillan’s personal interest in those matters should not be seen to materially interfere with providing SNJ with future legal advice. Comerica also fails to recognize the distinction that SNJ seeks McMillan’s representation for their personal interests in Estate entertainment and transaction matters, not to represent Comerica or the Estate. Comerica further does not demonstrate how Gleekel’s claims against McMillan with respect to commissions generated from transactions years ago should act as a complete bar to McMillan’s ability to provide SNJ legal representation in future Estate

entertainment matters going forward. Those future matters are entirely unrelated (such as the attorneys' lien arbitration) to any alleged "personal interest" McMillan may have regarding Gleekel's claims. McMillan is not seeking to represent SNJ in connection with Gleekel's claims against the Estate in the UMG and/or Jobu matters. The SNJ heirs are not direct parties to such matters related to UMG or Jobu. As stated above, Rule 1.7 is not intended to act as an automatic disqualification rule. Should this Court be concerned that McMillan's representation may be limited due to the UMG and Jobu transactions, McMillan is more than agreeable to recusing himself from such matters.

B. McMillan Is Not Liable To The Estate

Comerica alleges that McMillan is "adverse and liable to the Estate." (Comerica Objection p.2). This is yet another false notion which has been conjured and advanced by Comerica and its legal counsel since early on in during Comerica's assignment as Personal Representative when Comerica sought to rescind the UMG Agreement (prior to notifying the Heirs, the Court, or McMillan). Notwithstanding Comerica's false claims for almost three years now, there has not been any fact finding, evidentiary hearing, or conclusion of any wrongdoing related to any conduct of McMillan in these Estate proceedings. Similar to those filed by the prior counsel of certain Heirs, such claims have been filed without proof against McMillan in an attempt to discredit him and limit his ability to participate in these proceedings. The Second Special Administrator's report recommending that the Estate seek a return of McMillan's commissions from Estate deals before Comerica's involvement--deals approved by both Bremer and this Court--does not conclude that McMillan is liable to the Estate, and it does not confirm that such recommendation conforms with the facts regarding the underlying events related to the UMG and/or Jobu transactions.

II. MCMILLAN'S REPRESENTATION OF SNJ IS APPROPRIATE EVEN IF THERE IS A CONCURRENT CONFLICT OF INTEREST AS AUTHORIZED UNDER RULE 1.7(B)

Even if a concurrent conflict of interest exists, which it does not, McMillan should be allowed to represent SNJ under Rule 1.7(b) allowing representation when (1) the lawyer (McMillan) reasonably believes he will be able to provide competent and diligent representation to SNJ, (2) the representation is not prohibited by law, (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same action, and (4) SNJ have provided informed consent, confirmed in writing. *See* Minn. R. Prof. Conduct 1.7(b). McMillan will provide entertainment and transactional legal advice, a field in which he unquestionably has substantial competency and expertise and will not be providing legal representation as it pertains to estate or probate matters. The other factors in Rule 1.7(b) do not exclude McMillan. It is not surprising that Comerica ignores the tests referenced in Rule 1.7(b), as Comerica has consistently attempted to undermine SNJ's ability to select their own representative.

III. THE COURT'S APRIL 13, 2018 ORDER SHOULD NOT BAR MCMILLAN'S REPRESENTATION OF THE SNJ HEIRS

In another effort to defeat the Motion, Comerica claims that "McMillan cannot effectively represent SNJ in the Estate proceedings without violating the Court's orders" (Comerica Objections at p. 3), in particular, the Order dated April 13, 2018 (the "Confidentiality Order"). The Confidentiality Order addressed the dispute between Comerica and McMillan, that arose over a year ago relating to the express written terms and language of the Non-Disclosure Agreement ("NDA"). Following negotiations between Comerica's counsel and McMillan, the parties were not able to reach agreement. Accordingly, the Confidentiality Order prohibited the sharing of confidential estate information with McMillan (after McMillan refused to sign an

overly broad NDA). Contrary to Comerica's assertions, Comerica's requirement that McMillan be bound to maintain confidentiality of "oral" communications, without contemporaneous and corresponding written documentation, was not a standard term, and McMillan refused to sign such an overly broad NDA. Notwithstanding the foregoing, McMillan has served as business advisor to SNJ since the Confidentiality Order was issued, and SNJ has been able to comply with such terms.

It is important to note that the Confidentiality Order contemplates the potential need to amend such terms. The Confidentiality Order was issued with an understanding of the pending time constraints. "Sharon Nelson, John Nelson and Norrine Nelson need to know whether they can utilize Mr. McMillan or his business entity to advise them as to the strengths or weaknesses of these proposed agreements. For this reason, the Court is issuing this Order immediately following the hearing and *reserves the opportunity to issue an Amended Order with additional findings or legal conclusions.*" (April 13, 2018 Order) (emphasis added). The very language within the order itself recognizes that it is subject to likely amendment.

The Confidentiality Order also recognizes circumstances in which SNJ may hire representatives without those representatives receiving confidential Estate information. "Sharon Nelson, John Nelson and Norrine Nelson...may utilize the services of advisors and consultants as they chose. However, no confidential information regarding the administration of the Estate...shall be disclosed to an advisor or consultant until a non-disclosure agreement has been entered into with the Estate." Therefore, should the Court enter an amended order upon McMillan's entering into a NDA with the Estate, or in the alternative, should SNJ continues to comply with the Order and does not disclose confidential Estate information to McMillan, in either of these instances there would be no violation of the Confidentiality Order. Comerica's argument

does not conclude that it believes McMillan should not be allowed to represent SNJ in regards to all matters. However, if that is the case, it is difficult to imagine how representation in certain matters (such as the attorney lien arbitration) would involve the sharing and disclosure of confidential information that would violate the Confidentiality Order.

IV. MCMILLAN'S SERVICES AS AN ATTORNEY WOULD BE SUBJECT TO THE ORDERS GOVERNING OTHER ATTORNEYS ON ESTATE MATTERS BEFORE THE COURT

Comerica's Opposition goes into significant detail explaining the outcome of the Confidentiality Order and McMillan's prior exclusion from "confidential information" of the Estate. Comerica even referenced McMillan and Greg Walker in the same context. While SNJ sought proper entertainment advice and wanted to share relevant confidential information with McMillan on the then pending entertainment deals negotiated by Comerica, the role in which McMillan sought to review such information was as SNJ's business advisor, not as SNJ's attorney. McMillan refused to sign the NDA in his capacity as SNJ's business advisor and has not violated any Court Order. Conversely, Mr. Walker did sign the NDA as the business advisor to other Heirs, and was later alleged to have violated that agreement. No such violation occurred with respect to McMillan.

In the matter before the Court, in addition to serving as business advisor, McMillan now seeks to also represent SNJ in certain legal matters (since SNJ do not have legal counsel and cannot afford legal counsel). Should the Court allow McMillan to serve as legal counsel to SNJ, McMillan would be obligated to comply with the same confidentiality orders of this Court as the other attorneys in these proceedings. Comerica's effort to exclude McMillan from representing SNJ as an attorney based on prior disputes and lack of agreement on what was presented as

"pending deals" years ago when McMillan's role at such time was limited to the role as business advisor should not be allowed to persist.

V. **SNJ SHOULD HAVE BROAD DISCRETION IN SELECTING THEIR COUNSEL AND DISQUALIFYING MCMILLAN WILL PREJUDICE SNJ'S ABILITY TO HAVE COMPETENT LEGAL REPRESENTATION**

The last paragraph of Comerica's Objection is instructive in that it shows the dismissive and self-concerned nature of the Personal Representative in relation to the Estate's beneficiaries. Comerica argued that denial of the Motion would not prejudice SNJ, as they "may choose virtually any attorney they desire to represent them in this matter...Thus, denial of this motion would not deny or limit their right or ability to retain effective counsel." In reality, as this Court is aware, despite the millions of dollars paid to Comerica and its legal counsel, SNJ have received no Estate distributions and may *still* owe hundreds of thousands more in legal fees. As this Court is aware, due to SNJ's financial limitations, despite the extremely complex nature of this Estate and the entertainment transactions associated with it, SNJ have been required to appear before this Court and other legal matters independently in a *pro se* capacity. While this is not a hardship or concern for Comerica and the counsel who enjoy the benefits of the Estate's funds, the challenges for SNJ should not be so easily dismissed by Comerica and their counsel when it comes to their ability to retain legal representation of their choice.

While some local counsel may be available in certain estate-related matters, few, if any will defer legal fees and even fewer have the expertise and background that McMillan has. This Estate matter involves unique entertainment law expertise where McMillan is and has been an authority in the practice area for over twenty-five years. His ability to directly advise SNJ in these proceedings will allow for more direct communication with the Court and other counsel. Lastly, in determining whether an attorney should be disqualified, clients should be provided

broad discretion to make informed decisions on who they wish to represent their interests. Denying the *pro hac vice* Motion will deprive SNJ of their opportunity to select counsel of their choosing and, due to financial constraints, hinder their ability to have any counsel in some instances.

CONCLUSION

As stated above and for the foregoing reasons, McMillan respectfully requests that this Court grant the *pro hac vice* Motion to serve as admitted counsel in this matter on behalf of SNJ. Should there be any concern with regard to Gleekel's claims related to the UMG or Jobu controversies, or issues relating to confidentiality, we respectfully request that this Court limit representation as it determines necessary, or to allow SNJ to waive any conflict under Rule 1.7(b). Lastly, should this Court approve the Motion, we request that the Court require that Comerica independently, not at the expense of the Estate, pay for attorneys fees and costs generated in filing and responding to Comerica's Objections to the Motion.

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