

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

**REDACTED**

**MEMORANDUM IN SUPPORT OF  
OMARR BAKER'S MOTION TO  
APPROVE PAYMENT OF  
ATTORNEYS' FEES THROUGH  
JANUARY 31, 2017**

Omarr Baker, by and through his counsel Cozen O'Connor, submits this memorandum in support of his Motion for an order approving payment of certain attorneys' fees and costs through January 31, 2017 from the Estate of Prince Rogers Nelson. The requested attorneys' fees and costs are for the substantial services Cozen O'Connor has performed related to the general administration of the Estate, including the selection and appointment of a successor to Bremer Trust, National Association, the negotiation and finalization of confidential business deals entered into by the Estate, and other work which has benefitted the Estate.

**FACTUAL BACKGROUND**

Since appearing as counsel of record for Omarr Baker ("Baker") on June 23, 2016, Cozen O'Connor ("Cozen") has spent significant time on Estate related proceedings which have benefitted the Estate of Prince Rogers Nelson (the "Estate") and not Baker individually. This Motion seeks reimbursement of fees incurred from December 1, 2016 to January 31, 2017.

**1. Entertainment Fees Incurred**

On September 30, 2016, the Court [REDACTED]

[REDACTED]  
[REDACTED] (See Affidavit  
of Steven H. Silton (“Silton Aff.”), ¶ 4.) On October 6, 2016, the Court [REDACTED]

[REDACTED] (See Silton Aff., ¶ 5.)

Cozen attorneys corresponded extensively with the Representatives, counsel for Bremer, counsel for the other Non-Excluded Heirs, and [REDACTED]

[REDACTED] (See Silton Aff., ¶¶ 6, 14.) Limited drafts of [REDACTED]  
[REDACTED] were provided to the Non-Excluded Heirs, and comments were to be provided on an expedited basis. Cozen’s analysis of the proposed agreements included [REDACTED]

[REDACTED] (*Id.*, ¶ 7.)

Baker now seeks reimbursement from the Estate for his attorneys’ efforts related to the entertainment work performed through January 31, 2017.

## **2. Non-Entertainment Fees Incurred**

Cozen has also spent significant time on non-entertainment related proceedings which have benefitted the Estate and not Baker individually. This time includes interviewing and selecting a successor to replace Bremer (which announced its intention to resign as Special Administrator on September 27, 2016 and was replaced on February 1, 2017), assessing the Special Administrator’s request for costs and fees, and preparing for and attending the January 12, 2017 hearing. (*See* Affidavit of Thomas P. Kane (“Kane Aff.”), ¶ 4.)

On September 27, 2016, Bremer filed with the Court its intent to resign as Special Administrator to the Estate. Upon receipt, Baker and Cozen coordinated with the other Non-

Excluded Heirs and their counsel to conduct an exhaustive and comprehensive search process for a personal representative to replace Bremer. These efforts led to the identification of a potential successor candidate with the unanimous consent of the Non-Excluded Heirs, Comerica Bank & Trust N.A. (“Comerica”). (*See Kane Aff.*, ¶¶ 9-15.) The Court subsequently appointed Comerica as personal representative of the Estate on February 1, 2017.

Although Bremer stepped down as Special Administrator, Bremer had also petitioned the Court for approval of its fees and costs and expenses (and those of its counsel) for the time spent working for the Estate, starting with its fees through June 30, 2016. After the Non-Excluded Heirs’ objected, the Court issued its “Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses” on October 28, 2016. (*See Kane Aff.*, ¶ 16.) The October 28 Order approved the Special Administrator’s fees, but the Court recognized that the Non-Excluded Heirs were entitled to review the fees prior to approval and voice any issues. (*Id.*, ¶ 17.)

Since the October 28 Order, Cozen has regularly reviewed and filed timely objections to Bremer’s request for fees and costs, when appropriate. (*See Kane Aff.*, ¶ 17.) Cozen’s efforts benefitted the Estate by providing a process for allowing the Non-Excluded Heirs to comment on the fees submitted by the Special Administrator. These efforts also ensured a proper vetting of the fees requested by the Special Administrator before they were removed from the Estate’s resources. (*Id.*)

On January 12, 2017, the Court held a hearing to determine a successor to the Special Administrator and to address Bremer’s submitted accounting. (*See Kane Aff.*, ¶ 19.) In advance of and following the January 12 Hearing, Cozen extensively researched Minnesota probate law regarding appointing a personal representative and requirements for the submitted accounting.

Cozen had to review the accounting Bremer filed on short notice prior to the January 12 Hearing.

(*Id.*, ¶ 20.) Cozen also drafted the following documents which aided the Court in its decision to appoint Comerica as personal representative and to fully consider Bremer's submitted accounting:

- A. Objections to the Special Administrator's Final Account Through 11/30/16, Final Account from 12/1/16 through 12/31/16, and Petition for Order Approving Accounting, Distribution of Assets, and Discharge of Special Administrator;
- B. Motion for Entertainment Advisor L. Londell McMillan to produce information necessary to determine his suitability to serve as co-personal representative;
- C. Memorandum in Opposition to Petition for Formal Adjudication of Intestacy, Determination of Heirs and Appointment of L. Londell McMillan as co-personal representative; and
- D. Memorandum in Support of Petition for Formal Adjudication of Intestacy, Determination of Heirs and Appointment of Van Jones as co-personal representative.

(*Id.*) Before the January 12 Hearing, Cozen attorneys also met and conferred with other counsel and prepared direct and cross examination of Bremer's representatives and the proposed co-personal representatives. At the January 12 Hearing, Cozen attorneys argued on behalf of some of the Non-Excluded Heirs. (*Id.*, ¶ 21.) Cozen's efforts benefitted the Estate by ensuring a full and careful review of the Special Administrator's submitted accounting and requested discharge, as well as the benefits and detriments of appointing the proposed co-personal representatives. (*Id.*)

As a result of Cozen's efforts, the Estate has benefitted from the identification of an agreed-upon successor to Bremer. The Non-Excluded Heirs' input has also guided the disposition, preservation, and operation of the Estate assets for the benefit of all those ultimately determined to be heirs.

## ARGUMENT AND AUTHORITIES

### 1. **Minnesota Law Provides for the Payment of Attorneys' Fees, Costs, and Expenses Where the Services Have Benefitted the Estate**

Minnesota law allows for the payment of attorneys' fees from the Estate for services rendered on behalf of the Estate. Minnesota Statute § 524.3-720 provides 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.”<sup>1</sup> In such cases, the “attorney shall be paid such commission from the estate as the court shall deem just and reasonable and commensurate with the benefit to the estate from the recovery so made or from such services.” Minn. Stat. § 524.3-720 (emphasis added); *see also In re Estate of Van Den Boom*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999); *In re Trust Agreement of Sudheimer*, No. A06-97, 2007 WL 46090, at \*3 (Minn. Ct. App. Jan. 9, 2007); *In re Estate of Rutt*, No. A09-2336, 2010 WL 3958649, at \*8 (Minn. Ct. App. Oct. 12, 2010); *In re Estate of Connelly*, No. CX-01-1476, 2002 WL 264806, at \*1 (Minn. Ct. App. Feb. 26, 2002) (setting forth factors to be considered in determining whether an attorney's fee is reasonable under Minn. Stat. § 524.3-720).

Minnesota courts use the following factors to determine whether attorneys' fees sought in a probate proceeding are just and reasonable:

- (1) the time and labor required;
- (2) the experience and knowledge of the attorney;
- (3) the complexity and novelty of the problems involved;
- (4) the extent of the responsibilities assumed and the results obtained; and
- (5) the sufficiency of assets properly available to pay for the services.

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<sup>1</sup> Unlike the Uniform Probate Code, Minnesota expressly provides for the payment of fees to an attorney of an interested party **even when that attorney's work benefits the entire estate**. *See* UPC § 3-720; Minn. Stat. § 524.3-720; *see also In re Estate of Zonas*, 42 Ohio St.3d 8, 536 N.E.2d 642 (1989) (“A few statutes are broadly written and do not limit the recovery of attorney fees to counsel retained by an executor or administrator.”)

Minn. Stat. § 525.515(b).<sup>2</sup>

As noted by the Special Administrator in its July 29, 2016 fee petition: “The Court is well aware of the unique and extraordinary nature of this proceeding and legal work performed on behalf of the Estate. The scope and sophistication required to represent the Estate may be unlike any other estate administration proceeding in Minnesota’s history.” The Special Administrator is correct regarding the extraordinary nature of this proceeding and the complexity of the various issues facing the Estate, including the unique collection of assets, the complex tax implications, and the large number of interested persons involved.<sup>3</sup>

Minnesota courts are clear that pursuant to Minnesota Statutes § 524.3-720, attorneys’ fees and costs may be paid from the estate when “just and reasonable and commensurate with the benefit to the estate.” Minn. Stat. § 524.3-720; *see also In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006). In *Torgerson*, the Minnesota appellate court held that the public policy underlying Minn. Stat. § 524.3-720 “recognize[s] that an estate as an entity is benefited when genuine controversies . . . are litigated and finally determined.” 711 N.W.2d at 555 (quotation omitted). Moreover, “a fiduciary acting on behalf of the estate, in good faith, [should be able to] pursue appropriate legal proceedings without having to risk personal financial loss by underwriting

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<sup>2</sup> Several other states have likewise permitted a beneficiary to recover attorneys’ fees where the attorneys’ services “benefited the estate as a whole or increased a common fund in which others might share.” *In re Estate of Zonas*, 42 Ohio St.3d 8, 12 (1989); *Jones v. Kuhn*, 650 P.2d 999, 1001 (Or. App. 1982) (holding that an award of attorneys’ fees was appropriate where the heir successfully brought an action to declare invalid an option to purchase the family farm from the intestate decedent); *In re Parr’s Estate*, 287 P.2d 906, 908 (Okla. 1955) (“where the services of the attorney employed by some of the heirs or legatees are beneficial to the estate as a whole, the court may, if the facts justify it, allow out of the estate a reasonable fee for such services.”).

<sup>3</sup> The legal work Cozen did from December 1, 2016 to January 31, 2017 involved in large part an extensive review of Bremer’s submitted accounting. The objections Cozen subsequently filed to Bremer’s accounting provided the Court with substantial analysis, which benefited the Estate by ensuring a full and fair review of the Estate’s assets, financial and otherwise. It is undisputed under Minnesota law that the Non-Excluded Heirs should have their attorneys’ fees related to disputing the accounting paid from the Estate. *In re Anthony J. Englund, Sr. Trust Agreement dated October 19, 1990*, No. A12–0147, 2012 WL 5476124, at \*2 (Minn. Ct. App. Nov. 13, 2012). Considering the size and unique nature of this Estate, Cozen is entitled to its fees related to objecting to Bremer’s accounting.

the proceeding's expenses." *Gellert v. Eginton*, 770 N.W.2d 190, 197 (Minn. App. 2009) (quoting *Torgersen*, 711 N.W.2d at 555), review denied (Minn. Oct. 20, 2009). Most importantly, Minnesota courts have *rejected* the argument that in order to contribute to the benefit of the estate, interested persons must not themselves benefit from the proceedings. *Id.* at 197-98; see also *In re Estate of Kane*, No. A15-1033, 2016 WL 1619248, at \*7 (Minn. Ct. App. Apr. 25, 2016) (noting that the Minnesota Court of Appeals has "rejected the argument that, in order to contribute to the benefit of the estate, interested persons must not themselves benefit from the proceedings.")

The Court has wide discretion to approve motions for reimbursement of attorneys' fees from an estate. *In re Estate of Balafas*, 225 N.W.2d 539, 541 (Minn. 1975). Whether legal work benefitted the estate is a factual determination for the Court to decide. *Matter of Estate of Henricksen*, No. C1-93-2484, 1994 WL 263350, at \*1 (Minn. Ct. App. June 14, 1994) (citing MINN. R. CIV. P. 52.01). While Minnesota courts have not clearly defined "benefit" to the estate, they have allowed recovery from an estate. See *Gellert v. Eginton*, 770 N.W.2d 190, 198 (Minn. Ct. App. 2009) ("[A]s long as the services of the attorney for the interested person do not contribute solely to the benefit of the interested person, but also contribute to the benefit of the estate, attorney fees are recoverable under section 524.3-720."); *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.").

Minnesota courts have awarded attorneys' fees to interested persons under Minnesota Statutes § 524.3-720 for various types of legal work performed. See *Rutt*, 2010 WL 3958649, at \*8 (attorneys' fees awarded for "the return of more than \$150,000 of improperly diverted assets"); *Gellert*, 770 N.W.2d at 198 (attorneys' fees awarded for work performed in civil suits as well as probate proceedings); *In re Anthony J. Englund, Sr. Trust Agreement dated October 19, 1990*, No.

A12–0147, 2012 WL 5476124, at \*2 (Minn. Ct. App. Nov. 13, 2012) (“all of the trust beneficiaries should have their attorney fees and expenses related to disputing the final accounting paid from the trust”).

Cozen was hired in part because of its national expertise in the areas of trusts and estates and entertainment law, as well as its local litigation experience. Accordingly, Cozen has managed significant undertakings which have benefitted the Estate and whoever its beneficiaries ultimately are. (Kane Aff., ¶¶ 5-6.) Cozen expended in excess of 800 hours from December 1, 2016 to January 31, 2017 on tasks appropriate to the administration of Estate, as detailed in the accompanying Affidavits of Thomas P. Kane and Steven H. Siltan. Given the size, nature, and complexity of the Estate and the number of interested persons involved in this matter, Cozen has managed significant undertakings which have benefitted the Estate and whoever its beneficiaries ultimately are. In the event a will or child of the decedent was discovered during these intervening months, Cozen’s efforts may have provided no benefit to Baker whatsoever. And even if Baker is an heir, Cozen’s efforts and expertise assisted all of the ultimate heirs.

In view of the time expended, the responsibility assumed, the results achieved, the size and complexity of the Estate, the sheer numbers of individuals claiming to be heirs, and Cozen’s good faith belief that its services benefitted the Estate, Baker respectfully seeks reimbursement from the Estate for Cozen’s efforts.

## **2. Summary of Time and Labor for Efforts Which Have Benefitted the Estate**

Cozen has rendered services and incurred expenses from December 1, 2016 through January 31, 2017, as more fully described and set forth in the concurrently filed Affidavits of Steven H. Siltan and Thomas P. Kane. Contemporaneous with this motion, Cozen has provided, under seal, its full, unredacted invoices for this work to the Court. However, because of attorney-



client privilege and attorney work product considerations, and because some of these matters remain in active litigation, Cozen has filed redacted versions of its invoices publicly.

***A. Entertainment-Related Time and Labor***

1. Review and Comment of Proposed Entertainment Deals

Cozen attorneys conferred with the Representatives to reach a consensus among counsel for all Non-Excluded Heirs. (*See* Siltan Aff., ¶ 16.) Upon developing a consensus, the Representatives provided [REDACTED]

Following those meetings, Cozen attorneys—along with counsel for the other Non-Excluded Heirs—engaged in many telephone calls, emails, exchanges of information and [REDACTED] (*Id.*, ¶ 17.)

As a result of Cozen’s efforts—along with the efforts of counsel for the other Non-Excluded Heirs—[REDACTED] are materially better for the Estate than [REDACTED]

(*See* Siltan Aff., ¶ 18.) Cozen attorneys engaged in frequent conversations and email exchanges with other counsel for the other Non-Excluded Heirs, with counsel for the Special Administrator, and with the Advisors to offer comments, to assist in negotiating amendments to the deals, and to obtain agreement on a joint strategy. (*Id.*, ¶ 19.)

These efforts benefitted the Estate by confirming the role of the Representatives in the negotiation process and providing a level of certainty to the Non-Excluded Heirs and the Estate’s partners that the proposed deals served the best interests of the Estate. Minnesota courts have awarded attorneys’ fees related to protecting estate assets. *See Rutt*, 2010 WL 3958649, at \*8. For the time spent protecting the Estate’s assets by reviewing and commenting on the proposed

entertainment deals, Cozen is entitled to attorneys' fees. Baker now seeks reimbursement from the Estate for those efforts.

***B. Non-Entertainment Related Time and Effort***

1. Finding a Personal Representative

Following Bremer's notice of its intent to resign as Special Administrator, Baker and Cozen participated in the search for a successor. Baker and Cozen, directly alongside the other Non-Excluded Heirs and their counsel, conducted an exhaustive and comprehensive two month search process for a personal representative to replace Bremer. Cozen's coordination efforts included scheduling of in-person meetings, gathering questions from the family and their counsel, and working with each interviewee to ensure it was prepared to respond and attend the interviews.

As set forth more fully in the Affidavit of Thomas P. Kane, the Non-Excluded Heirs vetted numerous national financial institutions, conducted several rounds of in-person interviews to determine each institution's qualifications, and surveyed staffing levels and plans for administering this Estate in exhaustive detail. (Kane Aff., ¶¶ 9-11.) Counsel received, reviewed and analyzed hundreds of pages of written proposals from the various institutions and provided additional follow-up questions to the various institutions. (Kane Aff., ¶ 12.)

These efforts led to the identification of two potential successor candidates, including one that has the unanimous consent of the family, Comerica. (Kane Aff., ¶ 13.) Some of the Non-Excluded Heirs subsequently filed petitions to appoint the same (either as successor Special Administrator or as Personal Representative). The Court subsequently appointed Comerica as Personal Representative, and as of February 1, 2017 Comerica is serving as Personal Representative for the Estate. (*Id.*) The efforts involved in vetting candidates and subsequently drafting petitions have benefitted the Estate by ensuring that an exceptionally qualified financial

institution with rapport with the Non-Excluded Heirs is administering the Estate and is capable of taking on the complex challenges this Estate has to offer.

2. Assessing the Special Administrator's Requests for Costs and Fees

Since its appointment as Special Administrator, Bremer has petitioned the Court for approval of its fees and costs and expenses and those of its counsel, and also sought to establish a procedure to govern payment and approval of such fees and costs and expenses. In response to this petition, Cozen conducted research and prepared briefing for the Non-Excluded Heirs' response in opposition to the Special Administrator's petition for fees. (Kane Aff., ¶16.) Subsequently, the Court issued its "Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses" on October 28, 2016. (*Id.*)

The October 28 Order approved the Special Administrator's fees, but the Court recognized that the Non-Excluded Heirs were entitled to review the fees prior to approval and voice any issues. Since that time, Cozen has reviewed and voiced objections to the requests for fees when appropriate. (*See* Kane Aff., ¶ 17.) Cozen's efforts benefitted the Estate by providing a process for allowing the Non-Excluded Heirs to comment on the fees submitted by the Special Administrator. (*Id.*) These efforts also ensured a proper vetting of the fees requested by the Special Administrator before they were removed from the Estate's resources. (*Id.*)

3. Preparing for and Attending the January 12, 2017 Hearing

On January 12, 2017, the Court held a hearing to determine a successor to the Special Administrator and to address Bremer's submitted accounting. (*See* Kane Aff., ¶ 19.) In advance of and following the January 12 Hearing, Cozen conducted research regarding the appointment of a personal representative and the requirements for the accounting. Cozen reviewed the accounting Bremer filed on short notice prior to the January 12 Hearing. Cozen also drafted the following

documents which aided the Court in its decision to appoint Comerica as personal representative and to fully consider Bremer's submitted accounting. (*Id.*, ¶ 20.)

Before the January 12 Hearing, Cozen attorneys met and conferred with other counsel and prepared direct and cross examination of the proposed co-personal representatives. (Kane Aff., ¶ 21.) At the January 12 Hearing, Cozen attorneys argued on behalf of some of the Non-Excluded Heirs.

Cozen's efforts benefitted the Estate by providing a full and careful review of the Special Administrator's submitted accounting and requested discharge, as well as the benefits and detriments of the proposed co-personal representatives. (Kane Aff., ¶ 21.) Minnesota courts have awarded attorneys' fees to parties objecting to submitted accounting. *In re Englund, Sr. Trust*, 2012 WL 5476124, at \*2. For the time spent reviewing and filing objections to Bremer's accounting and discharge, Cozen is entitled to attorneys' fees. Baker now seeks reimbursement from the Estate for those efforts.

### CONCLUSION

For all the foregoing reasons, Omarr Baker respectfully requests the Court authorize and direct the Personal Representative to pay \$354,258.00 in attorneys' fees and \$15,847.61 in costs to Cozen O'Connor from the assets of the Estate for its efforts that benefitted the Estate.

Dated: March 3, 2017

COZEN O'CONNOR

By       /s/Steven H. Silton        
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