

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
PROBATE DIVISION

In Re:

Case Type: Special Administration

Court File No: 10-PR-16-46

Judge: Kevin W. Eide

The Estate of Prince Rogers Nelson,

Decedent.

**MEMORANDUM IN SUPPORT OF
MOTION TO ENFORCE EXISTING
COURT ORDERED PROTOCOLS ON
COMMUNICATIONS AND ESTABLISH
PROTOCOLS ON COMMUNICATIONS
TO FUTURE TRANSITION**

INTRODUCTION

Sharon L. Nelson, Norrine P. Nelson, John R. Nelson (“Heirs”), as Heirs to the estate of Prince Rogers Nelson (“Estate”), and L. Londell McMillan and Charles Spicer (each, an “Interested Person”) (all parties collectively referred to herein as “Movants”) submit this memorandum in support of their motion requesting that the Court issue an order reaffirming and enforcing its protocols concerning discussions, dispute resolution and mediation between Movants and Comerica Bank & Trust (“Comerica”). Movants are requesting that the Court issue an order directing Comerica to comply with the existing protocols and engage in good faith discussions of issues raised by Movants as a prerequisite to submitting issues to mediation.

The communication problem with Comerica in this Estate continues, unfortunately. Recognizing the number of parties, disputes and complexity of the Estate, this Court has, on several occasions, reiterated the necessity of communication between Comerica, the Heirs and other Interested Persons in mitigating or resolving potential disputes. Movants have made sincere efforts to follow the protocols set by the Court, by seeking to engage in direct, informal communications with Comerica to gain information and remedy potential disputes before engaging

in other costly solutions, such as mediation or court action. While the Court has instituted a dispute resolution process to be followed by Movants and Comerica, Comerica has frequently ignored this guidance and established a pattern and practice of refusing to engage in good faith discussions when they see fit, and instead forcing disputes directly into mediation. Comerica's actions not only fail to follow the protocols issued by this Court, but result in increased legal costs to the Estate and further delays in resolving issues and proceeding toward closure of the Estate, the very concerns that Movants are attempting to discuss with Comerica to address and reduce in the best interest of the Estate. Movants have participated in multiple mediations. While these mediations have produced good discussions, they have proven ineffective for the most part due to insufficient action by Comerica and lack of communication. Movants continue to support mediations, where appropriate, and any process to communicate in good-faith yet mediation should not be used to circumvent the Court's Order and negate good faith communications among Comerica, the Heirs and Interested Persons. Movants are sincerely concerned that Comerica and its counsel have created a false narrative to delay closure of the Estate by suggesting that the Heirs' and Interested Persons' positions on closing or transitioning the Estate lack clarity. The communication problem has been caused by Comerica's insistence on delay and its failure to engage in good faith discussions.

BACKGROUND

As a result of the Heirs' requests for greater transparency and a reduction in Comerica's expenses and legal costs, on April 23, 2019, this Court established a simple communication and dispute resolution process. Instead of raising disputes exclusively through litigation or airing disputes publicly, the Court determined that the parties' concerns with respect to administration of the Estate were "more effectively addressed through discourse and mediation" and the Court

“encouraged the parties to continue to expand dialog opportunities and informally mediate administration concerns.” (April 23, 2019 Order Regarding Personal Representatives Fees and Costs for February 2019 Through January 2020 & Petition To Limit Authority of Personal Representative at 2). This Court emphasized the importance of open communication in the April 23, 2019 Order, stating that the only disputes that should be referred to mediation with Justice Gilbert should be those that “cannot be addressed through open communication.” (*Id.* at 5) (emphasis added).

This Court reiterated the importance of open communication through discussion and keeping interested persons informed in the May 3, 2021 Order confirming McMillan and Spicer as Interested Persons. There, the Court instructed that mediation regarding McMillan and Spicer’s participation in the Estate should be utilized only after direct discussions were unsuccessful, requiring that parties “shall consult with one another informally, or if necessary, through mediation.” (May 3, 2021 Order Regarding L. Londell McMillan and Charles Spicer’s Rights as Interested Persons under Minn. § 524.1-201(33) at ¶ 2) (emphasis added). The Court also emphasized that only after those avenues of communication have been unsuccessful, should the dispute be brought to the Court. (*Id.* at ¶ 2).

DISCUSSION

I. COMERICA HAS NOT COMPLIED WITH THE COURT’S DIRECTIVES REQUIRING OPEN COMMUNICATION AND INFORMAL DISCUSSION OF POTENTIAL DISPUTES.

Movants, in compliance with the guidelines issued by the Court, have attempted on several occasions to confer with Comerica and its representatives regarding Estate matters, including transition activities and information sharing practices. However, Comerica has refused to engage in any discussion, stating instead that it will only consider the issue through the formal mediation process with Justice Gilbert as an intermediary. In another instance, where Movants requested

mediation on transition issues, Comerica refused to participate in mediation at all until Movants had met a number of their demands. Some specific examples include the following:

On August 3, 2021, McMillan, on behalf of Movants, wrote to Comerica to seek its opinion on instituting weekly transition planning meetings with the Heirs and Interested Persons. In her responsive email, Angela Aycock declined to provide any opinion or schedule any further discussion and stated that, going forward, Comerica would only engage in discussions concerning Heirs' meetings and communications through mediation with Justice Gilbert. (McMillan Decl., Ex. A at 1-2).

On July 30, 2021, McMillan, on behalf of Movants, wrote Comerica to inquire why he is often not been copied on communications (in this case, a simple press release related to Prince's long-announced new album "Welcome2America") sent to Primary Wave and the Heirs. McMillan's sought further information to enable Movants to help bring public awareness to the project (as any loyal fan or supporter may wish to do but certainly as an Interested Person who wished to help promote the project). On August 2, 2021, Andrea Bruce replied that Comerica believed McMillan was not entitled to this information, that Primary Wave should now be included in a "broader line of communications" and that if McMillan had issue with his omission, he could raise the issue through mediation with Justice Gilbert. (McMillan Decl., Ex. B at 3). These exchanges indicate that Comerica has made it a matter of policy to refuse to engage in any direct discussions with the Heirs and Interested Persons and instead force all issues immediately into mediation. This conduct is contrary to the Court's directives concerning open communication, and serves to stifle constructive dialogue, generate excessive legal costs and significantly prolong the resolution of disputes.

Not only has Comerica often refused to engage in discussions with both the Heirs and Interested Persons regarding Estate transition issues, but it has previously notified Movants that it would refuse to participate in mediation of these issues unless and until the Heirs and Interested Persons have complied with Comerica's unilaterally imposed benchmarks of "progress" in transitioning the Estate. On May 18, 2021, both Larry Mestel, CEO of Primary Wave, and McMillan wrote to Comerica seeking to schedule a transition meeting regarding the Estate's creation of new IP and branded music deals and, if necessary, discuss the issue through the mediation process. (McMillan Decl., Ex. C at 2-6). Comerica's counsel responded the next day, stating that it would be willing to mediate transition issues at some point in the future, but that until the Heirs and Interested Persons made "significant progress" on transition issues, Comerica would not be participating in mediation of the issue. (*Id.* at 2). It appears Comerica picks and chooses when it desires to communicate with the Movants; but that when Movants commence litigation or when public projects are forthcoming, Comerica shows more of a willingness to engage in mediation. Nonetheless, Comerica has failed to engage in reasonable open communication with Movants which is not in the best interest of the Estate.

Comerica's communication policy is contrary to the Court's Orders, and is not how a healthy dispute resolution process should operate. Comerica should not be allowed to dictate when and how it is willing to participate in mediation, particularly when conditioning its participation on vague and ill-defined demands. Mediation should not be used as a bargaining chip for Comerica to wield to suit its purposes – and it should not be used to stifle good faith discussion of issues. Comerica's actions entirely undercut the process of addressing and resolving disputes, cause unwarranted expense and delay and serve only to frustrate and antagonize, rather than update Movants or facilitate any resolution.

II. THE COURT'S INTENDED DISPUTE RESOLUTION PROCESS IS ESSENTIAL TO OPEN COMMUNICATIONS, ADMINISTRATION OF THE ESTATE AND PATH TO TRANSITION THE ESTATE.

The dispute resolution process was instituted by this Court to encourage increased communication, transparency and trust among the Heirs, Interested Persons and Comerica. The Court sought to address the significant time and costs expended when disputes were brought directly to the Court by requiring that the parties first consult with one another directly in an attempt to resolve issues, and only after attempts to resolve were unsuccessful, should they proceed to mediate the issues before Justice Gilbert. Comerica's refusal to engage directly and immediate forcing of mediation in response to Movants' inquiries is contrary to the spirit and purpose of the April 23, 2019 and May 3, 2021 Orders, and creates increased distrust, frustration and delay as well as excessive attorney and mediation fees.

Even if Comerica prefers not to engage in discussions of Estate issues through email correspondence, it has made no attempt to move discussions to a forum that it may find preferable for engaging in constructive dialogue, such as via telephone or videoconferences. Instead, its actions appear to be intended to avoid having to deal with Movants entirely, and to only engage in negotiation of issues indirectly, entirely through an intermediary. Whether Comerica dislikes the Movants or seek to avoid disagreements, there has been a major problem caused by Comerica's communication void. Unfortunately, mediation has shown itself to be a slow-moving and inefficient process.¹ It was never intended to be, and should not remain, the exclusive means through which the Personal Representative and the Heirs and other beneficiaries communicate on matters of importance. Moreover, Comerica's wielding of mediation as a weapon by refusing to

¹ For example, Movants raised numerous issues regarding transition and closure of the Estate in a conference with Judge Gilbert on May 27, 2021. (McMillan Decl., Ex D). Now, eleven weeks later, Movants are still awaiting Comerica's response on these issues and have not seen any resolution.

participate unless its demands are made have only caused further dysfunction in the dispute resolution process.

Movants remain ready and willing to meet with Comerica and its representatives in whatever forum the parties deem is most conducive to a full, constructive and thoughtful discussion of the numerous important Estate issues that both Movants and Comerica must address, and seek the Court's intervention in reaffirming and reinforcing the importance of its open communication directive in a manner that will set forth the expectations for how the parties shall effectively and efficiently discuss and negotiate their differences directly before proceeding to more expensive and time-consuming means of resolution. If needed, Movants would agree to record the discussions for the Court to review, as it is essential that a fiduciary engages in open and good-faith communications in a complex Estate, especially as the parties seek to close the Estate.

CONCLUSION

Movants respectfully request that the Court issue an order reaffirming and enforcing its protocols and guidelines set forth in the April 23, 2019 and May 3, 2021 Orders to require that the parties must engage in direct, good faith discussions on all potentially disputed issues before proceeding to mediation; and that the parties shall participate in mediation in good faith following their failure to reach resolution of an issue through direct discussions. Movants also respectfully request this Court to hold biweekly or monthly status conferences and communications with the Court, as prior status conferences with the Court have proven more effective.

Dated: August 10, 2021

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Dated: August 10, 2021

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Sharon Nelson

Dated: August 10, 2021

By: /s/ Norrine Nelson
Norrine Nelson

Dated: August 10, 2021

By: /s/ John Nelson
John Nelson

Dated: August 10, 2021

By: /s/ Charles Spicer
Charles Spicer