

STATE OF MINNESOTA
COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

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

In re:

Estate of Prince Rogers Nelson,

MEMORANDUM OPPOSING IMPOSITION
OF ATTORNEYS' FEES PURSUANT TO
MINN. R. CIV. P. 11.02 AND MINN. STAT. § 549.211

Decedent.

INTRODUCTION

The Court has entered an Order to Show Cause why Sharon, Norrine, and John Nelson (collectively "SNJ") should not be sanctioned pursuant to Minn. R. Civ. P. 11.02 and/or Minn. Stat. § 549.211. In so doing, the Court implies that the Petition to Remove Comerica Bank & Trust, N.A. ("Comerica") as Personal Representative ("PR") was frivolous. This implication is unfounded in the authority cited by the Court. The Petition was not filed for an improper reason, the claims were justified by existing (although not well developed law), and the facts known and that would likely have been uncovered in discovery support the allegations. It also makes no sense to impose a financial penalty against SNJ when any legal fees incurred in responding to the Petition are effectively born 50% by SNJ anyway. For all these reasons, no sanctions should be imposed against SNJ.

FACTS AND PROCEDURAL POSTURE

Since Comerica's appointment as PR, SNJ have become increasingly concerned with its administration of the Estate of Prince Rogers Nelson ("Estate"). In September 2017, [REDACTED]

[REDACTED]

Court. In its Order denying the Petition to Remove Comerica, the Court made no finding that the Petition was frivolous. Instead, the Court concluded that the Petition was an attempt to further Petitioners' agenda at the Estate's expense. In its Order to Show Cause, the Court states that it was "critical of filing the petition for Removal for the reasons stated therein[,]" but it still does not conclude that the Petition was frivolous. Nonetheless, the Court's actions so far imply such a determination, requiring SNJ to respond.

Minn. R. Prof. Con. 11.02 and 11.03

By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other document, an attorney or self-represented litigant is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

- (a) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
- (b) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
- (c) the allegations and other factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery....

Minn. R. Civ. P. 11.02.

If, after notice and a reasonable opportunity to respond, the court determines that Rule 11.02 of these rules has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated Rule 11.02 or are responsible for the violation....

Minn. R. Civ. P. 11.03.

If the Court *sua sponte* seeks to impose a sanction, it must "enter an order *describing the specific conduct that appears to violate Rule 11.02*, and directing an attorney, law firm, or party to show cause why it has not violated 11.02 with respect thereto. *Id.* "A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or

comparable conduct by others similarly situated.” *Id.* If the Court imposes sanctions, it “shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.” *Id.*

Importantly, the purpose of Rule 11 sanctions is not to penalize, but rather to deter. *Uselman v. Uselman*, 464 N.W.2d 130, 142 (Minn. 1990). To function properly as a deterrent, the “attorney or party must have fair notice of both the possibility of a sanction and the reason for its proposed imposition,” which should “be given as early as possible during the proceedings to provide the attorney and party the opportunity to correct future conduct.” *Id.* There is little possibility for a deterrent when the district court seeks to sanction a party after resolution of the issue. *See id.* In order to not stymie arguably legitimate claims “the rule should be construed somewhat narrowly.” *Id.* “[W]hile some sanctionable conduct might under these circumstances escape discipline, that is preferable to deterring legitimate or arguably legitimate claims.” *Id.*

Rule 11.03 provides two mechanisms for sanctions to be imposed: (1) by a party through the 21-day safe harbor process; and (2) by the Court on its own initiative. Minn. R. Civ. P. 11.03(a). While the present Order to Show Cause is made on the Court’s own initiative, the purpose of the proposed sanction—deterrence—is just as pertinent here as it would be if made under the 21-day safe harbor provision. Since the Petition to Remove Comerica has already been decided by this Court, there is no deterrent purpose to be served by imposing sanctions, unless the Court’s purpose is to preemptively bar SNJ from attempting to seek further relief. Additionally,

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denial of the Petition does not mean the relief sought was not warranted. *Ferguson v. Shea*, 374 N.W.2d 575, 577 (Minn. Ct. App. 1985).

Third, the allegations and other factual contentions have evidentiary support, or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery. Minn. R. Civ. P. 11.02. As the Court knows, SNJ presented a number of grievances in their Petition. For some, there was factual support offered, both in the Petition and in the Reply. Denial of those claims does not mean they were frivolous. *Ferguson*, 374 N.W.2d at 577. However, a number of allegations specifically sought discovery from Comerica on the basis that evidentiary support was solely in the custody of Comerica. Comerica is the gatekeeper of the Estate's information. If it does not tell the Heirs something, they have little independent means by which to discover the information. Rather than allow even basic discovery on some of the contested matters, the Court outright denied the request. As a practical matter, the Court should not claim that SNJ's allegations lacked merit when it denied SNJ the opportunity to discover necessary evidence. Thus, the claims were not frivolous and the Court should have permitted discovery on the allegations so specifically identified.

If the Court were to nonetheless impose a fine on SNJ, the Court's originally contemplated fine—the entirety of the fees incurred by Comerica—is a grossly improper amount. SNJ not only incorporates its January 26, 2018 objection to Comerica's Fee Affidavit here, but also notes that SNJ are half the Heirs of the Estate, so any payment by the Estate to Comerica for attorneys' fees has already caused financial harm to SNJ as it has reduced the amount that they will eventually receive when the Estate is closed. Additionally, the sanction imposed is to be limited. *See* Minn. R. Civ. P. 11.03. For Example, Federal Rule 11, on which Minnesota's rule is based, does not permit attorneys' fees to be awarded as part of a sanction when it is done on the Court's own

initiative. *MHC Inv. Co. v. Racom Corp.*, 323 F.3d 620, 626-28 (8th Cir. 2003) (the 1993 advisory committee comment notes comment that attorneys' fees may not be imposed when the Court *sua sponte* seeks to impose sanctions). While Minnesota's counterpart rule lacks the advisory committee note, the reason for the rule is as compelling in Minnesota as it is in federal cases. Especially in this situation, where no party requested fees and there is no deterrent purpose to be served. "[W]here the language of the Federal Rules of Civil Procedure is similar to language in the Minnesota civil procedure rules, federal cases on the issue are instructive." *T.A. Schifsky & Sons, Inc. v. Bahr Constr., LLC*, 773 N.W.2d 783, 787 n. 3 (Minn. 2009).

Lastly, as a procedural matter, the Court's Order to Show Cause is defective since it does not "describe the specific conduct that appears to violate Rule 11.02." Rather, the only reference to specific conduct refers to the Court's December 18, 2017 Order Denying the Petition to Remove Comerica, noting "the Court is critical of filing the Petition for Removal for the reasons stated therein." In the referenced Order, the Court made a number of observations about the Petition and it is unclear to SNJ which specific allegations the Court is suggesting were frivolous. Thus, the Order to Show Cause does not meet the specificity requirements of Rule 11.02.

Minn. Stat. § 549.211

The other authority cited by the Court in its Order to Show Cause is Minn. Stat. § 549.211, which in relevant part provides the same mechanism and authority for sanctions as Minn. R. Civ. P. 11.02 and 11.03. It requires a party to acknowledge that sanctions can be imposed for violations of the statute. Minn. Stat. § 549.211, subd. 1. It provides the same three certifications as Rule 11.02. *Id.*, subd. 2. Finally, it provides the same mechanism and limitations on sanctions as Rule 11.02. *Id.*, subds. 3-5. As noted above, the ultimate concern is that frivolous matters are not being presented to the Court. For all relevant purposes, the analysis under Minn. Stat. § 549.211 is the

same as under Minn. R. Civ. P. 11.02 and 11.03 (although there is far more case law interpreting the statute than the rule). Therefore, based on application of the arguments above, the Court should decline to impose sanctions against SNJ under Minn. Stat. § 549.211 for pursuing their rights under Minnesota law to seek removal of Comerica.

CONCLUSION

Based on these arguments, it is clear that SNJ did not violate Minn. Stat. § 549.211, subd. 2, or Minn. R. Civ. P. 11.02. While the Court may have preferred that SNJ raise their grievances with Comerica's administration of the Estate in a less public forum, it was within SNJ's rights under Minnesota law to proceed as they did. SNJ's allegations had both factual support and there were a number of other contentions which SNJ believed were likely to have factual support had the Court permitted further investigation or discovery. Since the Court flatly denied SNJ's request for discovery, the opportunity to prove the accuracy of those issues was lost. For these reasons, the Court should find that SNJ have not violated Minn. Stat. § 549.211 or Minn. R. Civ. P. 11.02 and should consequently refuse to impose any sanctions upon them.

SKOLNICK & JOYCE, P.A.

Dated: February 21, 2018

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