

STATE OF MINNESOTA  
COUNTY OF CARVER

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

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In the Matter of:

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

Estate of Prince Rogers Nelson,

Decedent.

**MEMORANDUM REGARDING  
APPLICATION OF EXISTING ORDERS  
AND PROTOCOLS TO THE  
PERSONAL REPRESENTATIVE**

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Pursuant to the Court's Order dated February 22, 2017, Comerica Bank & Trust, N.A., as Personal Representative of the Estate of Prince Rogers Nelson (the "Personal Representative"), respectfully submits this Memorandum, and accompanying Proposed Order, with recommendations regarding the application of existing orders and protocols to the Personal Representative.

The Court appointed Bremer Trust, N.A. as Special Administrator (the "Special Administrator") by Order dated April 27, 2016, following the untimely death of Prince Rogers Nelson (the "Decedent"). Because the appointment was temporary, the Court entered a series of orders granting powers to, or limiting the powers of, the Special Administrator, including the following orders (collectively, the "Special Administrator Orders"):

- Order Authorizing Depositions and Discovery dated May 18, 2016;
- Findings of Fact, Order & Memorandum Authorizing Special Administrator's Employment of Entertainment Industry Experts dated June 8, 2016;
- Interim Order Regarding Estate Administration Following the Court's July 28, 2016 Order dated August 11, 2016;
- Order Regarding Listing and Sale of Real Property dated August 11, 2016;
- Order Regarding Exhibition Operating Agreement for Paisley Park Museum dated August 17, 2016;

- Order Adopting Modified Protocol for Confidential Business Agreement dated August 30, 2016;
- Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses dated October 28, 2016;
- Order Authorizing Limited Extension of Monetization Experts dated November 8, 2016; and
- Order Establishing Protocol for Finalizing Court-Approved Entertainment Agreements dated November 23, 2016.

The Court appointed the Personal Representative as personal representative of the Estate effective February 1, 2017, pursuant to this Court's Order dated January 20, 2017, as amended by this Court's Order dated January 31, 2017. The Court has not specifically addressed whether, and to what extent, the Special Administrator Orders apply to the Personal Representative.

Ordinarily, under Minnesota's Uniform Probate Code, a personal representative has "the same power over the title to property of the estate that an absolute owner would have," and "[t]his power may be exercised without notice, hearing, or order of court." Minn. Stat. § 524.3-711. Unless specifically limited by the Court, such powers includes the ability to enter into the twenty-nine categories of transactions set forth in Minnesota Statutes § 524.3-715.

Although the Court has not entered a final order determining heirship in this matter, there is a reasonably likelihood that Norrine Nelson, Sharon Nelson, John R. Nelson, Tyka Nelson, Omarr Baker, and Alfred Jackson (the "Non-Excluded Heirs") will be found to be the heirs of the Decedent. Based on the extraordinary circumstances of this Estate and the interests of the Non-Excluded Heirs, the Personal Representative believes that it is in the best interests of the Estate and its beneficiaries that the Personal Representative have broad authority to administer the Estate and its assets, but that the Court impose limited restrictions on and guidelines for the Personal Representative in this matter, as summarized below.

**I. GENERAL AUTHORITY OF THE PERSONAL REPRESENTATIVE.**

Consistent with Minn. Stat. § 524.3-701, *et seq.*, the Personal Representative should be granted all of the powers and duties of a personal representative under Minnesota's Uniform Probate Code, subject only to those limitations specifically set by the Court. To accomplish this, the Court should determine that the Special Administrator Orders do not apply to the Personal Representative. Any powers granted to, or limitations imposed on, the Special Administrator that the Court wishes to apply to the Personal Representative should be specifically set forth in an order addressing the Personal Representative's power and authority, such as the Proposed Order submitted with this Memorandum.

**II. SALE OF REAL PROPERTY.**

In its Order Regarding Listing and Sale of Real Property dated August 11, 2016, the Court authorized the Special Administrator to list and sell certain parcels of real property. Of those, the following three parcels remain unsold, and the Court should recognize the Personal Representative's authority to continue the listing and sale of those parcels:

- a. 2178 Red Fox Circle, Chanhassen, MN 55317;
- b. 2179 Red Fox Circle, Chanhassen, MN 55317; and
- c. Turks and Caicos.

In its Order, the Court declined to grant the Special Administrator the authority to sell certain parcels of real property without seeking prior Court approval. Of those parcels, two should be added to the parcels the Personal Representative is authorized to list and sell:

- a. 99 Lake Drive E., Chanhassen, MN 55317; and
- b. Lot 1, Block 2, Aztec Drive Addn.

Finally, in its Order, the Court imposed certain minimum price requirements for the sale of property. The Court should not impose minimum price requirements or other conditions on the sale of these five parcels because the Personal Representative is already subject to a fiduciary obligation to the Estate to obtain the highest sale price available under the circumstances for each parcel.

At this time, the Personal Representative is not seeking authority to sell nine parcels: 539 Newton Ave. N., Minneapolis, MN (the home where Tyka Nelson is residing); 115 King Creek Road, Golden Valley, MN (the home where Omarr Baker is residing); 3420 Snelling Ave., Minneapolis, MN (the “Purple Rain” home); 8020 Park Place, Chanhassen, MN 55317 (the warehouse); and five contiguous parcels in Chanhassen that may be subject to large scale development opportunities—7141 Galpin Blvd., Chanhassen, MN 55317; 6921 Galpin Blvd., Chanhassen, MN 55331; 7021 Galpin Blvd., Chanhassen, MN 55317; Tract C RLS 89 (vacant lot off Galpin Blvd.); and Tract B RLS 89 (156 acres on Galpin Blvd.). As to these nine parcels, the Personal Representative recommends that it petition the Court for approval, with notice and an opportunity to be heard by the Non-Excluded Heirs, if it wishes to list or sell any of these properties in the future.

**III. THE PERSONAL REPRESENTATIVE SHOULD ONLY BE REQUIRED TO PROVIDE ADVANCE NOTICE TO THE NON-EXCLUDED HEIRS BEFORE ENTERING INTO MATERIAL BUSINESS TRANSACTIONS, BUT SHOULD BE REQUIRED TO KEEP THE NON-EXCLUDED HEIRS REASONABLY INFORMED REGARDING THE ESTATE.**

Based on the temporary nature of the special administration, the Court understandably limited the Special Administrator’s authority to enter into certain entertainment transactions without prior approval of the Court or the Non-Excluded Heirs. However, continuing that limitation now for routine transactions that the Personal Representative is required to engage in

to administer the Estate would only create inefficiencies and impose substantial additional costs on the Estate. As a result, the Court should confirm that the Personal Representative is authorized to enter into any lawful business transaction that the Personal Representative deems appropriate and necessary to maximize the value of the Estate and its assets, including transactions related to the licensing or exploitation of the entertainment assets of the Estate. However, for any transaction in which the Personal Representative reasonably anticipates receiving more than \$2 million in value, the Personal Representative should be required to provide the Non-Excluded Heirs with 5 business days' notice before entering into the transaction, including to allow the Non-Excluded heirs the opportunity to provide input and, if they deem Court review necessary, to allow the Non-Excluded Heirs an opportunity to seek relief from the Court with respect to any such transaction. The Court should further clarify that the Personal Representative is not required to provide advance notice to, or seek the approval of, the Non-Excluded Heirs for routine licensing, exploitation, and other contractual matters. The Personal Representative should, however, be required to keep the Non-Excluded Heirs informed regarding the assets and business transactions of the Estate by reporting to the Non-Excluded Heirs on at least a monthly basis. Finally, the Personal Representative should maintain the ability to seek Court approval for any transaction or agreement, even if it is not required to do so by any Court order.

**IV. THE PERSONAL REPRESENTATIVE SHOULD BE AUTHORIZED TO RETAIN AGENTS TO ASSIST IN THE ADMINISTRATION OF THE ESTATE.**

The Court should affirm that the Personal Representative is authorized to retain accountants, appraisers, entertainment industry experts, counsel, realtors, and other professionals the Personal Representative deems necessary to administer the Estate, pursuant to terms the Personal Representative determines are reasonable under the circumstances. *See* Minn. Stat.

§§ 524.3-707 (authorizing the employment of appraisers), 524.3-715(21) (authorizing the employment of persons, “including attorneys, auditors, investment advisors, or agents”). Consistent with Minn. Stat. § 524.3-721, however, the Personal Representative and Non-Excluded Heirs should retain the right to have the Court review the propriety of employing any such agent and the reasonableness of any such agent’s compensation.

**V. THE PERSONAL REPRESENTATIVE AND ITS COUNSEL SHOULD BE PROVIDED COMPENSATION AND REIMBURSEMENT FOR COSTS AND EXPENSES, SUBJECT TO QUARTERLY COURT APPROVAL.**

In its Order Approving Fees and Costs and Expenses and Establishing Procedure for Review and Approval of Future Fees and Costs and Expenses dated October 28, 2016, the Court established a procedure for the Special Administrator and its counsel to receive compensation and reimbursement for attorneys’ fees, costs, and expenses. The Personal Representative has modeled the process it has set forth in the Proposed Order that accompanies this Memorandum on the October 28, 2016 Order, subject to the modification set forth herein.

First, the Personal Representative has proposed that it be provisionally entitled to receive compensation at the rate of \$125,000 each month for the time period beginning February 1, 2017 and ending February 1, 2018, as well as reimbursement for the expenses incurred in connection with administration of the Estate. The \$125,000 per month rate is the rate the Personal Representative presented to the Non-Excluded Heirs as part of the request-for-proposal process through which the Personal Representative was selected to serve in that role, and is commensurate with the time and expertise the Personal Representative is devoting to this extraordinary Estate. *See* Minn. Stat. § 524.3-719(b) (providing that, in determining the reasonable compensation of a personal representative, Courts shall give consideration to “(1) the time and labor required; (2) the complexity and novelty of problems involved; and (3) the extent

of the responsibilities assumed and the results obtained”). As set forth below, however, the Personal Representative’s compensation and expense reimbursements would be subject to quarterly review and approval by the Court, with the requirement that the Personal Representative reimburse the Estate in an amount that the Court determines to be reasonable and appropriate, if the Court believes that there was an overpayment of the Personal Representative’s compensation or expense reimbursements. Because it is difficult to anticipate the amount of time and effort the Personal Representative will be required to devote to the Estate after February 1, 2018, the Personal Representative proposes that, prior to that date, the Personal Representative petition the Court regarding the amount of its compensation for the time period of February 1, 2018 through February 1, 2019, based on the then anticipated needs and activities of the Estate.

Second, the Personal Representative has proposed that it be authorized to pay its counsel for legal services, costs, and expenses as invoices are submitted to the Personal Representative without advance approval of the Court. *See* Minn. Stat. §§ 525.515, 524.3-720, and 524.3-721. As set forth below, like the compensation and expense reimbursements of the Personal Representative, the attorneys’ fees, costs, and expenses paid to counsel would be subject to quarterly review and approval by the Court, with the requirement that counsel reimburse the Estate in an amount that the Court determines to be reasonable and appropriate, if the Court believes that there was an overpayment of attorneys’ fees, costs, or expenses.

Third, the Personal Representative proposes that on June 16, 2017, and every four months thereafter, the Personal Representative will submit to the Court for review and approval: (1) an affidavit (“Personal Representative Fee Affidavit”) that details the compensation and expense reimbursements of the Personal Representative for the preceding four month period (*i.e.*, February 1, 2017 through May 31, 2017, except that the initial Personal Representative Affidavit

would include all amounts beginning during December 2016); and (2) an affidavit of counsel (“Attorney Fee Affidavit”) that attaches unredacted copies of all itemized billing statements that represent attorneys’ fees, costs, and expenses for which the Personal Representative seeks Court approval for the preceding four month period (*i.e.*, February 1, 2017 through May 31, 2017, except that the initial Attorney Fee Affidavit would include all amounts beginning during December 2016).

Consistent with the October 28, 2016 Order, when submitting the quarterly Attorney Fee Affidavits, billing statements and Personal Representative Fee Affidavits, the Personal Representative would serve unredacted copies to counsel for the Non-Excluded Heirs. The Non-Excluded Heirs would then have 10 days after service to submit written objections. The Personal Representative then proposes that the Court consider all supporting submissions made by the Personal Representative and order the Personal Representative to reimburse the Estate in an amount that the Court 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 Personal Representative proposes that the Court consider all supporting submissions made by the Personal Representative in connection with the Attorney Fee Affidavits and order counsel for the Personal Representative to reimburse the Estate in an amount that the Court determines to be reasonable and appropriate, if the Court believes that there was an overpayment of the attorneys’ fees, costs, or expenses. *See* Minn. Stat. § 524.3-721.

Also consistent with the October 28, 2016 Order, the Personal Representative proposes that any submission of unredacted Attorney Fee Affidavits and Personal Representative Fee Affidavits (together, “Fee Affidavits”), or supporting detail for the Court’s review would not be deemed to constitute a waiver of the attorney-client privilege or work product doctrine. To the

extent counsel for the Non-Excluded Heirs receive the Fee Affidavits and supporting documents, the Personal Representative requests that they maintain the confidentiality of such documents and not disclose the contents to their clients or third parties. The Personal Representative further requests that the Court determine that the disclosure of any attorney-client privilege or work product material contained in redacted Fee Affidavits and supporting documents provided to counsel for the Non-Excluded Heirs not be deemed a waiver of confidentiality, the attorney-client privilege, or the work product doctrine, given the common interest of the Personal Representative and the Non-Excluded Heirs. Finally, the Personal Representative requests that the Court continue, from the October 28, 2016 Order, the provision allowing Court filings that include Fee Affidavits and supporting documents to be filed under seal to preserve the privilege and work product protections, and maintain the confidentiality of the ongoing business work of the Estate, with the understanding that the Personal Representative will file redacted versions of those documents to limit the sealed material to information which is privileged or confidential.

**VI. THE COURT SHOULD PERMIT THE PERSONAL REPRESENTATIVE TO EXERCISE DISCRETION IN DETERMINING WHEN AND HOW TO DISCLOSE CONFIDENTIAL INFORMATION TO THE NON-EXCLUDED HEIRS.**

Administration of this Estate requires the Personal Representative to access and maintain highly sensitive and confidential information, including confidential business information and genetic testing results. The Court should authorize the Personal Representative to disclose such confidential information, in its discretion, to the Non-Excluded Heirs and their counsel in a manner that does not compromise any applicable attorney-client and work product protections or hamper the confidentiality needed for future business and tax purposes. The Court should also specifically authorize the Personal Representative to limit disclosure of such confidential information to the Non-Excluded Heirs and their counsel as the Personal Representative deems

necessary or appropriate under the circumstances, when such disclosure is not otherwise required by a Court order.

**VII. THE COURT SHOULD AUTHORIZE THE PERSONAL REPRESENTATIVE TO UTILIZE SUBPOENAS AND OTHER DISCOVERY METHODS.**

In its Order Authorizing Depositions and Discovery dated May 18, 2016, the Court authorized the Special Administrator to issue subpoenas and otherwise engage in the discovery methods allowed under the Minnesota Rules of Civil Procedure for purposes the Special Administrator deemed necessary for the benefit of the Estate. The Personal Representative contemplates requiring the same ability to engage in discovery, including third-party discovery, to effectively administer the Estate and its assets. Accordingly, the Court should authorize the Personal Representative to employ all means of discovery afforded by Minnesota Rules of Civil Procedure 26 through 37 and to employ subpoenas pursuant to Minnesota Rule of Civil Procedure 45. *See* Minn. Stat. § 524.1-304. Because the assets, liabilities, claims, and business transactions involved in administering this Estate are not restricted solely to Minnesota and involve property, individuals, and entities in foreign jurisdictions, the Court should also authorize the Personal Representative to utilize interstate depositions and discovery, including requesting the issuance of subpoenas pursuant to the authority of courts in jurisdictions outside of Minnesota. To the extent notice to all parties is required, *see, e.g.*, Minn. R. Civ. P. 45.01(e), the Personal Representative will provide notice to interested persons, including those entitled to notice pursuant to Minnesota Statutes § 524.3-204.

## CONCLUSION

For the reasons set forth herein, the Personal Representative respectfully requests that the Court enter the accompanying Proposed Order regarding the scope of the Personal Representative's authority and the application of existing orders and protocols to the Personal Representative.

Dated: March 3, 2017

/s/ Joseph J. Cassioppi

Mark W. Greiner (#0226270)

Karen Sandler Steinert (#0389643)

Joseph J. Cassioppi (#0388238)

FREDRIKSON & BYRON, P.A.

200 South Sixth Street

Suite 4000

Minneapolis MN 55402-1425

612-492-7000

612-492-7077 fax

mgreiner@fredlaw.com

ksteinert@fredlaw.com

jcassioppi@fredlaw.com

*Attorneys for Comerica Bank & Trust N.A.*

60892801