

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In Re:

Court File No.: 10-PR-16-46

Estate of Prince Rogers Nelson,

**REDACTED**

Deceased.

**MEMORANDUM IN OPPOSITION  
TO FRANK WHEATON AND  
JUSTIN BRUNTJEN'S MOTIONS  
FOR APPROVAL OF PAYMENT  
FROM THE ESTATE FOR  
SERVICES THAT BENEFITTED  
THE ESTATE AS A WHOLE AND  
ENTERTAINMENT ATTORNEYS'  
FEES**

Sharon L. Nelson, Norrine P. Nelson and John R. Nelson ("Sharon," "Norrine," and "John", collectively referred to as "SNJ") submit this Memorandum in Opposition to motions submitted by Alfred Jackson seeking payment of attorneys' fees and costs from the Estate of Prince Rogers Nelson. Frank Wheaton and Justin Bruntjen, attorneys for Alfred Jackson ("Alfred"), seek \$1,602,005.50 in attorneys' fees and cost reimbursement. The claim continues the accumulation of attorneys' fees requested from the Estate from counsel for non-excluded heirs in this matter, which now exceed \$4 million:

Lommen Abdo: \$339,205  
Gray Plant Mooty: \$228,525.95  
Holland & Knight: \$1,067,243.89  
Cozen O'Connor: \$860,361.85  
Bruntjen/Wheaton: \$1,602,005.50

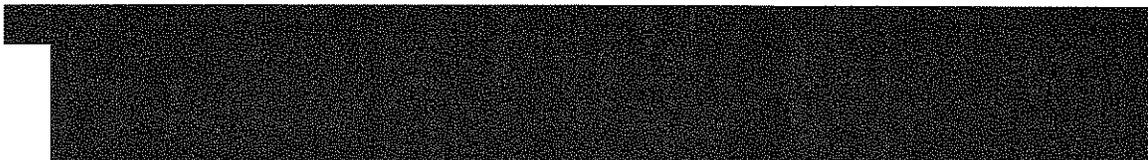
**Total: \$4,097,342.19**

Of note, this total does not include subsequent fees incurred by the same firms nor does it include legal fees incurred by the Special Administrator and Personal Representative.

Alfred failed to submit this substantial request in a timely manner or include non-redacted billings allowing for review by other counsel. For these reasons, the Court should reject Alfred's motion outright. Sharon, Norrine, and John additionally object to this request as it seeks compensation that is not just, reasonable, and provides no demonstrable benefit to the Estate from such generalized services. The work discussed in the supporting affidavit is ambiguous, overbroad, and lacks clear reference of how such work provided commensurate value to Estate for the \$1.6 million request. Accordingly, the request should be denied in its entirety.

### **BACKGROUND**

Alfred Jackson retained Frank Wheaton and Justin Bruntjen in April of 2016 to represent his interests in these proceedings. (Mar. 2, 2017 Mem. Of Law in Supp. Of Frank Wheaton and Justin Bruntjen's Mot. For Approval of Payment From the Estate For Services That Benefitted the Estate as a Whole, p. 1.) Justin Bruntjen recites the work performed broadly, without specifically stating how such work benefitted the whole Estate. Examples of such work included:



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*Id.* at 3–5.) Since the Court’s October 6, 2016 Order approving six short-form deals and authorizing the Special Administrator to negotiate and execute the final long-form agreements, Frank Wheaton has participated in serving as a Representative. (Mar. 3, 2017 Mem. In Support of Mot. To Approve Payment of Entertainment Attorney’s Fees for Period Apr. 23, 2016 Through Jan. 31, 2017, pp.1–2.) Based on their role as a Representative and as counsel to Alfred Jackson, they claim over a million dollars for entertainment fees.

Frank Wheaton primarily seeks entertainment fees related to the following work:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(Mar. 3, 2017 Mem. In Supp. of Mot. To Approve Payment of Entertainment Attorney's Fees for Period Apr. 23, 2016 Through Jan. 31, 2017, pp.1–6.) In support of his request for attorneys' fees, Alfred relies on the affidavit of attorney Justin Bruntjen, which includes voluminous redacted billing entries. Since the billing is redacted, the only way to determine whether any work benefited the Estate is based upon Mr. Bruntjen's affidavit, which does little to clarify or detail how any work performed benefited the Estate and not solely Alfred.

Of the approximately \$1.6 million in attorneys' fees sought, nearly \$1.3 million constitutes non-entertainment related fees. (*Id.* at p. 7.) Yet the eleven-page affidavit submitted by Mr. Bruntjen in support of Alfred's attorney fee request does not list a single instance of non-entertainment work performed by Alfred's counsel on behalf of the Estate. Moreover, there is no indication in the affidavit that either of Alfred's attorneys have experience in estate administration that could justify \$1.3 million of work on behalf of the Estate in a probate matter.

## ARGUMENT

### **I. Alfred Should be Precluded from Submitting His Motion for Attorneys' Fees Due to Untimeliness and Failure to Follow Court Orders**

#### *i. Alfred's Motion for Attorney Fees is Untimely*

Courts have discretion to deny a party's motion for his or her failure to timely file the motion per the timeline of the scheduling order. *See generally Brierton v. Brown Deer Apartments Hous. Assocs., LLC*, No. A09-2291, 2010 WL 5071274, at \*8 (Minn. Ct. App. Dec. 14, 2010) (unpublished) (holding that the district court was well within its "broad discretion in determining that appellants did not show good cause to justify modifying the

scheduling order and permitting their motions”); *Tryggeseth v. Thermogas*, No. A06-208, 2007 WL 656426, at \*1 (Minn. Ct. App. Mar. 6, 2007) (unpublished) (The district court refused to hear respondent’s motion in limine “because it was filed after the deadline for such motions specified in the Scheduling Order.”); *Ahlberg v. Timm Med. Techs., Inc.*, No. A05-675, 2006 WL 91792, at \*3 (Minn. Ct. App. Jan. 17, 2006) (finding that appellants did not have good cause to “move to amend past the deadline for nondispositive motions established by the district court’s scheduling order”).

According to the Court’s Scheduling Order, motions pertaining to attorney fees were to be submitted by March 3, 2017. (Feb. 22, 2017 Scheduling Order Relating to Approval of Atty’s Fees, Final Accounting and Extension of Powers.) Attorneys Frank Wheaton and Justin Bruntjen did not submit their motion until March 7, 2017 and Justin Bruntjen’s accompanying affidavit until the following day, March 8, 2017. Although a motion for an extension was submitted, no good cause has been demonstrated for the ongoing delayed filings related to Alfred’s Motion for Attorney Fees.

While a minimal delay could potentially be excusable under some circumstances, the multiple-day delay and failure to disclose work descriptions deprived other interested parties of a meaningful opportunity to assess the request for over \$1.6 million in legal fees. Indeed, Alfred’s attorneys were still submitting documents just two days before the deadline to object to the request. Therefore, the Court should not hear Alfred’s motion due to the untimeliness of his attorneys’ submissions.

*ii. Alfred Failed to Submit Un-redacted Invoices per the Court’s Order*

Alfred's attorneys failed to submit un-redacted billing entries. Instead, they sent un-redacted entries "through certified mail to be reviewed by the court in camera." (Mar. 3, 2017 Bruntjen Aff., p. 1, ¶ 3.)<sup>1</sup> Per this Court's January 23, 2017 and February 22, 2017 Orders, "a redacted and un-redacted copy of all fee statements shall be filed with the Court." (Feb. 22, 2017 Scheduling Order Relating to Approval of Atty's Fees, Final Accounting and Extension of Powers.) In addition, the Court indicated "a strong preference not to review documents by in camera review." (Jan. 23, 2017 Order Regarding the Filing of Certain Doc. Under Seal.) Instead, the legal billing statement should be addressed through redaction, "whenever possible." (*Id.*) The redactions, however, should be "very specific as to individual entries that need to be redacted and the filer shall explain why as to each redaction." (*Id.*)

In addition to the Court Orders regarding the filing procedure of attorney fees, no other party (that has submitted invoices) has submitted their invoices via in camera review or almost completely redacted entries preventing the other parties from viewing and assessing the submitted invoices. Even counsel for the Special Administrator permitted counsel to review many of the billing entries. Due to his attorneys' failure to comply with Court Order, the other parties are prejudiced because they cannot review the billings to determine whether any work was duplicative, ambiguous, or excessive in context of the claimed work and purportedly related benefits.

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<sup>1</sup>Mr. Bruntjen's affidavit repeats some paragraph numbers; therefore, for clarity, the page number and paragraph has been included.

Alfred's objection to producing billing statements based on attorney client privilege and work-product are overbroad and inconsistent with Minnesota case law. Billing statements generally do not convey attorney advice to constitute attorney client privilege and generally do not contain work product. *City Pages v. State*, 655 N.W.2d 839, 844-46 (Minn. Ct. App. 2003). Other law firms seemingly recognized this precedent and did not see the need for such extreme redactions. For this reason, Alfred's Motion for Attorney Fees should be denied in its entirety.

## **II. Alfred Fails to Establish that the Attorney's Fees and Expenses Incurred Benefitted the Estate**

Even if the Court considers the Motion, it should be denied because Alfred fails to establish that his attorneys' work benefitted the Estate. Rather than recite legal standards, SNJ rely on the law provided in its Memorandum in Opposition to Omarr Baker's Motions To Approve Payment of Attorney's Fees and Costs. (Mar. 10, 2017 Mem. In Opp'n To Omarr Baker's Mot. To Approve Payment of Atty's Fees and Costs.)

To succeed on his Motion for Attorney Fees, Alfred must establish the right to payment of such fees. However, counsel is unable to review the billing entries since the only billing filed was redacted copies. Moreover, Alfred's pleadings fail to establish sufficient detail regarding his attorneys' experience to support their involvement in this unique Estate. Indeed, neither attorney documents experience in estate matters despite seeking approximately \$1.3 million for non-entertainment matters in a probate matter. Therefore, Alfred's counsel has failed to meet their burden in proving that such fees benefitted the Estate.

Due to opposing counsels' failure to properly submit the billings for review, counsel for SNJ had to review and analyze the work Justin Bruntjen indicated was completed in his affidavit. The affidavit, however, only provides broad generalizations regarding work performed and does not detail how much time or money were expended per task, nor does it provide what specific tasks were performed. Several examples are:



(Mar. 7, 2017 Bruntjen Aff., pp. 1–4, ¶¶ 12, 16.) From these descriptions, it is impossible to determine the specific work Alfred's counsel performed and how such work benefited the Estate as a whole. As a representative, Mr. Wheaton may have likely provided services that benefitted the Estate. However, the record still needs to support that assertion and justify the substantial fees. Given the complete lack of readable billing submissions, the examples from the affidavit incorporate such vague entries that it precludes meaningful review of the time entries. Moreover, much of Mr. Bruntjen's affidavit refers to simply participating in meetings and there is little reference in the affidavit, or the record, to

indicate that Mr. Wheaton and Mr. Bruntjen contributed during all the meetings or with past litigation in this matter. (*See* Mar. 7, 2017 Bruntjen Aff., pp. 1–5, ¶¶ 14, 16, 21.) Indeed, mere participation alone does not convey a benefit to the Estate. Given Alfred’s burden of proof in this case and the multitude and vagueness of such entries, the request for fees should be denied.

Even if the non-redacted billing had been provided, not all of that work would have been for the benefit of the Estate as a whole due to the nature and type of work. As noted in objections to fees claimed by counsel for other non-excluded heirs, it appears that the Special Administrator was already performing much of the work making other counsel’s efforts redundant. In addition, Alfred seeks payment for work that benefitted the non-excluded heirs with descriptions such as “Work with the Special Administrator regarding the UMG Consultancy Agreement.” Not only is this entry vague regarding the actual work performed for the benefit of the Estate, but this consulting work was ultimately for the benefit of individuals, not the Estate as a whole.

### **CONCLUSION**

For the foregoing reasons, Sharon, Norrine, and John respectfully request that the Court deny Alfred’s request for payment of attorneys’ fees and costs from the Estate. Alfred’s attorneys filed their motion untimely and prejudiced opposing counsels’ ability to review the invoices because they only filed completely redacted invoices, which was against this Court’s Order. Even if the Court considers the Motion, approving Alfred’s request increase the risk of each non-excluded heir to incur unnecessary expenses for the Estate while asserting himself or herself as a pseudo special administrator and personal

representative contrary to Minnesota law. If the Court is inclined to award fees, SNJ respectfully requests that it hold Alfred to his full burden to provide work descriptions that provide meaningful review and to provide a meaningful explanation justifying over a million dollars of expenses.

Respectfully submitted,

Dated: March 10, 2017

HANSEN, DORDELL, BRADT,  
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