

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISIONFile No.: 10-PR-16-46  
(Judge Kevin W. Eide)

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In re:

Estate of Prince Rogers Nelson,

Decedent.

**MEMORANDUM OF LAW IN  
SUPPORT OF HOLLAND &  
KNIGHT, LLP'S APPLICATION  
FOR DETERMINATION AND  
ESTABLISHMENT OF  
ATTORNEY'S LIEN**

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Pursuant to Minn. Stat. § 481.13 Subd. 1(c), Holland & Knight, LLP (“H&K”), respectfully submits this memorandum of law in support of its application for the summary establishment of its cause-of-action attorney’s lien, amount thereof, and entry of judgment adjudging the amount due H&K from Tyka Nelson (“Ms. Nelson”) in connection with H&K’s legal representation of Ms. Nelson in the above-captioned probate proceeding (the “Application”).

**INTRODUCTION**

Between September 22, 2016 and April 12, 2017, H&K represented Ms. Nelson as first, a “non-excluded heir”, and then subsequently, an heir of the Estate of Prince Rogers Nelson (the “Estate”) in the above-captioned probate proceeding (the “Proceeding”). Despite its diligent legal representation, Ms. Nelson did not fully pay for the legal services, costs and disbursements provided by H&K on her behalf in the Proceeding. The unpaid compensation due H&K for the legal services provided to Ms. Nelson in connection with the Proceeding is \$717,254.37.

## **FACTUAL BACKGROUND**

### **A. H&K's Legal Representation Of Ms. Nelson.**

H&K was retained to represent Ms. Nelson in the Proceeding on September 22, 2016. *See*, Declaration of Robert Barton (“Barton Decl.”), ¶ 3. On September 27, 2016, H&K served, filed, and provided notice of its representation of Ms. Nelson in the Proceeding. *Id.*, Ex. A.

The terms of H&K's representation of Ms. Nelson in the Proceeding were memorialized in a written engagement letter signed by Ms. Nelson (the “Engagement Agreement”). *Id.*, ¶ 3, Ex.

B. The Engagement Agreement provides, in relevant part, as follows:

Our charges in this matter for professional services will be based on the hourly rates that we internally assign for each of our attorneys and legal assistants, based upon factors described in detail in the attached Terms of Engagement. Our practice is to provide a case “team” to manage these matters; Vivian L. Thoreen, Christopher Boyett, Robbie Barton, Terry Middlebrook, Jorge Hernandez Torano, and I [Edward Diaz] will be the team for this matter. Other attorneys or legal assistants may be involved in this matter as required. The first billing for professional time will include time devoted to the matter prior to receipt of the copy of the signed engagement letter. Rates are adjusted annually, generally in December, effective as of January 1.

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Once we have issued an invoice to you, you will have 30 days within which to pay the balance due. If the outstanding balance is not paid within 30 days, and the circumstance are within your control, you agree that H&K reserves the right to withdraw from your representation after the 30 day period has elapsed and that you will execute any court documents necessary to effectuate that withdrawal, including a substitution of attorney.

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By your signature on this letter, you confer an attorneys' lien (security interest) in H&K's favor on any proceeds you receive from the Estate and on any distribution, award, judgment, settlement, or recovery you receive from any source, or that is obtained on your behalf or for your benefit, regardless of whether such distribution, award, judgment, settlement, or recovery is received or obtained in your capacity as a beneficiary of the above-named Estate, solely to the extent of our reasonable attorney's fees and costs incurred on your behalf and remaining unpaid at the time of any such distribution to you or at the conclusion of our representation of you. If our representation concludes for any reason before such distribution or recovery, the lien will continue until the unpaid reasonable fees and costs are paid. If you have questions about this lien arrangement or proposed fee structure, neither of

which is set by law but by negotiation between attorney and client, we urge you to consult with independent counsel of your choosing. By signing this letter, you acknowledge that you have been advised of the terms of this lien agreement and of your right to consult independent counsel that you have been given a reasonable opportunity to seek such advice.

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You further agree by your signature on this letter not to assign any interest or grant any other lien in your distribution, award, judgment, settlement, or recovery to any other person or entity that would take precedence over H&K except with H&K's express written consent. The effect of our lien or security interest is that H&K may be able to compel payment of its reasonable fees and costs from your distribution, award, judgment, settlement, or recovery, even if H&K has withdrawn from the case or has been discharged before the end of the case.

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I [Ms. Nelson] have read the foregoing and have had any items I did not understand explained to me. I have also been urged by H&K to consult with independent counsel regarding the contents of this letter and following the opportunity to do so, I acknowledge and agree to H&K's terms of engagement.

*Id.*, Ex. B.

H&K's representation of Ms. Nelson in the Proceeding was terminated on April 12, 2017. *Id.*, at ¶ 8. On October 4, 2018, H&K provided notice of its cause-of-action attorney's lien for unpaid compensation in connection with its legal representation of Ms. Nelson in the Proceeding. *See*, Declaration of John C. Holper ("Holper Decl."), ¶¶ 2-3, Exs. A-B. H&K also filed a UCC-1 Financing Statement. *Id.* at ¶ 4, Ex. C.

The compensation due H&K for the unpaid attorney's fees and costs incurred on behalf Ms. Nelson in the Proceeding pursuant to the agreed upon terms of the Engagement Agreement is \$717,254.37, exclusive of collection costs. Barton Decl., ¶ 8, Exs., C-D. All the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson are for legal services provided by H&K. *Id.*, ¶¶ 9-15. All of the unpaid attorney's fees and costs incurred on behalf of Ms. Nelson in connection with the Proceeding were necessary and reasonable for the proper and competent representation of Ms. Nelson by H&K in the Proceeding. *Id.* The specific details supporting the amount of

compensation due H&K for legal services rendered is set forth in detail in the Declaration of Robert Barton submitted herewith.

**B. The Other Purported Non-Attorney Third Party Claimants.**

Roc Nation LLC (“Roc Nation”) purports to hold an interest in “all assets and properties” of Ms. Nelson. On October 5, 2016, after the commencement of H&K’s representation of Ms. Nelson in the Proceeding, Roc Nation filed a UCC-1 Financing Statement in connection with its purported interest. Holper Decl., ¶ 5, Ex D.

G.W. Walker, LLC (“G.W. Walker”) and Audubon Loan Funding, L.P. (“Audubon”) purport to hold an interest in “all of grantors [Ms. Nelson’s] beneficial interests in the estate of Prince Rogers Nelson (the “Estate”). On January 11, 2017, after the commencement of H&K’s representation of Ms. Nelson in the Proceeding, G.W. Walker and Audubon filed a UCC-1 Financing Statement in connection with their purported interests. *Id.*, ¶ 6, Ex, E.

G.A. Walker, LLC (“G.A. Walker”)<sup>1</sup> purports to hold an interest in “all of grantors [Ms. Nelson’s] beneficial interests in the estate of Prince Rogers Nelson (the “Estate”). On June 7, 2017, after the commencement of H&K’s representation of Ms. Nelson in the Proceeding, G.A. Walker was added as a secured party to the UCC-1 Financing Statement previously filed by G.W. Walker and Audubon on January 11, 2017. *Id.*, ¶ 6, Ex, F.

**ARGUMENT**

The remedy of an attorney’s lien “prevent[s] a client from benefitting from an attorney’s services without paying for those services.” *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 883 N.W.2d 592, 595 (Minn. 2016) (quoting *Dorsey & Whitney LLP v. Grossman*, 749 N.W.2d 409, 420 (Minn. Ct. App. 2008) (internal quotations omitted)). While the attorney’s lien originated in

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<sup>1</sup> Roc Nation, Audubon, G.W. Walker, and G.A. Walker shall be collectively referred to as the “Third Party Claimants.”

the common law, “the Minnesota legislature has long since preempted this and substituted statutory procedures.” *Id.*

Minnesota Statutes § 481.13, subd. 1, provides that:

(a) An attorney has a lien for compensation whether the agreement for compensation is expressed or implied (1) upon the cause of action from the time of the ... commencement of the proceedings, and (2) upon the interest of the attorney’s client in any money or property involved in or affected by any action or proceeding in which the attorney may have been employed, from the commencement of the action or proceeding, and, as against third parties, from the time of filing the notice of the lien claim ....

Further, Minn. Stat. § 525.491 has explicitly extended this provision for attorneys appearing on behalf of an heir or devisee in a probate proceeding by providing:

When any attorney at law has been retained to appear for any heir or devisee, such attorney may perfect a lien upon the client's interest in the estate for compensation for such services as may have been rendered respecting such interest, by serving upon the personal representative before distribution is made, a notice of intent to claim a lien for agreed compensation, or the reasonable value of services. The perfecting of such a lien, as herein provided, shall have the same effect as the perfecting of a lien as provided in section 481.13, and such lien may be enforced and the amount thereupon determined in the manner therein provided.

The Minnesota Supreme Court has held that Minn. Stat. § 481.13, subd. 1(a) creates two distinct classes of attorney’s liens: a cause-of-action lien, which attaches to the cause of action, and a property-interest lien, which attaches to any of the client’s money or property involved in or affected by the proceeding in which the attorney represented the client. *See, Oronoco*, 883 N.W.2d at 596.

The current version of Minn. Stat. § 481.13 has eliminated the distinction between establishment and enforcement of an attorney’s lien. *Thomas A. Foster & Assocs., LTD v. Paulson*, 699 N.W.2d 1, 5 (Minn. Ct. App. 2005). The value of the lien ordinarily is determined based on the terms of the fee provisions of a retainer agreement. *Id.* at 6.

For the reasons set forth herein, H&K is entitled to an order and judgment summarily establishing the existence of H&K’s attorney’s lien and the amount of its attorney’s lien in the

amount of \$717,254.37. With respect to the priority of H&K's attorney lien, H&K is entitled to an order and judgment determining that H&K's cause-of-action attorney's lien is prior to, and has priority over, any claim or interest of the Third Party Claimants and all other third parties in the interest of Ms. Nelson in any money or property involved in or affected by, the Proceeding whether by way of settlement, distribution, recovery, judgment, decree and/or any other form of recovery.

**A. H&K Has Established Its Right To An Attorney's Lien In The Amount Of \$717,254.37.**

A statutory attorney's lien may be established, and the amount of the lien may be determined, summarily by the court on the application of the lien claimant. Minn. Stat. § 481.13, subd. 1(c). When there is an express agreement between an attorney and a client that sets the attorney's compensation, the amount of the attorney's lien for legal services is properly determined by reference to the agreement. *Paulson*, 699 N.W.2d at 6.

Here, H&K's legal representation of Ms. Nelson in the Proceeding was governed by the terms of the written Engagement Agreement. Barton Decl., Ex. B. Ms. Nelson agreed to pay H&K for the fees and costs incurred on her behalf in the Proceeding in accordance with the terms of the Engagement Agreement. Ms. Nelson did not fully pay H&K for the legal services, costs and disbursements provided on her behalf by H&K in the Proceeding. As set forth in the Declaration of Robert Barton submitted herewith, the balance of the compensation due H&K, after applying a courtesy discount, for the unpaid legal services provided to Ms. Nelson in connection with the Proceeding is \$717,254.37.

Pursuant to Minn. Stat. § 481.13 Subd. 1, and based upon the express terms of the written Engagement Agreement between H&K and Ms. Nelson, H&K is entitled to an attorney's lien for unpaid compensation arising from its representation of Ms. Nelson in the Proceeding in the amount of \$717,254.37. H&K respectfully requests that the Court enter judgment establishing its attorney's lien and adjudging the amount due H&K on its attorney lien to be \$717,254.37.

**B. H&K's Attorney's Lien Is Prior And Superior, And Has Priority Over Any Claim, Lien Or Interest Of The Third Party Claimants And Other Third Parties.**

An attorney's lien attaches at the commencement of a cause of action to the cause of action itself and to the client's interest in any money or property involved in the cause of action. *Grossman*, 749 N.W.2d at 422 (citing Minn. Stat. § 481.13, subd. 1(a)). If the attorney did not represent the client at the time of commencement, the lien attaches at the time the attorney first appears in the proceeding. Minn. Stat. § 481.13, subd. 1(a)(1); *Williams v. Dow Chemical Co.*, 415 N.W.2d 20, 25-26 (Minn. Ct. App. 1987); *City of Oronoco v. Fitzpatrick Real Estate, LLC*, 869 N.W.2d 332, 337-38 (Minn. Ct. App. 2015) (*aff'd*, *Oronoco*, 883 N.W.2d 592). "Once formed, a lien on a cause of action exists until it is satisfied and is not extinguished by the entry of judgment on the cause of action." *Williams*, 415 N.W.2d at 26 (citing *Desaman v. Butler Bros.*, 131 N.W. 463, 464 (Minn. 1911)). In *Oronoco*, the Minnesota Supreme Court held that the third-party clause that is part of subdivision Minn. Stat. § 481.13, Subd 1(a)(2) does not require an attorney with a cause-of-action attorney's lien to file separate notice of the lien to have priority over third-party claims. *Oronoco*, 883 N.W.2d at 596. In that case, the Minnesota Supreme Court further held that the attorney's lien at issue was superior to a garnishment lien because the attorney held a cause-of-action attorney's lien and was not required to file a separate notice of the lien to have priority over third-party claims, even those that were perfected prior to the filing of the attorney's notice of attorney's lien. *Id.*

Here, H&K's cause-of-action attorney's lien attached on September 27, 2016, when H&K noticed its appearance on behalf of Ms. Nelson in the Proceeding. Each of the Third Party Claimant's purported liens were perfected after H&K's cause-of-action attorney's lien had attached. Roc Nation's purported lien was not perfected until October 5, 2016. G.W. Walker's

and Audubon's purported liens were not perfected until January 11, 2017. G.A. Walker's purported lien was not perfected until June 7, 2017.

Because all of the Third Party Claimants' purported liens were perfected after H&K's cause-of-action attorney's lien attached, and because there are no other perfected third party liens, H&K's cause-of-action attorney's lien in Ms. Nelson's interest in any money or property involved in or affected by the Proceeding whether by way of settlement, distribution, recovery, judgment, decree and/or any other form of recovery is prior and superior, and has priority over any claim, interest, or lien of the Third Party Claimants and all other third parties.

### CONCLUSION

H&K respectfully requests that the Court summarily establish the existence of H&K's cause-of-action attorney's lien in the amount of \$717,254.37 and, accordingly, enter judgment in favor of H&K. H&K further requests that the judgment declare and establish that H&K's cause-of-action attorney's lien in Ms. Nelson's interest in any money or property involved in or affected by the Proceeding whether by way of settlement, distribution, recovery, judgment, decree and/or any other form of recovery is prior and superior, and has priority over any claim, interest or lien of the Third Party Claimants and all other third parties.

Dated: December 26, 2018

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