

STATE OF MINNESOTA
COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

In re:

Estate of Prince Rogers Nelson,
Decedent.

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

**REPLY MEMORANDUM IN SUPPORT OF
PETITION TO PERMANENTLY REMOVE
COMERICA BANK & TRUST N.A.
AS PERSONAL REPRESENTATIVE**

INTRODUCTION

It is clear from the pleadings in this matter that Comerica Bank & Trust N.A. (“Comerica”) and Petitioners Sharon Nelson, Norrine Nelson, and John Nelson (collectively “Petitioners”) disagree on a great number of things. However, it is undisputed that the Petitioners are unhappy. They *are* unhappy with the way Comerica has managed the Estate of Prince Rogers Nelson (“Estate”), but that they have been belittled, betrayed, and disrespected. The problem is that Comerica confused a symptom with the root cause. Petitioners’ relationship with Comerica are the symptom of its chronic mismanagement of the Estate, caused by its inexperience and evidenced by a number of poorly executed actions and bad decisions. Most importantly, Petitioners are convinced that Comerica’s continued administration of the Estate will not only cause financial harm to the Estate, but more importantly, will irreparably damage the legacy of one of the world’s most renowned and beloved artists.

There is nothing before the Court to suggest that if Comerica is allowed to continue administering the Estate for another ten months, let alone up until the Estate is eventually closed,

that it will make better decisions than it has during the first ten months of its administration.

While there is undoubtedly a cost to replacing the personal representative, the alternative is far less appealing.

For the reasons first stated in the Petition, and for the reasons below, Petitioners respectfully request that the Court exercise its authority under Minnesota Statute § 524.3-611 and permanently remove Comerica as the personal representative of the Estate. In the alternative, and upon further motion and/or briefing, the Court should impose additional protocols on Comerica regarding creative entertainment decisions relating to the Estate or explore the appointment of co-personal representative(s) as contemplated in the Court's Transition Order.

BACKGROUND

Rather than include a responsive factual statement, Petitioners will respond to the factual inaccuracies in Comerica's memorandum within the body of the argument. However, it should be noted that one of Petitioners' primary concerns with Comerica's administration of the Estate is their lack of communication and transparency to the Heirs. A number of the documents Comerica filed in its' memorandum and supporting affidavits were never previously disclosed to Petitioners. Comerica is the gatekeeper of information to the Heirs, a factor which impacted both the Petition and this reply memorandum. Petitioners are justifiably concerned that there is information they do not have, which may expose additional conflicts, mismanagement, or Comerica's motivations in taking certain actions. Should an area of contention not be fully explored to the Court's satisfaction, Petitioners request that the Court permit discovery on those limited areas so they may obtain evidence relevant to their claims.

ARGUMENT

In its memorandum, Comerica argues at length that none of the issues set forth in the Petition are sufficient under the law to justify granting the Petition. While this is untrue, it is also an oversimplification of the argument. Petitioners raise several distinct issues, each of which justify removal. Moreover, when those issues are considered in total with the other issues raised in the Petition, there is ample cause remove Comerica. There will be a financial cost to replacing Comerica, but investing the resources now will generate a better result for the Estate and all of the Heirs when the Estate is finally closed and the personal representative is discharged.

I. LEGAL STANDARD TO REMOVE A PERSONAL REPRESENTATIVE

While there is little caselaw regarding Minn. Stat. § 524.3-611, the statute itself and the cases that interpret the statute support removal of Comerica as the personal representative. In relevant part, Minn. Stat. § 524.3-611 provides six scenarios in which the personal representative should be removed:

- (1) when it is in the best interests of the estate;
- (2) if the personal representative or person seeking the personal representative's appointment misrepresented material facts in proceedings leading to the appointment;
- (3) the personal representative has disregarded an order of the court;
- (4) the personal representative has become incapable of discharging the duties of office;
- (5) if the personal representative failed to perform any duty pertaining to office; or
- (6) the personal representative has mismanaged the estate.

While any one of these six scenarios provides ample cause for removal, the necessity of an expedient removal must be higher when there is more than one cause demonstrated by the

evidence. Importantly, Comerica touted in its September 28, 2016 pitch to the Heirs, “the law generally holds corporate fiduciaries such as Comerica Bank & Trust, N.A. to a higher standard of care in performing their duties.” (Bruce Dec. Ex. A, p. 5). “Corporate fiduciaries are expected to have a significantly higher degree of expertise in probate and trust matters than individuals.” *Id.*

Comerica correctly notes that there is little Minnesota caselaw that interprets Minn. Stat. § 524.3-611. (Comerica Mem. p. 2). Thus, reference to other state court decisions interpreting the Uniform Probate Code may be appropriate.¹ For example, “a trial judge should be given broad discretion as to when a personal representative is to be removed, ‘but the grounds must be valid and supported by the record.’” *Matter of Estate of Robbin*, 747 P.2d 869, 871 (Mont. 1987) (quoting *Matter of Estate of Wooten*, 643 P.2d 1196, 1199 (Mont. 1982)). “An action to remove a personal representative is equitable in nature.” *Blackmon v. Weaver*, 621 S.E.2d 42, 43 (S.C. 2005). In determining whether to remove a personal representative, the question focuses on the harm to the Estate. *Robbin*, 747 P.2d at 871. Irregularities that are not directly harmful to the Estate are not enough to justify removal. *Id.*

This is not to say that Minnesota lacks any authority to guide the Court. Minnesota caselaw provides examples of conduct that meets the threshold necessary to remove a personal representative. Importantly, the caselaw implies that one action, or lack of action, may be sufficient to remove a personal representative, but also a series of less serious actions, or failures

¹ The states that have adopted the Uniform Probate Code, in its entirety, are: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah.

to act, may constitute cause for removal. *Compare In re Drew's Estate*, 236 N.W. 701, 702-03 (Minn. 1931) with *Matteson v. McClure*, 245 N.W. 382 (Minn. 1932).

Comerica's failure to follow the Court's orders is an independent and sufficient basis to justify its removal as personal representative. *In re Drew's Estate*, 236 N.W. at 702-03.

Comerica may also be removed for waste, mismanagement, delay, or other maladministration. *Matteson*, 245 N.W. at 382. Conflicts of interest between personal representative and interests of the estate also justify removal of the personal representative. *In re Estate of Anderson*, No. A-15-1513, 2016 WL 3582414, at *3-4 (Minn. Ct. App. July 5, 2016). In ruling on the standard necessary to warrant removal of a personal representative, the Court must remove the personal representative if Petitioners "present evidence that raises a 'real issue' as to whether there is a substantial conflict of interest." *Helgason v. Merriman*, 69 P.3d 703, 706 (Alaska 2001). In Minnesota, it is not necessary to prove actual harm to remove a personal representative, only that the current personal representative is unfit. *In re Estate of Loewe*, No. C0-89-1077, 1989 WL 138989, at *1 (Minn. Ct. App. Nov. 21, 1989).

In interpreting the provision that cause for removal exists when removal is in the best interests of the estate, the Montana Supreme Court found that the personal representative's unwillingness to cooperate fully "and to make full disclosure to the decedent's heirs of all the facts involving the estate" justified the personal representative's removal. *Matter of Estate of Lehner*, 714 P.2d 130, 131 (Mont. 1986). Comerica cites to a Florida case to suggest that a personal representative should only be removed if it can be shown that the administration of the Estate is endangered or prejudiced by the challenged conduct. *In re Murphy's Estate*, 336 So. 2d 697, 699 (Fla. Dist. Ct. App. 1976). However, that case is easily distinguished by the fact that the Court recognized an overwhelming preference for retaining a personal representative chosen

by the deceased. *Id.* Here, Comerica is a corporate personal representative that **Prince did not choose**. The North Dakota Supreme Court, agreed with the removal of both co-representatives, determining that it was in the best interests of the estate to allow for removal where “contentious attitude” and “quarrelsome behavior” resulted in substantial estate related litigation. *Matter of Kjorvestad’s Estates*, 304 N.W.2d 83, 86-87 (N.D. 1981).

“Personal animosity between the personal representative and one beneficiary of the estate is an insufficient reason for removal.” *Matter of Estate of Sumpter*, 419 N.W.2d 765 (Mich. Ct. App. 1988). The *Sumpter* case concerned hostility and adversity towards one of the four beneficiaries by the personal representative. *Id.* at 769. Here, the facts are different, where Comerica is essentially adverse to half of the beneficiaries of the Estate. [REDACTED]

[REDACTED] The *Gresham v. Strickland* court noted that hostility and tension between a trustee and the trust’s beneficiaries can be considered in determining whether the trustee should be removed by the court. 784 So.2d 578, 581 (Fla. Dis. Ct. App. 2001) (“Hostility or tension between a trustee and potential beneficiaries of the trust *does not by itself* constitute a ground for such removal.” (emphasis added)).

Minnesota carved out a similar rule, removing a personal representative where there was “considerable animosity between the [personal representative] and his brothers, and considerable disagreement as to what constitutes property of the estate, and how the estate should be divided.” *In re Estate of Michaelson*, 383 N.W.2d 353, 356 (Minn. Ct. App. 1986). Contrary to Comerica’s assertions, there is no requirement that hostility and adversity between the personal representative and the heirs be “accompanied by severe and injurious behavior.” (Comerica Mem. p. 4 (citing *In re Estate of Giebel*, No. A13-0213, 2013 WL 6223508, at *3 (Minn. Ct.

App. Dec. 2, 2013)). In *Giebel*, the personal representative took antagonistic action against the heirs, but the Court couched its decision to remove the personal representative on the “considerable animosity” and “disagreement between them.” 2013 WL 6223508, at *3.

Comerica is intent on casting the dispute between itself and Petitioners as a simple disagreement over a certain transaction or courses of action. (Comerica Mem. pp. 4, 22-23). While Petitioners disagree with the way Comerica handled certain transactions, the dispute runs much deeper than that, as the allegations in the Petition demonstrate. These issues are much different, and with substantially higher stakes, than those articulated in the *Kramek* case cited by Comerica to support its argument. *In re Kramek Estate*, 710 N.W.2d 753 (Mich. Ct. App. 2005). The Estate is highly unique, and of such significant value, that application of cases like *Kramek* and others involving relatively minor disputes between a personal representative and the heirs are not comparable. (Order (dated October 29, 2016)) (“[T]he unique and extraordinary nature of this probate is undeniable.”). As argued below, based on the laws of Minnesota, and with interpretation by other states that have adopted the Uniform Probate Code, there is sufficient cause on the record to remove Comerica as the personal representative.

II. ADVERSARIAL RELATIONSHIP

As the Court knows, Petitioners were initially in support of Comerica’s appointment as personal representative. (Bruce Dec. Ex. K); (Sharon Nelson Dec. ¶ 4); (Norrine Nelson Dec. ¶ 3).² While the Heirs asked the Court to appoint a co-personal representative, with Petitioners supporting L. Londell McMillan, the Court felt that doing so would be potentially divisive. (Order, pp. 2-3 (dated Jan. 20, 2017)). In appointing Comerica as the sole personal representative, the Court nonetheless noted that “[t]he Court shall reconsider the appointment of

² In the interests of reducing Court filings, a separate declaration of John Nelson was not prepared.

a co-personal representative in the future...if the Court is persuaded that a co-personal representative is necessary for the proper and efficient administration of the Estate.” *Id.* at 3. As to Comerica, the Petitioners support was based, in part, on Comerica’s assurances that the Heirs would have a strong voice and role in guiding the Estate and protecting Prince’s legacy. (Sharon Nelson Dec. ¶¶ 5 & 6); (Norrine Nelson Dec. ¶ 4).

COMERICA’S BAIT AND SWITCH (FRAUDULENT INDUCEMENT)

Unfortunately, Comerica began to renege on those promises shortly after being appointed personal representative. Less than a month after taking over the Estate, Comerica’s representatives told the Heirs that they would not have a voice or vote in the handling of the Estate. (Sharon Nelson Aff. ¶ 7 (dated March 10, 2017)). Sharon Nelson felt that Andrea Bruce was physically aggressive, confrontational, and hostile. *Id.* at ¶¶ 7, 9 & 10. Comerica was, and has continued to be, dictatorial and bullish with some of the Heirs. *Id.* at ¶ 11. In the nine months that followed, Comerica has demonstrated more hostility and aggression towards the Petitioners and their business advisor L. Londell McMillan. (Sharon Nelson Dec. ¶¶ 17 & 18). The relationship atrophied and any trust that Petitioners once had in Comerica is gone. *Id.* at ¶ 17; (Norrine Nelson Dec. ¶ 16). While Petitioners acknowledge that the adversarial nature of the relationship between Comerica and them should not be the sole reason for Comerica’s removal, it can and should inform the Court about the actions Comerica has taken and support the other factors necessary to remove Comerica as personal representative.

A. Petitioners Discussed these Issues with Comerica Multiple Times

At several points in their memorandum, Comerica complains that Petitioners did not raise these issues with Comerica prior to bringing their Petition. This claim is not true. Petitioners

raised some or all of these issues over the past ten months with Comerica, but nothing has improved. [REDACTED]

[REDACTED] (Norrine Nelson Dec. ¶ 25 & Ex. 1). [REDACTED]

[REDACTED] *Id.* at ¶ 26.

Prior to that, Petitioners raised issues in Sharon Nelson's March 10, 2017 affidavit and objection to the Court, during various other objections to proposed entertainment transactions, and in communications. (*See* Skolnick Dec. Ex. 1). Comerica's ongoing objection to Petitioners' business advisor are also well known. Not only have they disparaged McMillan in Heirs' meetings, but their disdain for him rings through in their memorandum. (McMillan Dec. ¶ 14). On the same page, Comerica has refused to negotiate the terms of McMillan's non-disclosure agreement ("NDA") (Silver Dec. ¶¶ 3-8). Thus, any complaint that Petitioners have not previously attempted to resolve these issues is meritless.

B. Comerica Falsely Promises the Heirs They Will Have a Voice

In agreeing to Comerica's appointment as personal representative, Petitioners were persuaded by Comerica's representations in their September 28, 2016 Proposal, attached to the Bruce Declaration as Exhibit A. (Sharon Nelson Aff. ¶ 4 (dated March 10, 2017)). In relevant part, Comerica's Proposal promises the following:

- "If appointed Executor, Comerica realizes that one of its main fiduciary duties is to preserve and protect the estate assets *on behalf of and for the benefit of* the heirs. To do so, Comerica must understand the needs and desires of the heirs." (emphasis in original).
- Comerica further realizes that Prince's estate is an extraordinarily unique estate with a legacy value that cannot be measured in dollars. Preserving and growing that legacy requires the personal insight of the heirs."

- “Therefore, Comerica considers consistent communication between the bank and the heirs of critical importance.”
- “The heirs will have the opportunity to express their opinions by voting at the monthly meetings. Votes by the heirs will be strongly considered and given significant and serious weight....”
- “Should the heirs desire to supplant Comerica’s authority and responsibility as Executor, we should explore appointing the heirs (or their designees) as special or directed Co-Executors as to the class of issues in question so that they can formally undertake that responsibility and liability.”

(Bruce Dec. Ex. A, pp. 3 & 4). Comerica promised, in unequivocal terms, to consistently communicate with the Heirs, to take votes and listen to their voices, to give significant and serious weight to the Heirs’ suggestions, and to preserve and grow Prince’s legacy through the personal insight and contributions of the Heirs.

Unfortunately, those promises turned out to be hollow. While Comerica was careful to not completely shut the Heirs out, by sending emails and holding meetings, which the Heirs’ attorneys and advisors cannot attend, it gives no votes and little voice to the Heirs concerns, playing lip-service to the promises that led to its appointment. (Sharon Nelson Dec. ¶¶ 10-13); (Norrine Nelson Dec. ¶ 9). [REDACTED]

[REDACTED] (Sharon Nelson Dec. ¶ 20). Petitioners were betrayed and disrespected by Comerica, both as an organization, and by its representatives, who have been openly hostile towards Petitioners. *Id.* at ¶ 12. To Petitioners, it feels like Comerica views them

as the enemy, even though Comerica's first job and promise is to work to preserve and protect Estate assets "on behalf of and for the benefit of the heirs." *Id.* at ¶ 21.

C. Comerica's Dispute with McMillan

While Comerica takes issue with McMillan's involvement in this matter, it was initially very supportive of McMillan, going so far as to indicate that it wanted McMillan to serve as a co-personal representative with Comerica. (McMillan Dec. ¶ 7). Despite this material representation to Petitioners, who supported Comerica's appointment, Comerica has shown little interest in having anyone else involved with Estate decisions, let alone McMillan. Since it was confirmed as the sole personal representative, Comerica has grown hostile towards McMillan.

Id. [REDACTED]

[REDACTED] One of the grounds for removal of a personal representative is material misrepresentations leading to its appointment. Minn. Stat. § 524.3-611. Here, if Petitioners' support of Comerica was based on Comerica's assertion that it wanted McMillan involved in the administration of the Estate, it constitutes a material misrepresentation and cause for removal. (See Skolnick Dec. Ex. 2, pp. 104-09); (McMillan Dec. ¶ 7).

Comerica's adversity towards the Petitioners is, at least in part, rooted in its individual managers' misplaced animosity towards McMillan, who serves as Petitioners' business manager and advisor.³ Even a cursory review of Comerica's memorandum demonstrates the truth of this assertion. Comerica describes McMillan as conflicted and a competitor of the Estate. In fact,

³ Contrary to Comerica's counsel's claims, McMillan does not represent Petitioners as an attorney. Comerica knows that an individual licensed as an attorney may act in an entirely different role. For example, Angela Aycock is an attorney but is not acting as an attorney for Comerica in this proceeding.

one of Comerica’s primary concerns with McMillan, [REDACTED]

[REDACTED] is patently false. (Comerica Mem. p. 26).

[REDACTED]

[REDACTED] This factor weighs in favor of granting the Petition, as Comerica deliberately breached its duty, under the law and this Court’s Order, to communicate with Petitioners. (Petition Ex. I). In blatantly ignoring McMillan’s advice, the person with the most Prince experience, Comerica has breached its duty of prudence to the Estate. (See McMillan Dec. ¶ 4 & Ex. 1).

COMERICA’S FALSE PREMISE

Comerica justifies its lack of communications with Petitioners, and McMillan, based on the false premise that [REDACTED] (Comerica Mem. p. 27). [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *Id.*; (Bruce Dec. ¶ 40). [REDACTED]

[REDACTED] Again, this breaches Comerica's duty to communicate.

[REDACTED]
[REDACTED] Comerica has been unwilling to negotiate the terms of a NDA. (McMillan Dec. ¶ 6); (Silver Dec. ¶ 3). A draft NDA was sent by Comerica's counsel to Alan Silver, McMillan's attorney, on May 11, 2017. *Id.* at ¶ 1 & Ex. A.

[REDACTED] *Id.* at Ex. B. Comerica complains that McMillan made significant edits to the form NDA, but they neglect to mention that they essentially ceased negotiations concerning the NDA on May 26, 2017, following Petitioners' counsel's email to Comerica's counsel. *Id.* at Ex. C; (Bruce Dec. Ex. M).

A token response to McMillan's draft NDA was received in June 15, 2017. (Silver Dec. Ex. D). An additional exchange of correspondence involving the NDA occurred in October 2017, but with no resolution. (Silver Dec. Exs. F-I). Rather than work through some of their issues with McMillan's edits, as Petitioners' counsel has attempted to do, Comerica shelved the NDA and tried to stonewall McMillan, to the detriment of half of the Heirs. *Id.* at Ex. G. Only since the filing of the Petition has Comerica indicated any willingness to continue negotiations around the terms of McMillan's NDA, but [REDACTED]

██████████ (McMillan Dec. ¶¶ 16 & 17); (Skolnick Dec. Ex. 4). McMillan does not believe Comerica will sign an NDA with him. (McMillan Dec. ¶ 17). The problem is that neither side trusts the other. McMillan's lack of trust is well founded. *Id* at ¶ 16.

Not only did Comerica cut off Petitioners' advisor from critical information, but they refuse to consider advice he has offered, ██████████

██████████ (Order, p. 2 (dated June 9, 2017)); (*see* Skolnick Dec. Ex. 5). Instead, Comerica has attempted to learn how to manage this Estate on the fly, alienating key partners, and costing the Estate substantial resources in the process.

McMillan has more business experience with Prince than anyone else involved with the Estate. (McMillan Dec. ¶ 4 & Ex. 1). It is foolish for Comerica to turn a deaf ear to his advice, but that is exactly what Comerica has done. This is not to suggest that they have to accept every piece of advice or suggestion, but Comerica has a fiduciary duty to act in the best interests of the Estate. It is undoubtedly a breach of that duty to ignore the advice of half of the Heirs' business manager and advisor, a person who intimately knew Prince's business, and has demonstrably aided the Estate in achieving better financial returns than those of its "entertainment advisor." (McMillan Dec. Ex. 1); (Skolnick Dec. Ex. 5, p. 112).

III. THE VAULT

In the ten short months that Comerica has been personal representative, Petitioners have raised a large number of critical issues with Comerica's administration of the Estate, but its handling of Prince's Vault⁴ is undoubtedly the straw that broke the camel's back. Not only did

⁴ ██████████
██████████
██████████

Comerica fail to disclose critical material information to the Heirs about the agreement with [REDACTED] [REDACTED] as well as the logistics of the move, but Comerica also failed to take adequate precautions to protect against loss during transport and to ensure that the contents of the Vault are protected against theft and leaks.

A. Comerica did not Disclose Critical Information Concerning the Vault Movement

Comerica's response to the Petition contains a key misunderstanding of the issue, as is common with Comerica's response to the Petitioners. [REDACTED]
[REDACTED]
[REDACTED]

The Petitioners never claimed that Comerica's consideration of [REDACTED] was undisclosed. Rather, Comerica never disclosed that it had reached any agreement with [REDACTED] or when the contents of the Vault were to be moved, until long after they were gone. (Sharon Nelson Dec. ¶ 35). [REDACTED]

[REDACTED] *Id.* at ¶ 30; (Norrine Nelson Dec. ¶ 21). To Sharon and Norrine Nelson, learning of the transfer, especially in the way that they did, left them shocked, betrayed, and feeling like Prince had died again. (Sharon Nelson Dec. ¶ 31); (Norrine Nelson Dec. ¶ 22).

As the Court knows, Comerica has held Heirs' meetings since becoming personal representative. Following each meeting, at which no attorneys or business advisors are permitted, representatives from Comerica create their own minutes of the meeting which are then distributed to the Heirs. Comerica does not permit transcription of the meetings. (Skolnick Dec.

[REDACTED]
[REDACTED]
[REDACTED]

Ex. 5). The following minutes contain at least some reference of [REDACTED] or the relocation of the Vault: [REDACTED] (Bruce Dec. Exs. FF, II, JJ, LL & PP).

The [REDACTED] meeting minutes reflect only [REDACTED]

[REDACTED]

[REDACTED] *Id.* at Ex. FF. The [REDACTED] meeting minutes reflect [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* The [REDACTED] meeting minutes contain

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] *Id.* The [REDACTED] meeting

minutes, [REDACTED], state:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(Bruce Dec. Ex. LL).

As noted above, the [REDACTED] meeting minutes contain no detail about [REDACTED]

The movement of the recordings from the Vault and Paisley Park was the type of event that should have been thoroughly disclosed to and discussed with the Heirs. The Vault is presumably the most valuable Estate asset. The monetization of the Vault's contents will undoubtedly generate more than \$2 million dollars in Estate revenue. It was therefore the type of transaction that the Court contemplated Comerica disclosing and discussing with the Heirs. More importantly, Comerica's failure to closely involve the Heirs in the decision to move the Vault ignores a critical emotional component. The Petitioners, as the family and heirs of Prince, feel a deep sense of responsibility to protect Prince's legacy. (Sharon Nelson Dec. ¶ 3). The recordings that were ferried away from Paisley Park, t [REDACTED], comprise Prince's entire life's work. In cutting Petitioners out of the conversation, Comerica and its representatives demonstrated a fundamental misunderstanding of the human component involved in these types of decisions. Even if the Court were to find that the decision to move the Vault was not technically the type of decision that Comerica was required to communicate to the Heirs, it nonetheless should agree that Comerica's unilateral decision left the Petitioners feeling

violated, betrayed, and grieving once more for Prince as a part of him, his music, was taken away.

B. Comerica Unnecessarily Risks the Loss of Invaluable Vault Contents

In order to justify its hasty decision to move the recordings, Comerica has spun its own fabrication about the need to move the Vault to [REDACTED] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED] *Id.* at 15.

Rather than heed [REDACTED] advice, Comerica seems to base much of its decision to move the assets to [REDACTED] on the [REDACTED] [REDACTED] (Bruce Dec. Ex. C). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] In short, there is no reason that the [REDACTED] should have trumped [REDACTED]

[REDACTED]

Comerica also takes issue with the Petition's claim that it transferred Vault recordings to [REDACTED] (Comerica Mem. p. 6); (Petition ¶ 16). In fact, the [REDACTED] meeting minutes support Petitioners' original assertions. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (Bruce Dec. Ex. PP). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

██████████ *Id.* Comerica has failed to provide any visitor logs to the Heirs, or in any other way sought to address Petitioners' valid concerns that the Vault's contents have been exposed to theft or loss by being packed up and hauled more than 2,000 miles away. Petitioners only learned of these important details, ██████████
██████████ resulting from their petition to remove Comerica as personal representative. (Carter Dec. ¶ 6).

Comerica claims that the ██████████ was chosen due to its ██████████ (Comerica Mem. p. 10). This claim ignores the fact that Paisley Park is equipped with a world class recording studio. Any additional equipment necessary for restoration of the audio/video recordings could have been brought to Paisley Park. This would seem to be the far more economical route than having multiple trucks ship thousands of assets across the country, only to pay to store them long-term at ██████████ (Bruce Dec. Ex. II) (██████████
██████████). Even accepting the ██████████
██████████
██████████
██████████
██████████
██████████ (Petition ¶ 20, Ex. A).

In total, Comerica's failure ██████████
██████████
██████████ The value in these recordings lies in the mystique of Prince's Vault and the unreleased nature of the recordings. To

be clear, Petitioners do not suggest that Vault should have forever remained at Paisley Park, but Comerica failed in its obligation to communicate these decisions and failed in its duty to properly protect and preserve the assets by proceeding as it did. Its actions with respect to the Vault demonstrate, at a minimum, mismanagement of the Estate, a cause for removal under Minn. Stat. § 524.3-611.

IV. COMMUNICATIONS

In making its pitch to take over as personal representative, Comerica assured the Heirs that they would have a voice, a vote, and would receive ample communication. (Bruce Dec. Ex. A). The Court, having acknowledged that this Estate is “extraordinary” and “unique,” imposed additional restrictions on Comerica. (Order (dated March 22, 2017)). The Court further indicated that it “expect[ed] Comerica [to] make communication with the heirs a high priority.” (Transition Order (dated January 18, 2017)). The Court ordered Comerica to provide details of transactions expected to return \$2 million or more to the Heirs for consideration and the opportunity to object, indicating its desire that the Heirs have an active role in the handling of the Estate. (March 22, 2017 Order).

To be sure, the Court noted that “the Court has learned that the heirs are all strong advocates of their positions on how the Estate should be managed and adding another divisive element will cause additional expense and delay in these proceedings.” (January 18, 2017 Order). Following the filing of the Petition, the Court reiterated its communication Order to Comerica, stating that Comerica “shall be extra vigilant in its communication with the heirs and their counsel regarding any negotiations, settlements or important decisions to be made on behalf of the Estate.” (Order (dated October 31, 2017)).

A. Violation of the Court's Orders Requiring Communications

Despite these clear promises and directives, Comerica has failed to communicate basic and material information to Petitioners, in violation of the Court's Orders. Failure to follow an order of the Court is a removable offense under Minn. Stat. § 524.3-611. Aside from the requirements of the Court's Order, Comerica also has a duty to communicate with the Heirs.

Comerica's self-serving conclusory statements, that its communications with the Heirs have surpassed those of [REDACTED] or what is required under Minnesota law, even if true, which is disputed, is ultimately irrelevant. (Comerica Mem. p. 21). The Court's orders are what count, and Comerica has not followed those orders. As noted in the Petition, Petitioners are concerned that they have not, among other things, been given required communications regarding business plans, litigation, and charitable endeavors. (Petition ¶ 43).

Petitioners allege several specific incidents of failed communication, but admittedly cannot yet know all of what Comerica has yet to divulge. It is entirely possible there are many matters of sufficient importance to merit communication that Comerica has not disclosed to the Heirs. Sticking to what they do know, Petitioners know that Comerica should have disclosed the

[REDACTED]
[REDACTED]. Without repeating all of the above, even if this is not the type of transaction contemplated by the Court's \$2 million threshold, it is of such importance and emotional impact that Comerica had a duty to disclose. As the Court clarified in its October 31, 2017 Order, Comerica has a duty to provide information regarding "negotiations, settlements or important decisions...." The removal of the Vault was one of those important decisions.

Another decision that should have been presented for approval to the Heirs was

[REDACTED]

[REDACTED]

[REDACTED]

5 [REDACTED]

In defending its communications, Comerica calls out two decisions where they responded to the Heirs' concerns. First, [REDACTED]

[REDACTED] *Id.*

Second, Comerica sent information to Sharon Nelson in response to a request for details about

[REDACTED] *Id.* at Ex. GG. In offering these

examples, Comerica misses the point. Petitioners do not allege that Comerica makes *no* communications with them. Rather, Petitioners allege that certain, important and material decisions were made by Comerica without proper disclosure and discussion amongst the Heirs who will bear the repercussions of any bad decisions made by Comerica. Simply offering two examples of "good communication" does not excuse Comerica's other communication failures.

B. The Heir Meetings do not Provide Sufficient Communication to the Heirs

Since taking over as personal representative, Comerica has held Heirs' meetings roughly twice a month. Despite the fact that the Heirs are relatively unsophisticated in the law or the entertainment business, Comerica has flatly refused to allow the Heirs' advisors or attorneys to attend the meetings, claiming that their presence would stifle communication. (Skolnick Dec. Ex. 6). To be clear, Comerica believes that its obligations under the Court's orders are mostly satisfied by holding a twice-monthly two-hour meeting in which the Heirs alone must process and absorb complicated legal and business matters. To the extent that they can later ask questions of those advisors, the Heirs still do not have the real-time ability to have questions answered or additional questions posed at a time when important decisions are being discussed.

(See Norrine Nelson Dec. ¶ 12). It is preposterous for Comerica to assume that it can be meeting its obligations with these Heirs' meetings. *Id.*

As if that were not enough, Comerica has refused to permit transcription of the meetings, instead creating minutes after-the-fact that it disseminates to the Heirs. (Skolnick Aff. Ex. 6). The Court has the entirety of the minutes at its disposal in the Bruce Declaration. Even a quick review of the minutes demonstrates that they insufficient to enable the Heirs to obtain follow-up from their advisors. Certainly a transcript, or recording of the meeting would better allow for this, but Comerica refuses, arguing that the proposal to have a court reporter present [REDACTED]

[REDACTED]

Id. [REDACTED]

[REDACTED]

More importantly, Petitioners believe that certain aspects of the minutes are inaccurate or fabricated. (Petition ¶ 49); (Sharon Nelson Dec. ¶ 15); (Norrine Nelson Dec. ¶ 14). In a tacit admission that its previous minutes were inaccurate, [REDACTED]

[REDACTED] contain substantially more detail than any prior meeting minute. (Bruce Dec. Ex. QQ). Comerica notes that Petitioners have recently ceased attending the Heirs' meetings. While accurate, Comerica neglects to acknowledge that it is the cause. Comerica and its representatives' adversarial attitude towards Petitioners made them feel disrespected, belittled, and threatened. (Sharon Nelson Dec. ¶ 12). As the relationship between Petitioners and Comerica continued to decay, Petitioners felt that the meetings were a futile waste of time, especially given that Comerica said the Heirs would not have a voice or a vote. (March 10, 2017 Sharon Nelson Aff. ¶ 7).

[REDACTED]

The proposed discovery may also indicate what preference or partiality Comerica has shown to other Heirs. (See Petition ¶¶ 38 & 39). Petitioners agree that Comerica can meet individually or in separate groups with the Heirs, but the concern runs deeper than that. There are details of the Estate that certain Heirs know, like the movement of the Vault, which were not provided in public meetings and so must have come from Comerica. It is these sorts of issues, [REDACTED], which raise the specter of impartiality and demand additional discovery.

B. Troy Carter has an Irreconcilable Conflict of Interest with the Estate

In April 2017, Comerica hired Carter to be the Estate’s entertainment advisor [REDACTED] [REDACTED] (Bruce Dec. ¶ 52). In placing Carter in charge of all entertainment decisions, Comerica effectively delegated its decision-making over the areas of Carter’s responsibility. (See Carter Dec. ¶ 2). Carter’s conflicts should thus be imputed to Comerica.

Carter is most well known as Lady Gaga’s former manager, having been fired in November 2013, in a well-publicized dispute over her forthcoming album and creative control. (Skolnick Dec. Exs. 7-9). Since then, Carter became the Global Head of Creator Services for

6 [REDACTED]

Spotify, one of the world's leading music streaming services. In that position, he is responsible for content procurement and is the primary relationship manager between the global music community and Spotify (Carter Dec. Ex. A, p. 1). While Comerica did not disclose Carter's conflict to the Court or the Heirs, at least prior to September 29, 2017, even if it had Comerica's refusal to allow business and legal advisors at Heirs' meetings would have hampered the Heirs' ability to understand and object to the conflict. (Petition Ex. E). In any event, their knowledge of the conflict is ultimately immaterial to the question of whether a conflict actually exists. The issue is whether Carter has a conflict with the Estate that Comerica sanctioned and refuses to correct.

Comerica tries to hand-wave the conflict away by pointing to language in Carter's contract with Comerica which states:

[REDACTED]

(Bruce Dec. ¶ 49). Petitioners have never seen Carter's contract and it was not fully disclosed in Comerica's memorandum or supporting documentation. (Sharon Nelson Dec. ¶ 36); (Norrine Nelson Dec. ¶ 24). Given such conflict, the Court should at a minimum, order a copy produced to the Heirs and to the Court for review.

The problem is that Carter's conflict permeates almost every action he will need to take on the Estate's behalf. (McMillan Dec. ¶¶ 20-25). First, Comerica cannot deny that Carter has an interest in Spotify's financial well-being and success. *Id.* Since Spotify is in direct

competition with a host of streaming competitors, including [REDACTED] and others, it must also be assumed that Carter's financial interest would create conflicts in dealing with any of those streaming services. *Id.* Prince's music would be a cornerstone of any streaming platform, and securing any exclusive rights to stream certain portions of the catalog by one provider would necessarily be to the detriment of other providers. *Id.* Moreover, securing rights to stream previously unreleased music would be a boon to any provider. *Id.* Since [REDACTED] [REDACTED], and because he has an interest in not seeing other providers compete with Spotify, he should be conflicted out of any transaction involving streaming services.

Unfortunately, the conflict does not end there. As entertainment advisor, [REDACTED] [REDACTED] [REDACTED] The cost to purchase those rights will be substantial, limiting the number of entities that could enter into such a transaction. At the same time as Carter is negotiating these deals, he is also negotiating for the acquisition of rights and talent at Spotify. It is inconceivable that the entity which ends up purchasing the rights would not have a sizable roster of additional artists. (*See* McMillan Dec. ¶ 23). Presumably, Spotify does or would have an interest in licensing new artists that it did not previously stream or retaining licenses it already had at more favorable terms. *Id.* Since Carter would be in a position to make tit-for-tat deals, to the potential detriment of the Estate, he cannot be said to lack conflict. Additionally, Carter may use his dual positions [REDACTED] [REDACTED] harming the Estate's negotiation position. [REDACTED] [REDACTED]. *Id.*

Finally, [REDACTED], [REDACTED]

[REDACTED] (Carter Dec. ¶ 6). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

VI. PROTECTION OF ASSETS

Aside from the issues articulated above regarding the transfer of the Vault’s contents to [REDACTED], Comerica also has not properly defended the Estate from unauthorized use of Estate intellectual property. Comerica touts the number of trademark applications it has filed, a handful of litigation actions threatened, a few cases actually in active litigation, and Mark Monitor’s purported progress in dealing with online infringement to claim that it is aggressively defending Estate intellectual property. Preliminarily, some of the information provided to the Court by Comerica is new to Petitioners, again highlighting the breakdown in communications. What the information suggests to Petitioners is that the Court should not be taken in by the large numbers quoted in Comerica’s memorandum regarding trademark applications and Mark Monitor’s progress, but rather should consider the ongoing infringement that Comerica has failed to prevent as evidenced by the multitude of unauthorized sellers of Estate intellectual property easily found by a Google search. The Court may remove Comerica based on the best interest of

the Estate and/or mismanagement, both of which are demonstrated in Comerica's failure to protect invaluable Estate assets. Minn. Stat. § 524.3-611.

A. Comerica Failed to Protect Estate Assets Through Mark Monitor

Comerica hired Mark Monitor in [REDACTED] to provide two types of asset protection services: Brand Protection and Anti-Piracy. In that role, Mark Monitor is essentially responsible for protecting the Estate's intellectual property on the internet. Comerica has information prepared by Mark Monitor detailing its progress. However, that information reveals substantial issues in Comerica's, through Mark Monitor, protection of Estate intellectual property.

The June 2017 email attached to the Bruce Declaration does not contain the attached pdfs, so a thorough discussion of Mark Monitor's initial efforts is not possible. (Bruce Dec. Ex.

G). [REDACTED]
[REDACTED]

[REDACTED] As noted above, the number of claims and notices sent is immaterial compared to the total number of infringers that remain. That information is missing from the exhibit.

In July 2017, Mark Monitor provided a full report at the [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

legal actions on behalf of the Estate (or related entities). (Friedemann Dec. ¶ 2). Specifically, Comerica cites to the [REDACTED] matters. *Id.* at ¶¶ 3 & 4. Given the immense amount of infringement that Mark Monitor documents in its reports to Comerica and the Heirs, it seems wrong that Comerica has only been involved in eight cases, some of which pre-dated Comerica's appointment ([REDACTED]). Comerica also points to certain infringement in which it has sent cease-and-desist letters or other protective action. (Wessberg Dec. ¶ 7, Ex. B). [REDACTED]

■ Since Comerica does not communicate these types of matters to Petitioners, other than certain updates on litigation like the [REDACTED], Petitioners have little way to gauge the propriety of Comerica's actions. Therefore, while the limited information that Comerica has provided supports the conclusion that Comerica has failed to properly defend the Estate's intellectual property, additional discovery may be needed on this point.

As to the [REDACTED] allegations in the Petition, Comerica again misses the point. Yes, Petitioners are concerned that this one individual continues to engage in intellectual property infringement. Comerica and Mark Monitor were notified of his infringement, as well as his name, city and country. (Petition, Ex. B). Despite having all this knowledge, Mark Monitor and Comerica appear to have taken no action against this individual, litigation or otherwise, who is advertising and releasing digital quality audio [REDACTED] *Id.* Not only should Comerica, rather than Petitioners, be the ones addressing these issues, but Comerica and Mark Monitor failed to follow-through with efforts to stop this one individual, which is indicative of the larger problem—Comerica's failure to properly protect Estate intellectual property.

VII. MONETIZATION OF ASSETS

Petitioners also take issue with Comerica’s failure to efficiently monetize the assets of the Estate, [REDACTED] from the Estate. Comerica claims that it has assembled a team that is “uniquely qualified to administer an estate of this complexity and magnitude,” but its actions speak louder than words. (Comerica Mem. p. 2). In the ten months since it took over, Comerica’s expensive efforts have yielded few results for the Estate based on its failure to properly defend the [REDACTED]

[REDACTED]

A. [REDACTED]

In yet another attempt to confuse the issue, Comerica argues that claims related to the [REDACTED] were litigated and thus are barred by the law of the case doctrine. (Comerica Mem. p. 39) (citing *Employers Nat. Ins. Co. v. Breaux*, 516 N.W.2d 188, 191 (Minn. Ct. App. 1994)). Comerica is wrong. The “law of the case ‘is not normally applied by the trial court to its own prior decisions.’” *Anderson v. Anderson*, 897 N.W.2d 828, 832 (Minn. Ct. App. 2017) (quoting *Loo v. Loo*, 520 N.W.2d 740, 744 n. 1 (Minn. 1994)). “It is a discretionary doctrine developed by the appellate courts to effectuate the finality of appellate decisions.” *Loo*, 520 N.W.2d at 744 n. 1. The “law of the case doctrine” does not bind the trial court to its own rulings, as the *Breaux* case cited by Comerica acknowledges. The Estate and the heirs should not have to pay these lawyers to make this meritless argument. Comerica’s argument is essentially a

smoke-screen, because Petitioners are not asking the Court to reconsider its earlier decisions regarding the [REDACTED]

Even a cursory review of the Petition demonstrates that Petitioners are not attempting to relitigate the [REDACTED] (Petition ¶¶ 26-31). Rather, Petitioners take issue with the way Comerica handled the dispute, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Comerica fails to address any of these arguments in its memorandum. Comerica’s preposterous hypothetical is not what Petitioners have argued to the Court during the rescission proceedings, nor is it what they are asserting now. While it is impossible to say what would have happened had [REDACTED]

[REDACTED], it is likely that at least some litigation would have taken place.

Moreover, the rescission of the [REDACTED] has, and continues to consume valuable Estate resources, through the investigation of the Second Special Administrator.

The Court itself noted that “the rescission of the UMG Agreement may certainly be seen as proceeding with a lack of caution....” (Order p. 6 (dated July 13, 2017)). In commenting on Comerica’s decision to assume the fetal position, the Court noted that “the other option of long and potentially expensive litigation while tying up the music rights owned by the Estate makes the other option more treacherous.” *Id.* Despite guidance from the Court on how to proceed,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] However, this speculative claim is made solely in the Carter Declaration, without any documentary support. [REDACTED]

[REDACTED] the Court should consider this claimed deal with a healthy dose of skepticism. More importantly, Prince's fans have a fervent desire to purchase Prince's music, including the twenty-one albums that are widely unavailable. [REDACTED] forfeits the immediate demand for Prince's music and has potentially cost the Estate millions of dollars in lost revenue.

B. Licensing of Estate Assets

It is undisputed that Comerica has been cautious in licensing Estate assets, a demonstrable failure to monetize. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. While these terms might sound catchy, it is the results, not the process that matters. [REDACTED]

[REDACTED]

In reality, Carter has presided over a period of lost opportunity and monetization for the Estate. [REDACTED]

[REDACTED] For all of these fees, he has delivered little tangible value to the Estate. [REDACTED]

[REDACTED]

[REDACTED] In total, the Estate has not received sufficient value to justify Carter's compensation, especially in light of the monetization efforts disclosed so far.

C. [REDACTED]

[REDACTED]

VIII. DISBURSEMENTS OR COMPENSATION TO THE HEIRS

In yet another attempt to mischaracterize Petitioners' claims in the Petition, Comerica argues "the Nelsons criticize [Comerica] for not making distributions to the Heirs." (Comerica Mem. p. 41). While the Petition noted that no interim distributions had been made it also notes that Petitioners "understand that such a unique Estate, with numerous facets, cannot have all issues resolved in a short period of time, they nonetheless have a strong interest in seeing the Estate moved expeditiously towards closure." (Petition ¶¶ 37 & 53). Petitioners' concerns are that Comerica has not moved expeditiously enough towards closure of the Estate and that it has failed to compensate them for their valuable time and services performed on behalf of the Estate, especially in light of Comerica's hesitance to provide any timeline for an Estate resolution that could take up to fourteen years. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Furthermore, Comerica's told Sharon Nelson that she would receive no interim distributions. (Sharon Nelson Dec. ¶ 11). Ultimately, Petitioners want the Estate to begin making distributions as expeditiously as possible, and stand ready and willing to assist with that process in any way they can. (Petition ¶ 53).

B. Consulting Payments

Petitioners have never requested that Comerica make "disguised distributions" in the guise of consulting payments. Bruce claims that Comerica has "not requested or received any services from the Nelsons." (Bruce Dec. ¶ 60). [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] there is little reason that it should be opposed to payments to Heirs for other services, including those listed above.

C. [REDACTED]

In declining Norrine Nelson's [REDACTED]

For all the reasons articulated in this memorandum and in the Petition, Petitioners respectfully request that the Court grant the Petition and permanently remove Comerica as the personal representative of the Estate.

SKOLNICK & JOYCE, P.A.

Dated: November 17, 2017

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