

STATE OF MINNESOTA
COUNTY OF CARVER

DISTRICT COURT
PROBATE DIVISION
FIRST JUDICIAL DISTRICT

In Re:

Court File No. 10-PR-16-46

Estate of Prince Rogers Nelson,
Decedent.

Rule 53 Master Report on the
Fee Application of Cozen O'Connor

The following order is pursuant to the Court's March 31, 2020 (and earlier June 5, 2018) order appointing the undersigned as the Court's Rule 53 Master to decide the motions (a) of Cozen O'Connor ("Cozen") to approve payment of Heirs' Representative's G.A. Walker, LLC ("Walker") Fees from June 18, 2018 through September 28, 2018, and (b) of Asa Weston ("Weston") to approve payment of attorney's fees and expenses from May 22, 2019 through August 7, 2019 (hereafter collectively "Fee Motions"). This Report is in respect to Cozen's motion, the motion of Weston having been decided earlier.

REPORT

1. The request for compensation for services of Cozen for Walker from the Estate is denied, without prejudice to Cozen renewing its request after the Court rules on Walker's motion for the payment of Walker's fees from the Estate;
2. The following memorandum is part of this Report.

Dated: June 11, 2020

Richard B. Solum
Rule 53 Master

MEMORANDUM

I. Introduction

Cozen here seeks approximately \$96,000 in fees and costs in respect to its representation of G.A. Walker, LLC (“Walker”) in respect to Walker’s role as a representative for heirs Omarr Baker and Alfred Jackson. Walker was appointed as such heir’s representative by the Court’s order of May 25, 2018, and such order provided that the billings for Walker’s services were to be billed, in the first instance, to heirs Baker and Jackson, allowing that such billings may be submitted to the Court if Walker’s services could be shown to have contributed a benefit to the Estate as a whole. There was no evidence of any request of, or assent by, the Court for Walker to engage Cozen to perform legal services for Walker in respect to Walker’s appointment.¹ The undersigned is unaware of any request Walker made of heirs Baker and Jackson (or Jackson’s estate) for the payment of Walker’s fees or for the payment of Cozen’s fees. However, in of 2020, Walker made a submission and affidavit in which Walker requested payment from the Estate of \$270,594, or \$800 per hour, for Walker’s services which Walker asserts contributed to the benefit of the Estate, which request is before the Court.²

Cozen’s motion and affidavit essentially claims that its legal services to Walker from June 18, 2018 through September 28, 2018 contributed a benefit to the Estate because Walker’s services contributed a benefit to the Estate.³ The Personal Representative opposes

¹ This is not to imply that any such request or assent was absolutely required for any related fees to ever be paid by the Estate. It is to note, however, that there was no evidence that this engagement and any responsibility for payment by the Estate was contemplated by the Court when Walker was appointed, or that any engagement and/or payment responsibility was anything other than between Walker as client and Cozen as lawyer. See discussion below at p. 7, *infra*.

² In such affidavit, there is no request or mention of attorney fees for services claimed to have contributed to a benefit for the Estate, although in another affidavit Walker submitted in behalf of Cozen, Walker claims that Cozen should be entitled to fees from the Estate because Walker contributed a benefit. As discussed below, it is the existence of Walker’s motion for fees for his services which gives rise to the above denial of Cozen’s request to be without prejudice pending the Court’s ruling on Walker’s request for fees for its services, as it is uncertain whether the Court may make findings which, however doubtful, could influence the determinations made here.

³ In Cozen’s February 2020 affidavit, there is a recitation that the legal services, for which some \$96,000 is requested, were from May 2018 through September 2018 time period—which time entries are materially less

Cozen’s request, claiming not only that the Court’s order appointing Walker did not provide for Walker engaging counsel or for any such counsel to seek fees from the Estate, and: (1) that for attorney fees to be paid by an estate, such fees must be in respect to an “interested person” asserting that such interested person’s counsel contributed to the benefit, and that Walker was not an “interested person;” (2) that the subject Cozen services were largely unrelated to the May 25, 2018 Court order in which Walker as named as Heirs’ advisor to review pending and future entertainment deal(s), and (3) that Walker’s services did not benefit, but rather harmed, the Estate.

We start with the “interested person” issue, about which Cozen argues that a fiduciary is an “interested person,” and that Walker was a fiduciary. Although not free of doubt, for purposes of this proceeding, I have accepted the notion that Walker may have been a fiduciary to heirs Baker and Jackson, and thus that Walker could have been acting as an “interested person” in respect to the subject performance of services. However, material related problems with the fee request remain. The statute provides:

524.3-720 EXPENSES IN ESTATE LITIGATION.

Any personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, or any interested person who successfully opposes the allowance of a will, is entitled to receive from the estate necessary expenses and disbursements including reasonable attorneys' fees incurred. When after demand the personal representative refuses to prosecute or pursue a claim or asset of the estate or a claim is made against the personal representative on behalf of the estate and any interested person shall then by a separate attorney prosecute or pursue and recover such fund or asset for the benefit of the estate, or when, and **to the extent that, the services of an attorney for any interested person contribute to the benefit of the estate,** as such, as distinguished from the personal benefit of such person, such attorney shall be

than \$96,000. Similarly, the Cozen motion sought fees for services from June 2018 through September 2018. However Cozen submitted time entries for services from June 2018 through April of 2019—which time entries do amount to some \$96,000. Problematic, however, is that Walker’s role in respect to the Estate was judicially terminated on February 13, 2019. Inquiry in respect to these temporal inconsistencies was answered in Cozen’s May 21, 2020 letter which extended its time of representation and fee request through April of 2020, even to the extent of claiming fees for services which post-dated Walker’s February 13 termination—Cozen claiming fees for defending Walker in respect to the Personal Representative’s claims of wrongdoing against the Estate. As discussed below, a significant part of the \$96,000 fee request is in respect to time entries (February 2019 through May 2019) showing Cozen dealing with or defending such claims.

paid such compensation from the estate as the court shall deem just and reasonable and **commensurate with the benefit** to the estate from the recovery so made or from such services. (emphasis added)

Applying the statutory requirement here, the question becomes whether there has been a showing of the extent to which “the services of [Cozen for Walker as a fiduciary] contribute to the benefit” Given all the evidence before me, there has not been such a showing.⁴

II. Benefitting Services

This is admittedly an unorthodox analysis, as the fees being sought here are not the fees for claimed benefitting entertainment services of Walker, but fees for claimed benefitting legal services of Cozen’s legal services for Walker. Unlike some of the fee applications which have been before me, here Cozen does not contend that any particular legal services contributed a direct benefit to the Estate, but that its legal services generally assisted Walker in Walker’s provision of benefitting services. This seemingly requires a showing that the services of Cozen for Walker were in furtherance of Walker’s work shown to have contributed a benefit.

Cozen has submitted an April 2020 affidavit of Walker stating that Walker’s work contributed to a benefit in respect to certain relationships with, and/or recommendations as to terms concerning, the Sony and the Unipix deal.⁵ Walker provides no information of how any Cozen service furthered any such Walker-related benefit in respect to such deals, nor any suggestion of any related monetary benefit.⁶ Similarly, in Cozen’s April 20th

⁴ I say “as a fiduciary,” as the only basis on which attorney services on behalf of a non-heir entity can be sought from an estate is if such non-heir has an interest of an estate or its heirs—as the administration of an estate is all about serving those with such an interest—thus the statutory term “interested parties.” Accordingly, I have accepted for purposes of Cozen’s request here that if one is acting as a fiduciary, one may be an “interested party.” Of course, the statute is not designed to allow for an estate to pay for legal services for anyone having any relationship to an estate. For instance, if an estate hired an appraiser to appraise estate art, this would not give a lawyer providing legal services to the appraiser a right to assess legal fees against the estate simply because the lawyer’s services assisted the appraiser benefitting the estate by appraising estate property—the very reason the appraiser was engaged. Here the only basis to even argue that legal services for Walker can be sought from the Estate is that Cozen was providing legal services to Walker acting as a fiduciary—as an interested party.

⁵ Walker understandably has an interest in urging that the Estate be responsible for some \$96,000 of Cozen’s fees--fees otherwise seemingly payable by Walker as Cozen’s client. See discussion at p. 7, *infra*.

⁶ The statute provides that fees for lawyer services be “commensurate with the benefit . . . from such services.” While in past rulings, in alignment with Court of Appeals guidance, I have not required a showing of a

submission, the Sony and Unipix deals are identified as those about which Cozen claims Walker contributed a benefit—again generally claiming that Walker suggested term language, with no showing of how any Cozen services furthered any such Walker-related benefits, nor again with no showing or even any suggestion of any monetary benefit. And in a May 21 letter, Cozen mentions the Broadway, PBS, Warner and Bravado deals—generally claiming that Walker provided some benefit—again with no showing as to how any Cozen services furthered any benefit relating to Walker’s services in respect to such deals, and no showing or even suggestion of any monetary benefit.

Despite the above, and not wanting to short Cozen if its services in fact contributed a benefit, I carefully examined all Cozen’s time entries. With very few exceptions, none of the entries even mention any of the deals identified by Walker or by Cozen as deals about which Walker contributed any benefit. Rather, virtually all of the time entries evidence services other than providing services to Walker with respect to any such deal about which Walker (or Cozen) claim Walker’s services contributed a benefit.⁷ Moreover, much of the services described in the time entries appear to relate to issues about which the Personal Representative and the Court ultimately had concerns about Walker acting in its own interest rather than that of the Estate--entries evidence of services concerning Lythcott, NDA’s, pitchbook, financings, purchase of assets from the Estate, etc.⁸ Moreover, as noted

quantifiable dollar benefit respecting legal services for heirs, as services providing benefits for heirs can be presumed to have some ultimate monetary benefit, including savings. Here, however, the requested fees are not for services to heirs, but services to a business consultant (Walker), claiming that such consultant provided a benefit to the Estate. This one-step-removed claim is without even a suggestion by the consultant Walker that Walker provided any monetary benefit to even the heirs, let alone the Estate. And perhaps as important, there is no evidence that any Cozen service furthered any Walker-related work that provided any monetary benefit. Again, as noted on page 2, *supra*, the affidavit of Walker in respect to Walker’s request for Walker’s fees (Walker being Cozen’s client and presumably having an obligation to pay Cozen’s fees), Walker makes no mention or request in respect to any Cozen service providing any benefit to, or being subject to payment from, the Estate.

⁷ While the Cozen time sheets do reveal a few entries for a few hours of non-descript services such as “review status of Sony deal” and “review status of Unipix deal” and “draft NDA between Walker and Warner Music Group,” these are the only entries even mentioning services respecting the claimed deals, and there are no entries which reflect any work in respect to furthering or improving the terms of any such deal—the basis on which a benefit is being asserted. Moreover, the Personal Representative notes that the Unipix deal was concluded prior to the start date for which Cozen seeks fees.

⁸ In the first time entry submission, there were redactions, which were removed at my request. Three redactions described work concerning the purchase of assets from the Estate. There were also time entries

earlier, a large dollar amount of the time entries describe services in response to, and/or defense of, the wrongdoing claims against Lythcott and Walker--much of which services post-dated the Court's February 13, 2019 termination of Walker. In short, a careful examination of the Cozen time entries failed to provide evidence of any Cozen service in furtherance of work of Walker which was work claimed to have contributed a benefit.⁹

III. Fiduciary

In addition to the unproductive examination of the subject time entries in search for legal services of Cozen for Walker's benefitting services, there is significant question as to whether Walker's activities were as a fiduciary or in breach of such duties.¹⁰ There are two concerns. First, there is evidence before me that Walker was acting in Walker's interest over the interest of the Estate, and thus not acting as a fiduciary—as an “interested person.” See n. 3, *supra*. Second, there is evidence that Walker's activities were more harmful than beneficial to the Estate.¹¹ While there has been no final judicial findings in these regards,

involving Lythcott. While I do not point this out with any concern that this work involved any wrongdoing of Walker, it is of interest as the purchase of assets from the Estate and activities of Lythcott were aspect of the Personal Representative's and the Court's concerns about a subordination of the Estate's interests to those of Walker.

⁹ As has been the case in prior requests for legal fees from the Estate, it is difficult to make a showing of benefit by non-descript block billing. Here, there were a host of time entries for substantial hours such as “review issues,” “analyze issues,” “analyze next steps,” etc., none of which made any mention of any claimed benefitting activity.

¹⁰ Cozen's contention that Walker's misconduct is not relevant to its request for fees seems to miss the point. Cozen's request for fees is claimed to be linked to Walker's claimed benefitting services. Again, as the statute allows a claim “to the extent that the services of an attorney for any interested person contribute to the benefit . . . ,” the issue is the extent to which Cozen's services for Walker as a fiduciary contribute to the benefit. If Walker is not acting as a fiduciary—not as an “interested person,” there is no claim for “services as an attorney” for Walker. Of course, even without this statutory problem, services of an attorney for a client which client's activities harmed the Estate, would not be services contributing a benefit. Finally, as both Cozen's and Walker's submissions claim that the basis for Cozen's request is that Cozen performed legal services for Walker and Walker's services were contributing a benefit—the claim cannot be divorced from Walker's work, but expressly dependent on it. And as noted earlier, there is no evidence of any Cozen legal services divorced from Walker's services which provided any independent benefit to the Estate, the claim being that Cozen's legal representation assisted client Walker's performance of claimed benefitting services.

¹¹ Admittedly there is no evidence before me of monetary amounts of harm, but there is also no evidence of monetary amounts of benefit—or even that any claimed benefit was attendant any monetary consequence. There is evidence, however, of significant legal activity by the Personal Representative's counsel which presumably is paid by the Estate and ultimately a charge against any distributive share to heirs.

the Court has made statements evidencing his view that Walker's activities were in Walker's interests over those of the Estate, and in connection with these concerns the Court in fact terminated Walker's appointment. See orders dated February 13, 2019 and April 23, 2019.¹² In short, these circumstances impair Cozen's ability to meet its burden of showing that Cozen's services for Walker as a fiduciary contributed a benefit.

IV. Cozen's Fees are Walker's Expense

Third, as noted earlier, the files and proceedings in respect to the Estate show that Walker is seeking from the Estate all of its fees for Walker's services at Walker's substantial hourly rate of \$800 per hour—totaling some \$270,594. See discussion at p. 2 *supra*. As discussed earlier, Cozen's request for fees, as described in Cozen's and Walker's affidavits, is that Cozen provided legal services which assisted Walker in providing claimed beneficial services to the Estate. Of course, this is what lawyers generally do for business clients—assist them respecting legal matters associated with the client's business of selling goods or services. Here, presumably Walker is in the business of making money by billing clients, and such was the understanding in respect to his appointment—namely that Walker would be “billing” the heirs (Baker and Jackson) he sought to represent. Again, it is unknown the degree to which Walker has billed Baker and/or Jackson (or Jackson's estate), although we know that Walker is now seeking to bill the Estate for Walker's services. Presumably, whether Walker's billing is to the heirs or the Estate, the billing and hourly rate seemingly is set by Walker at an amount (\$800 per hour) expected to pay Walker's business expenses. As the Personal Representative notes, the order of appointment evidences no expectation by the Court or the Estate that Walker's billing, would include, in addition to Walker's fees for Walker's services, Walker's legal expenses--expenses presumably to be paid from Walker's revenues or billings. Here to the extent Walker shows that he is entitled to his \$800 hourly fee from the Estate because Walker provided a benefit, then to that extent Walker will have

¹² It should be noted that I am serving as a Rule 53 Master for the Court who has ultimate authority over the matter before me, and of course the Court would have firsthand knowledge of the degree to which Walker was terminated and was not acting as a fiduciary. Accordingly, if my understanding of the Court's understanding (as expressed in the judicial record) of these issues is incorrect, the Court obviously has the authority to correct the determinations made here. As noted earlier, these issues may be before the Court presently in connection with Walker's request that the Estate pay Walker's fee for Walker's services.

been paid an amount which seemingly covers Walker's expenses incurred specifically in providing such a benefit.¹³ To the extent Walker is unable to make such a showing, then presumably the services of Cozen to assist Walker in providing services to the Estate, by definition, would not have contributed a benefit. In short, the correct outcome here seems to be that Walker will be paid from the heirs or the Estate as the case may be, and to the extent not paid by the Estate it will be because Walker's services were not beneficial to the Estate—and thus Cozen's enabling services were not beneficial. In any event, the obligation for the payment of legal fees would be by the client Walker, and not by the Estate.¹⁴

V. Scope of Appointment

Finally, the Personal Representative notes that where an interested person or fiduciary appointed by the Court engages in activities not within the scope of the Court's appointment, the activities should not be the subject of payment by the Estate. Cozen makes no real argument in opposition to this "scope" position. A court overseeing the administration of an estate, and concerned about the waste of estate assets or resources, must be able to assume that the scope of an appointment of an expert or service provider to the estate or to any heir will be adhered to, such that claims for fees beyond that contemplated by a court would not be sought from the Estate. From the evidence before me, it appears that a great deal of Walker's work, and thus by implication the assisting legal services, were not within the appointment's contemplation, and as discussed above, there is no evidence of any judicial assent to, or judicial contemplation of, Walker's engagement of counsel at Estate expense. See discussion at 5-6, *supra*. As noted earlier, there are precious few time entries of Cozen which even mention any of the entertainment matters about which any Walker benefitting services are claimed.

¹³ Put another way, could it be that Walker could be paid by the Estate some \$800 an hour or \$270,000 for time spent in service to heirs or the Estate, and that the Estate could then in addition pay \$96,000 of Walker's legal fees presumably covered by Walker's hourly rate?

¹⁴ The order here allows for Cozen to re-apply if it believes that the result of the Court's determination concerning Walker's request for Walker's fees to be paid by the Estate, would make a difference in the decision here.

VI. Conclusion

For all of the reasons above, and without any implication that the work of Cozen was anything but honorable and competent, the rights to payment from the Estate simply has not been shown to be authorized by Minnesota law. As noted earlier, there are determinations here which may be the subject of assessments by the Court in respect to Walker's request for fees. And while it seems unlikely that any such assessments could alter the outcome here, the uncertainty in this regard causes me to err on the side of Cozen and leave open the opportunity to revisit the above order should the Court's further assessments impact determinations made here.

RBS