

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF CARVER

FIRST JUDICIAL DISTRICT  
PROBATE DIVISION  
Case Type: Special Administration

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In the Matter of:

Court File No. 10-PR-16-46

Judge Kevin W. Eide

Estate of Prince Rogers Nelson,

Decedent.

**COMERICA BANK & TRUST, N.A.'S  
REPLY IN SUPPORT OF MOTION TO  
DISMISS COUSINS LAW, APA'S  
PETITION FOR ALLOWANCE OF  
PREVIOUSLY DISALLOWED CLAIM**

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**INTRODUCTION**

In Cousins Law, APA's ("Cousins Law") Response to Comerica's Motion to Dismiss, Cousins Law presents several new assertions, none of which alter the dispositive facts in this matter: First, Cousins Law failed to file its Petition for Allowance of its Previously Disallowed Claim ("Petition") within two months of the Special Administrator's October 18, 2016 Notice of Disallowance of its Claim, as required by Minnesota law; second, the limited information provided in Cousins Law's claim indicates that it is an attempt to recover payment for services rendered outside the six-year statute of limitations. For these two reasons, the Petition and claim must be dismissed.

**ARGUMENT****I. COUSINS LAW CANNOT ESTABLISH ANY PREJUDICE RELATED TO SERVICE OF THE MOTION TO DISMISS.**

Cousins Law first asserts that it was not properly served with the Personal Representative's Motion to Dismiss. The Personal Representative mailed a copy of the Motion and supporting documents to Cousins Law's office address on March 1, 2017. *See* Cassioppi

Decl. Ex. A. However, likely due to a typographical error in the address, Cousins Law states it did not receive the mailing. *See* Response ¶ 1. Cousins Law alleges that it did not receive a copy of the Motion and supporting documents until March 13, 2017. *Id.* Unfortunately, because the mailing was never returned to the Personal Representative as undeliverable, the Personal Representative was not aware that Cousins Law had not received the mailing until Cousins Law's Response to the Motion was filed on March 29, 2016. *See* Cassioppi Decl. ¶ 4. Counsel for the Personal Representative immediately contacted Mr. Cousins to inquire whether he wished to reschedule the hearing date as a result in the delay in service, but has not received a response. *See id.* ¶ 5 & Ex. B. As a result, the Personal Representative assumes Cousins Law wishes to proceed with the current April 7, 2017 hearing.

## **II. COUSINS LAW'S PETITION MUST BE DISMISSED AS UNTIMELY.**

Cousins Law failed to file its Petition for Allowance of Claim within two months of the Special Administrator's Notice of Disallowance of its claim. In its Response, Cousins Law alleges that the Special Administrator twice mailed Cousins Law a Notice of Disallowance of Claim addressed to the incorrect claimant. This allegation is a red herring because it is undisputed that the Special Administrator's third Notice of Disallowance was correctly addressed to Cousins Law on October 18, 2016. *See* Cousins' Law Response Ex. D. It is also undisputed that Cousins Law received this third Notice of Disallowance on or before October 27, 2016. *See id.* Therefore, Cousins Law was required to file a Petition by December 18, 2016, or—at the very latest by—December 27, 2016. Minn. Stat. § 524.3-804(3) (once a claim is presented, “no proceeding thereon may be commenced more than two months after the personal representative has mailed a notice of disallowance”). Cousins Law did not file its Petition until February 8, 2016.

Cousins Law argues that it complied with Minn. Stat. § 524.3-804(3) by filing a Written Statement of Claim with the Court on December 6, 2016. But filing a statement of claim does not “commence a proceeding” against the Special Administrator for allowance of the claim, and therefore, it does not satisfy Minn. Stat. § 524.3-804(3). Cousins Law knew how to commence a proceeding on its claim because it later filed a Petition for Allowance, and because the Notice of Disallowance specifically notified Cousins Law that its claim would be barred unless it filed a “petition for allowance” within two months. *See* Response Ex. D. Because Cousins Law failed to file a Petition for Allowance of its Claim within two months of the October 18, 2016 Notice of Disallowance, its Petition must be dismissed as untimely.

### **III. COUSINS LAW’S CLAIM IS BARRED BY THE STATUTE OF LIMITATIONS.**

In its claim, Cousins Law asserts that it rendered “legal services” to the Decedent for “among other things, representing Prince in a contested divorce.” *See* Petition Ex. A. The claim contains no further description of the alleged legal services rendered. *Id.* Because the Decedent’s divorce took place in 2006-2007, the claim is—on its face—barred by the six-year statute of limitations. *See* Minn. Stat. § 541.05, subd. 1(1); *Pederson v. Am. Lutheran Church*, 404 N.W.2d 887, 889 (Minn. Ct. App. 1987) (affirming dismissal of breach of contract claim when it appeared from the face of the pleading that the claim was time-barred).

In its Response to the Motion, Cousins Law now claims that it also provided legal services to the Decedent in connection with a “post-divorce decree.” *See* Response ¶ 14. Cousins Law does not allege when these services were performed. Instead, in a transparent attempt to avoid the statute of limitations, Cousins Law contends that the invoice it seeks to collect on “became fully due and owing” on April 1, 2016. The invoice, however, indicates that it is for a “Previous Balance” and Cousins Law has failed to allege or provide any detail regarding when the “Previous Balance” first accrued. *See, e.g., Honn v. Nat’l Comp. Sys., Inc.*,

311 N.W.2d 1, 2-3 (Minn. 1981) (statute-of-limitations period on a claim of breach of contract for failure to make payment commences when payment first becomes due). Because Cousins Law's claim is, on its face, for services rendered and amounts due more than six years before the Decedent's death, and Cousins Law has failed to allege or prove any facts indicating that its claim for payment accrued within the statute-of-limitations period, its claim must be dismissed.<sup>1</sup>

#### **IV. COUSINS LAW MUST RETAIN LOCAL COUNSEL.**

Finally, the Personal Representative notes that Cousins Law has failed to fulfill its legal obligation to obtain local counsel to represent it in these proceedings. Under Minnesota law, a corporate entity cannot maintain a proceeding in any court through its officers or employees. Minn. Stat. § 481.02, subd. 2; *Haugen v. Superior Dev't, Inc.*, 819 N.W.2d 715, 718 (Minn. Ct. App. 2012). As a professional association, Cousins Law therefore must be represented by a duly licensed attorney to maintain its Petition against the Estate. Mr. Patrick Cousins, who signed the Petition and Response on behalf of Cousins Law, is not licensed to practice law in the State of Minnesota and therefore cannot represent Cousins Law in this matter. As a result, the Court should require Cousins Law to appear at the scheduled hearing through duly licensed local counsel.

#### **CONCLUSION**

Because both Cousins Law's Petition and claim are untimely under Minnesota law, Comerica respectfully requests that the Court dismiss Cousins Law's Petition for Allowance of Previously Disallowed Claim.

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<sup>1</sup> The Court need not decide whether Cousins Law's claim is barred by the statute of limitations because its Petition is untimely. If, however, the Court reaches the issue of the statute of limitations and determines that it does not have sufficient information on which to make a determination, it should—at the very least—direct Cousins Law to explain why its claim is not barred by the statute of limitations.

Respectfully submitted,

Dated: April 4, 2017

/s/ Joseph J. Cassioppi

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