

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In Re:

Case Type: Special Administration  
Court File No.: 10-PR-16-46  
Judge: Kevin W. Eide

Estate of Prince Rogers Nelson,  
Decedent,

And

Tyka Nelson,

Petitioner.

**OMARR BAKER AND TYKA NELSON'S  
REPLY IN SUPPORT OF MOTION TO  
COMPEL L. LONDELL MCMILLAN TO  
PRODUCE INFORMATION NECESSARY  
TO FACILITATE THE APPOINTMENT  
OF A PERSONAL REPRESENTATIVE**

### INTRODUCTION

Omarr Baker and Tyka Nelson (“Petitioners”) submit this reply in support of their motion to compel L. Londell McMillan to produce certain information necessary to facilitate the appointment of a personal representative. On January 9, 2016, counsel for John Nelson, Norrine Nelson, and Sharon Nelson submitted a memorandum in opposition to Petitioners’ motion (the “Opposition”). The Opposition fails to provide a reason *why* Mr. McMillan—the individual seeking to be a fiduciary to the Estate—will not produce the basic information the Court needs to determine his suitability. Instead, the Opposition spends twelve pages expounding the technical deficiencies of the Petitioners’ motion; denigrations that are both without merit and orchestrated by Mr. McMillan.

As the Court well knows, this is a complex and highly unusual estate. Despite Petitioners’ attempts on several occasions to get the information listed in Exhibits A and B, Mr. McMillan and counsel staunchly refused. Considering the time left before the January 12 hearing, Petitioners were forced to bring this motion. In the interest of expediency, Petitioners respectfully request the

Court compel Mr. McMillan—via Randall W. Sayers—to provide this information in order to assist the Court and the other putative heirs in making a fully informed decision.

### FACTS

Petitioners refer the Court to the facts as stated in their motion. Contrary to what the Opposition states, Petitioners met and conferred with counsel for John, Norrine, and Sharon Nelson on numerous occasions. (*See* Affidavit of Steven H. Siltan (“Siltan Aff.”), ¶¶ 3-4.) On December 5, 2016, counsel for Petitioners met with Mr. McMillan and asked him questions regarding the information listed in Exhibits A and B. (Siltan Aff., ¶ 3.) At the meeting, Mr. McMillan indicated he would provide the information requested at a later date. (*Id.*) Counsel for Petitioners subsequently requested the information again, this time from Mr. Sayers, counsel for John, Norrine, and Sharon Nelson. (*Id.*, ¶¶ 4-7.) Mr. Sayers subsequently refused to provide the information requested. (*Id.*)

The Opposition’s contention that Petitioners did not meet and confer is belied by the facts. (*See* Mem. in Opp. to Mot. to Compel at p. 4.) In fact, the Opposition’s statement that the “discovery sought” was never previously submitted intentionally misses the point. Counsel for the Heirs have consistently tried to work together, exchange information needed, and willingly provide information when requested. This is true not only for the present issue, but for the many issues the Heirs have addressed. Counsel for the Heirs worked cooperatively on approving the entertainment deals, on deciding on Comerica as corporate personal representative, and in opposing Brianna Nelson, et al.’s memorandum regarding legal status of heirship. These are just a few examples. The Opposition disregards this, instead focusing on a purely technical argument that does nothing to address the issue before the Court.

With respect to the information sought from Mr. McMillan, counsel for Petitioners worked diligently to get the information without the Court's involvement. On December 7, two days after meeting with Mr. McMillan, counsel for Petitioners contacted Mr. Sayers<sup>1</sup> and provided a courtesy copy of the petition they intended to file requesting Comerica and Van Jones act as co-personal representatives. (*See Siltan Aff.*, ¶ 4, Ex. A.) The petition asks for the information previously requested:

Baker is concerned about McMillan's current contractual and personal relationship with Sharon Nelson, Norrine Nelson, and John Nelson, as well as some aspects of his role as Advisor to the Estate. As such, Baker currently objects to his appointment. **Baker would request that prior to ruling on his suitability as co-Personal Representative, McMillan provide full disclosure of his contractual relationship with any heir and provide full disclosure of his efforts as an Advisor to the Estate.** In addition, to the extent that McMillan is considered as a co-Personal Representative, Baker requests the Court place procedures in place to assure that his role is not impacted by any conflicts. That being said, assuming the proper disclosure and procedure, Baker does not foreclose accepting McMillan as a co-Personal Representative.

(*See Siltan Aff.*, Ex. A at p. 4) (emphasis added).

In the email attaching the petition, counsel reiterates its request for information from Mr. McMillan:

It would be very helpful to have a formal proposal from Londell [McMillan] to evaluate his fitness and viability as a PR. We will be putting together one for Van [Jones].

(*See Siltan Aff.*, Ex. A.) Counsel received no productive response to this email request. Counsel subsequently followed this email up with a phone call to Mr. Sayers. (*Id.*, ¶ 4.) In the phone call,

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<sup>1</sup> Mr. Sayers' substitution in this case was coincidental at best. Mr. Sayers replaced Ken Abdo and the firm Lommen Abdo. Until the substitution, Mr. Abdo had been the selected entertainment counsel on behalf of the Heirs. Mr. Abdo had worked diligently with counsel for all Heirs to modify the entertainment deals to save the Estate millions in improper commissions. In contrast, Mr. Sayers has refused to cooperate with counsel for the Heirs, and instead his actions seek to further imbed Mr. McMillan in the Estate.

Mr. Sayers told counsel for Petitioners that under no circumstances would Mr. McMillan be providing any of the requested information. (*Id.*)

On December 16, 2016, Mr. Sayers sent an email regarding a proposal for the petitions for personal representative. (*See* Silton Aff., ¶ 5, Ex. B.) This email does nothing to address the previous request for information regarding Mr. McMillan. Moreover, this email disregards the courtesy copy of the petition counsel for Petitioners had sent on December 7. (*Id.*)

Regardless of the lack of response, on December 19, 2016, counsel for Petitioners responded to Mr. Sayers' request. (*See* Silton Aff., ¶ 6, Ex. C.) In the response, counsel again asks: "any interest in some type of mediated discussion regarding these issues? . . . [I] do see the need to continue to facilitate open communications." (*Id.*) Counsel received no productive response to this request. (*Id.*)

Finally, on December 30, 2016, counsel for Petitioners sent another email to Mr. Sayers requesting a discussion. In the email, counsel states "How about ongoing discussions on . . . co-PR options, etc.? . . . I think communication is crucial at this point." (*See* Silton Aff., ¶ 7, Ex. D.) Counsel received no productive response to this request, either.

With the January 12 hearing date fast approaching, and receiving no productive response from Mr. McMillan or Mr. Sayers, counsel for Petitioners acted quickly to file its motion before the Court. As stated in the Petitioners' motion, the information is crucial in order to determine Mr. McMillan's ability and qualifications to serve as a co-personal representative of the Estate pursuant to Minn. Stat. § 524.3-203(f)(2).

### **ARGUMENT & AUTHORITIES**

Discovery in probate matters is governed by the Minnesota Rules of Civil Procedure, which stipulate methods by which to obtain discovery. (*See* Mem. in Opp. to Mot. to Compel at p. 5.)

However, as Petitioners rightly stated in their motion, a district court judge has “wide discretion to issue discovery orders,” and will not be reversed unless it makes findings unsupported by the evidence or if it improperly applies the law. *State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009) (emphasis added); *see also* Minn. R. Civ. P. 26.02.

**I. Given the Shortened Time Available, Petitioners Were Required to Submit Their Motion in Advance of the January 12 Hearing**

This is an unusual case, in more ways than one. Throughout this proceeding, the various parties have attempted to resolve any conflicts in an informal manner. This has usually worked. In this situation; however, after waiting for and receiving no cooperation from Mr. McMillan—and no explanation for failing to provide the information—there was no time to submit the formal discovery envisioned by the Opposition. Petitioners tried hard to get the information without formal discovery. Additionally Petitioners, in their motion, anticipated the Opposition on the basis that a subpoena and/or formal discovery pursuant to Rule 26 has not been served. As they stated in their motion, that can be remedied. (*See* Mem. in Supp. of Mot. to Compel at p. 4.) But obtaining this information is a matter of urgency. Mr. McMillan would certainly have objected to a subpoena, otherwise he would have voluntarily produced the information to show his good faith to the parties and the Court. Moreover, a subpoena and objection would expend close to 90 days before Petitioners receive the information needed. And as the Court well knows, the various motions for the appointment of either a successor special administrator, a corporate personal representative, and/or an individual personal representative or co-representative shall be heard on January 12, 2017.

Therefore, the Court must receive any information needed to determine Mr. McMillan’s suitability to serve as personal representative *before* January 12. There is not enough time to conduct formal discovery, and regardless, Petitioners have diligently attempted to get that

information in one form or another. From the moment Petitioners realized John, Norrine, and Sharon Nelson were requesting Mr. McMillan, Petitioners worked hard to get the information they knew the Court needed to evaluate Mr. McMillan's suitability. (*See* Siltan Aff., Ex. A, B, C, and D.) At each point, they were rebuffed. For the Opposition to contend otherwise is baseless. The Court needs this information to properly determine Mr. McMillan's suitability, and the Court has the discretion to compel Mr. McMillan produce the information.

Additionally, the Opposition contends that because Mr. Sayers does not represent Mr. McMillan, he is "not obligated to answer discovery on his behalf." (*See* Mem. in Opp. to Mot. to Compel at 10.) Once again, this is a baseless argument. Ostensibly, prior to selecting Mr. McMillan as their selection for co-personal representative, the requestors underwent some preliminary investigation as to his suitability.<sup>2</sup> The Court has the inherent power to order discovery. *See State v. Underdahl*, 767 N.W.2d 677, 684 (Minn. 2009). There is no reason the Court cannot order Mr. McMillan to produce the information that Petitioners request. Had he and his clients conducted even the semblance of an investigation on Mr. McMillan, Mr. Sayers would be able to readily produce this information. Mr. McMillan would be under the jurisdiction of the Court as a personal representative. As such, the Court has the authority to order Mr. McMillan produce the information if he wishes to be considered a personal representative. This would not be considered an abuse of discretion by an appellate court.

The Opposition's above argument—as with the rest of the Opposition—is largely technical. Nowhere does the Opposition deign to explain *why* they cannot produce this information regarding Mr. McMillan. Nowhere does the Opposition address Petitioners' arguments regarding

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<sup>2</sup> It should be noted that Mr. Sayers often speaks on Mr. McMillan's behalf. In turn, Mr. McMillan often speaks on behalf of John, Norrine, and Sharon Nelson. There are additional entanglements that merit further discussion before Mr. McMillan's suitability can even be addressed.

suitability. *See* Minn. Stat. § 524.3-203. “No person is qualified to serve as personal representative who is . . . a person whom the court finds unsuitable in formal proceedings.” *Id.*, subd. (f)(2) (emphasis added); *see also In re Estate of James R. Franta*, AS12-0663, 2013 Minn. App. LEXIS 122, at \*2 (Minn. Ct. App. Feb. 11, 2013); *Crosby v. Hunt (In re Estate of Crosby)*, 15 N.W.2d 501, 505 (Minn. 1944) (“Unsuitability is now a ground for refusing appointment, whereas formerly it was only a ground for removal of an executor.”). For the Court to be able to properly determine Mr. McMillan’s suitability, it needs the information requested. And yet, the Opposition does not address this at all. The Opposition is “too technical to deserve serious consideration.” *See Crosby*, 15 N.W.2d at 505.

Given the time before the January 12 hearing is less than the regular time allotted pursuant to Rule 26 for responses to discovery or pursuant to Rule 45 for responses to subpoenas, and given that there are questions as to Mr. McMillan’s suitability, Petitioners respectfully request the Court compel Mr. McMillan and counsel for the putative heirs who are proffering Mr. McMillan to produce documents responsive to the instructions and requests as detailed in Exhibits A and B.

## **II. Petitioners Agree to Both Proposed Co-Personal Representatives Submitting to Formal Discovery**

Mr. McMillan and Anthony ‘Van’ Jones both seek to serve as co-personal representative of the Estate. The Opposition offers to have both proposed co-personal representatives submit to formal discovery. (*See* Mem. in Opp. to Mot. to Compel at 11.) If it is the Court’s preference, Petitioners are amenable to having both parties produce the information that will assist the Court in making a suitability determination.

In sum, Petitioners respectfully request the Court use its inherent power to compel counsel and Mr. McMillan to produce this information, which they should have readily available. The documents and materials requested is information that will satisfy the Court’s needs in order to

properly determine Mr. McMillan's suitability to act as co-personal representative. This case involves complex issues. A proper review of Mr. McMillan's qualifications to act as co-personal representative warrants adequate information. For these reasons, the Petitioners ask the Court to compel Mr. McMillan to produce the information requested in Exhibit B via Randall Sayers. Petitioners believe that this additional information will aid the Court in determining whether Mr. McMillan is suitable to act as co-personal representative, pursuant to Minn. Stat. § 524.3-203(f)(2).

### CONCLUSION

For all the foregoing reasons, Omarr Baker and Tyka Nelson respectfully request the Court grant their Motion to Compel L. Londell McMillan to produce certain information necessary to facilitate the appointment of a personal representative.

Dated: January 11, 2017

**COZEN O'CONNOR**

/s/ Thomas P. Kane  
Steven H. Silton (#260769)  
Thomas P. Kane (#053491)  
Armeen F. Mistry (#397591)  
33 South Sixth Street, Suite 4640  
Minneapolis, MN 55402  
Telephone: 612-260-9000  
ssilton@cozen.com  
tkane@cozen.com  
amistry@cozen.com

Jeffrey Kolodny, *pro hac vice*  
277 Park Avenue  
New York, NY 10172  
Telephone: 212-883-4900  
jkolodny@cozen.com

*Attorneys for Omarr Baker and Tyka Nelson*