

**STATE OF MINNESOTA**  
**COUNTY OF CARVER**

**DISTRICT COURT**  
**FIRST JUDICIAL DISTRICT**  
**PROBATE DIVISION**

In Re:

**Estate of Prince Rogers Nelson,**  
**Deceased.**

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

**REDACTED**

**REPLY MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO  
QUASH SUBPOENA DUCES TECUM  
AND FOR ENTRY OF PROTECTIVE  
ORDER**

Sharon L. Nelson, Norrine P. Nelson, and John R. Nelson (“Sharon”, “Norrine”, and “John”, or collectively referred to as “SNJ”) continue to be burdened by the actions of overly litigious Non-Excluded Heirs who previously sought to usurp the role of the Special Administrator and now seek to commandeer the role of Personal Representative. While the Court may have acknowledged that McMillan and Koppelman have apparently been a “lightning rod” for disputes in this matter, Omarr Baker (“Omarr”), Tyka Nelson (“Tyka”), and their attorneys have been the figurative storm clouds circling these Estate proceedings almost since their inception. The Subpoena to McMillan is just the latest continuation of vociferous and repetitive litigation in this matter at their behest.

Putting aside the speculative and unsubstantiated claims asserted by Omarr, Tyka, and Alfred Jackson (“Alfred”) against Bremer and McMillan, the Subpoena marks a turning point in the case as they move from burdening the Estate generally to directly burdening SNJ. Sharon, Norrine, and John are the eldest Non-Excluded Heirs and, in contrast to actions of other Non-

Excluded Heirs, have avoided excessive litigation in this matter. The Subpoena targets them directly, forcing SNJ to incur unnecessary expense to protect their interests and attempt to avoid further public exposure of their private business dealings. These burdens are due to speculative and unsubstantiated conflicts or misdeeds that Omarr, Tyka, and Alfred admit are nothing more than “possible” at this time. SNJ maintain their position outlined in their initial Memorandum and submit this Reply to address the changes in this matter’s procedural posturing since the Subpoena was issued and to correct the misstatements in the Opposition briefing.

### FACTS

The subsequent developments in this case since the initial Motion to Quash do not remedy the defects in Omarr’s subpoena. Indeed, Omarr, with varying support from Alfred and Tyka, continues to submit repetitive and lengthy filings rehashing his opposition to any involvement of McMillan in the Estate. With respect to matters in this proceeding before the Court, the relevant changes in case status relate to the Court suspending the discharge of Bremer Trust, National Association as of April 12, 2017 after developments regarding the License Agreement with Universal Music Group (“UMG”). (Apr. 7, 2017, Omarr Baker and Alfred Jackson’s Supplemental Objections to Bremer Trust, National Associations Final Accounts through January 31, 2017. Supplemental Objection at pp. 2-3.) Of note, Supplemental Objections filed in advance of that postponement focused almost exclusively on issues related to the UMG dealings and the Tribute Concert. (*See generally id.*)

In addition to staying Bremer’s discharge, the Court ordered Comerica Bank & Trust (“Comerica”) to review and investigate issues related to real property located at 1119 Morgan Avenue North in Minneapolis, unfound Estate assets, and the Tribute Concert. (Apr. 5, 2017 Order Granting Special Administrator’s Request to Approve Payment of Special Administrator’s and

Attorneys' Fees and Costs Through Jan. 31, 2017 and Final Accounts Inventory ¶¶ 8-11.) The Court specifically delegated responsibility to Comerica to investigate McMillan's involvement:

9. Comerica Bank & Trust shall investigate and make an informed decision regarding whether any action should be pursued for the return of the commission paid to L. Londell McMillan in connection with the agreement with Jobu Presents to conduct the Tribute Concert.

(*Id.* at ¶ 10.) In short, the primary changes in status of the case since the Court rejected the previous attempt to obtain discovery on the eve of the January 12, 2017 hearing relate to the UMG deal and the Tribute Concert. Regardless of these developments, the Subpoena should be quashed with respect to information sought regarding SNJ.

### ARGUMENT

#### I. The Subpoena Seeks Impermissible Discovery.

As an initial matter, the discovery sought remains improper as neither Omarr nor any other Non-Excluded Heirs currently have asserted a direct claim against McMillan or SNJ in these proceedings or otherwise. Absent a claim, the Subpoena seeks information beyond the scope of discovery. Rule 26.02 limits discovery to "matters that would enable a party to prove or disprove a claim or defense." Minn. R. Civ. P. 26.02(b). Moreover, absent certain exceptions, formal discovery is generally disallowed prior to filing a claim. *See generally In re Minn. Asbestos Litig.*, No. A08-2222, 2009 WL 2747083, at \*2 (Minn. Ct. App. Sept. 1, 2009) (recognizing that unique aspects of asbestos litigation warranted pre-suit discovery per case management order). Indeed, individuals are generally precluded from utilizing pre-suit discovery to investigate claims. *See Sandmann v. Petron*, 404, N.W. 800, 802 (Minn. 1987) (refusing to allow pre-suit discovery to obtain information necessary for complaint); *see also In re Sitter*, 167 F.R.D. 80, 82 (D. Minn. 1996) (denying pre-suit discovery).

Even if legitimate claims exist, Estate claims should be pursued by a personal representative. The duties of a personal representative in pursuing claims were relatively recently summarized by the Minnesota Court of Appeals:

A personal representative also is authorized to bring suit on behalf of the estate. Minn. Stat. § 524.3–703(c). And “[e]xcept as to proceedings which do not survive the death of the decedent, a personal representative of a decedent ... has the same standing to sue ... in the courts of this state ... as the decedent had immediately prior to death.” *Id.*; *see also* Minn. Stat. § 524.3–715(22) (2008) (authorizing personal representative to prosecute or defend claims or proceedings to protect the interests of estate and personal representative in performance of duties). A personal representative who fails to perform these duties may be personally liable to the estate’s beneficiaries. Minn. Stat. § 524.3–712 (2008).

*Nelson v. Holland*, 776 N.W.2d 446, 449 (Minn. Ct. App. 2009) (citations omitted). While parties other than a personal representative can pursue claims on behalf of an estate under certain circumstances, the law regarding awarding attorney fees in such instances further suggests that courts should be reluctant to encourage non-personal representatives from pursuing those claims, especially imposing burden on other heirs. As the court in *Shablow’s Estate* noted:

A doctrine which permits a decedent’s estate to be so charged, should, however, in our opinion, be applied with caution and its operation limited to those cases in which the services performed have not only been distinctly beneficial to the estate, but became necessary either by reason of laches, negligence, or fraud of the legal representative of the estate.

253 Minn. 1, 9, 92 N.W.2d 83, 89 (quoting *Becht v. Miller*, 279 Mich. 629, 638, 273 N.W.2d 298 (1937)). Indeed, before an interested party other than the personal representative can seek attorney fees for pursuing a claim that benefits the estate, that party must first demand action from the personal representative. Minn. Stat. § 524.3-720; *Gellert v. Eginton*, 770 N.W.2d 190, 196–97 (Minn. Ct. App. 2009).

In the present case, Omarr, Tyka, and Alfred admit there is no present claim against McMillan and fail to provide facts suggesting any wrongdoing by SNJ other than repeatedly referencing “possible” actions. (May 3, 2017, Mem. in Opp. to Motions to Quash, at p. 18.) They

acknowledged that the Subpoena is a fishing expedition as they admittedly are still in the process of trying “to determine whether sufficient evidence exists to bring a claim against McMillan and others” and presume that they are entitled to information about other Non-Excluded Heirs and former advisors to the Estate. (*Id.* at p. 20.) The only pleadings that resemble a claim in this matter appear to be the objections to discharging Bremer and while they continue to suggest there may be claims involving McMillan, no such claim has been directly asserted against him by the Estate or a Non-Excluded Heir. Moreover, there does not appear to be a clear refusal by Comerica to pursue such a claim and as the Court seemingly acknowledged in ordering Comerica to investigate the Tribute Concert, the obligation to investigate matters and protect the Estate in litigation rests with Comerica.

Under these circumstances, Omarr is attempting to utilize formal discovery to establish a claim he does not yet know exists, a practice that is generally disallowed in Minnesota, and is burdening the entire Estate as well as three Non-Excluded Heirs individually in the process. He should be precluded from submitting Subpoenas to advisors to SNJ.

Even if discovery was available regarding the alleged issues, the Subpoena still fails to comport with the factors of proportionality as articulated in Minnesota Rule of Civil Procedure 26.02(b). Nothing in the responsive memorandum resolves this deficiency as the Subpoena is based on circular reasoning presuming the veracity of the slew of allegations against McMillan to justify discovery. As indicated in McMillan’s responsive briefing and correspondence, the allegations remain conjecture and, even if true, fail to delineate any specific wrongdoing on his behalf.

The bulk of the allegations as related to SNJ circle around the UMG deal, the Tribute Concert, and McMillan’s relationship with SNJ. Even if there were communications between SNJ

and McMillan regarding UMG or other deals during the time of McMillan's advisory role to the Special Administrator or at any other time, Omarr, Tyka, and Alfred fail to delineate how such information would result in claims for the Estate. The deals in place were subject to voluminous filings and input from the Non-Excluded Heirs, and were ultimately approved by the Court. The merits of the UMG deal, like several deals, have already been litigated *ad nauseum*.

The emphatic need to inquire into the UMG deal yet again presented by Omarr, Tyka, and Alfred is surprising [REDACTED]

[REDACTED] and Anthony

“Van” Jones testified about how he negotiated the previous Warner Bros. deal [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

While the Subpoena would likely do little by way of legitimizing the allegations, compliance with the Subpoena would undoubtedly burden SNJ as they risk public exposure of their privileged communications and confidential business information to the public and similarly situated heirs who may attempt to exploit their endeavors or benefit from McMillan's advice

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<sup>1</sup> Jones testified regarding the 2014 Warner Bros deal, “And so when we finally got that deal we negotiated, there were three people in the room when Prince signed that deal: Prince, Phaedra and myself.” (Jan. 12, 2017 Hearing Tr. at p. 138.)

<sup>2</sup> If Omarr is in fact entitled to discovery from non-parties, it follows that Non-Excluded Heirs and other interested parties would have the ability to submit discovery to other non-parties and interested parties as related to Estate matters including use of Estate assets and efforts to purchase Estate assets or influence Non-Excluded Heirs.

contained within those communications without retaining his services or compensating him.<sup>3</sup> Given the broad, unsubstantiated allegations, Omarr fails to establish a substantial need for disclosure of trade secret or other confidential information as required by Rule 45(c)(2). Moreover, given the Court's instruction to Comerica to investigate the Tribute Concert, the burden imposed by the Subpoena is even more unjustified given the duplicative other investigation seemingly underway in this matter.

While counsel has suggested that confidentiality issues can be resolved with a protective order, the handling of other potentially confidential information suggests otherwise. Counsel for Omarr, Tyka, and Alfred filed an affidavit in support of the opposition to the motion to quash the Subpoena and included a document titled "Alfred Jackson and NorthStar Agreement." (May 5, 2017 Kane Aff. at Ex. 5.) The terms of the Agreement provided that Alfred would not disclose the material terms of the Agreement to any party not subject to the Agreement. The Agreement was filed publicly with no effort to redact or maintain its confidentiality. Counsel for Omarr, Tyka, and Alfred suggest that SNJ have similar agreements with McMillan casting their business into public spotlight. Submitting the document publicly without notice and suggesting SNJ have similar deals is reckless and brings unnecessary public attention to their private business decisions.

The overtly overbroad nature of the information requested further supports quashing the Subpoena.<sup>4</sup> The Opposition to the Motion to Quash is devoid of any defense of the expansive

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<sup>3</sup> SNJ decline to further elaborate on the nature and extent of their communications with McMillan absent further order from the Court. If the Court orders discovery, SNJ respectfully insist on the ability to conduct a preproduction review of the materials for privilege and confidentiality subject to producing a privilege log per Rule 26.02(f). At this time, SNJ have no obligation to disclose the extent of their relationship with McMillan or any related communications to Omarr and doing so to support their privilege and confidentiality claims would effectively provide discovery.

<sup>4</sup> As stated above, SNJ acknowledge the role of the personal representative in overseeing litigation involving an estate. However, SNJ question Comerica's response regarding the Subpoena and why Comerica did not submit a subpoena to McMillan previously if the information sought in Request

categories of information sought and fails to cite any case law for the proposition that an heir to an estate can literally seek every document in the possession and control of a third-party associated with other heirs with no limitation for subject matter or relevance. Indeed, courts routinely hold that requests for *all* documents regarding a lawsuit are typically overbroad. *See, e.g., Knollwood Co. v. Cty. of Hennepin*, No. TC26071(97), 1999 WL 333419, at \*2 (Minn. Tax May 25, 1999) (stating that request for “[a]ll internal company memoranda relating to the operation was overly broad and unduly burdensome), *Consumer Justice Ctr. P.A. v. Trans Union L.L.C.*, No. A05-1433, 2006 WL 920182, at \*1 (Minn. Ct. App. Apr. 11, 2006) (holding that Trans Union's request for “[a]ll documents relating to initial contacts, disputes, requests for reinvestigation or other communications with credit reporting agencies that [CJC][has] had in the last ten years, including but not limited to work papers, correspondence, reports, and testimony” was overly broad and burdensome), *Mead Corp. v. Riverwood Nat. Res. Corp.*, 145 F.R.D. 512, 513 (D. Minn. 1992) (“Discovery request for all documents relating to sale of corporation which allegedly infringed patent was overbroad; most of material would have little bearing on patent infringement action against successor corporation and there were likely to be thousands of such documents.”).

Omarr cannot escape the overbroad nature of his requests as he literally seeks all documents, including electronic information, from McMillan any way “relating to Norrine Nelson, Sharon Nelson, John Nelson, Alfred Jackson, Tyka Nelson, and/or Omarr Baker.” (Ex. B to L. McMillan Subpoena filed on Mar. 3, 2017, at ¶ 5.) The information sought is not limited to any claim in this matter. No such claim presently exists before the Court and even if there is a claim,

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No. 4 of the Subpoena was necessary. Moreover, SNJ are not aware of any previous efforts by Comerica to obtain the requested information from McMillan absent incurring the cost of formal discovery and respectfully suggest that Comerica utilize informal discovery before expending additional Estate resources to obtain information from McMillan. Comerica likely could have received the documents from McMillan via a request to him directly.

it would presumably deal with the UMG Agreement or the Tribute Concert. Indeed, the information is admittedly sought for continued investigation into matters with absolutely no evidence of wrongdoing by SNJ. Even if there was a shred of evidence to implicate them in a legitimate claim, the requests seek information far beyond any issue with UMG or the Tribute Concert.

## II. Omarr, Tyka, and Alfred Continue to Distort the Record in this Matter.

The actions of Omarr, Tyka, and their counsel in their dogged pursuit of Bremer and McMillan in this matter have resulted in countless unnecessary hours expended by attorneys and their clients in these matters in addition to admonishment from the Court and what appears to be disclosure of confidential business records as noted above.<sup>5</sup> In addition, their attorneys apparently misrepresent or twist the record to support unfounded allegations. Such distortion undercuts the veracity of their allegations and the purported necessity for the Subpoena.

By way of example, counsel suggests some sort of impropriety in Sharon testifying on January 12, 2017 that she retained McMillan as a business advisor and McMillan testifying that he did not have a contractual relationship with her at that time. (Jan. 12, 2017 Hearing Tr. at pp. 109-110, 183-84.) Both statements are true without any “inconsistent” statement as alleged as McMillan was free to provide advice absent a contractual arrangement. (May 3, 2017, Mem. in Opp. to Motions to Quash, at p. 10.) Sharon stated, “I have him as a business manager - - not manager, advisor.” (Jan. 12, 2017 Hearing Tr. at P. 109.) Counsel omitted the rest of her testimony regarding her relationship with him where she refuted any suggestion that McMillan would use

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<sup>5</sup> By way of example, this pursuit warranted a warning of potential sanctions during the January 12, 2017 hearing. (Jan. 12, 2017 Hearing. Tr. At p. 62-63.)

the Estate to benefit her individually.<sup>6</sup> (*Id.* at p. 110.) Despite the current suggestion that this relationship presented a conflict or warranted additional discovery, counsel declined to cross-examine Sharon at the January 12, 2017 hearing. (*Id.* at 111.)

The distortion continues by suggesting that Sharon represented that “any Non-Excluded Heir’s mistrust of McMillan was immaterial.” (May 3, 2017, Mem. in Opp. to Motions to Quash, at p. 2.) Although her testimony was cited in a footnote, the obvious implication was that Sharon and the majority would refuse to listen to criticism of McMillan and bully the other Non-Excluded Heirs with their majority. That is a mischaracterization of the testimony as she expressly stated that they would “hear them out.”

The distortion shifts to a blatantly false statement in asserting that “[on] the eve of the hearing, McMillan offered Nelson a \$10,000,000.00 for her cooperation with respect to the Estate.” (Br. at p. 6 citing Jan. 11, 2017 Affidavit of Tyka Nelson.) However, that affidavit provides no such statement with Tyka and instead attaches an apparently undated text message purportedly from McMillan stating:

I also offered loans before with “no strings attached” and have major financing opportunities with no risks to you and family. I also have a bank loan for up to \$10 million each if you wish on great great terms. One day you will see I am honest[.]

(Jan. 11, 2017 Affidavit of Tyka Nelson at p. 4.)

The misstatements and unfounded inferences continue with opposing counsel improperly suggesting that SNJ and McMillan’s counsel failed to properly meet and confer. (Br. at p. 9, 10 n. 7.) There is no requirement that a party meet and confer prior to filing a motion to quash. *See*

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<sup>6</sup> Sharon’s testimony was consistent with representations made to the Court during previous conferences in which she stated that McMillan was her business advisor during his tenure as entertainment advisor to the Special Administrator. Counsel’s purported focus on this relationship as a basis for issuing the Subpoena appears disingenuous given that the Court and counsel have been aware of that relationship since before the Personal Representative Appointment.

*generally* Minn. R. Civ. P. 45. The duty to confer arises out of General Rule of Practice 115.10 and requires that the moving party certify an attempt to confer *before* the motion hearing. Minn. General R. Prac. 115.10. As noted by opposing counsel, multiple conferences have taken place. Given SNJ's objections and aversion to allowing Omarr to access any of their communications with McMillan, counsel did not reach an agreement.

It warrants noting that procedurally, Omarr, Tyka, and Alfred fail to address the technical violation regarding the apparent failure to provide the parties with a copy of the subpoena at the time it is served on the non-party. Attorneys signed New York and Minnesota subpoenas to McMillan on February 22, 2017 and February 28, 2017. (May 3, 2017 Kane Aff. at Ex. I; Mar. 3, 2017 Notice to the Parties). SNJ understand that the subpoena was delivered to McMillan before the filing and the pleadings fail to include an affidavit of service confirming otherwise.

When viewed in conjunction with vague assertions the demonstrated willingness by counsel for Omarr, Tyka, and Alfred to twist and manipulate the record only to make additional allegations undermines the legitimacy of the purported basis for discovery.

### CONCLUSION

For the foregoing reasons, Sharon, Norrine, and John respectfully request that this Court issue an Order quashing the Subpoena to McMillan and prohibiting Omarr Baker from seeking further discovery from McMillan. The Subpoena is a continuation of the burdening of the Estate with unnecessary litigation based on conjecture and perceived entitlement to pry into the dealings of other Non-Excluded Heirs despite the appointment of Comerica as Personal Representative.

Respectfully submitted,

Dated: May 8, 2017

HANSEN, DORDELL, BRADT, ODLAUG  
& BRADT, P.L.L.P.

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