

STATE OF MINNESOTA  
COUNTY OF CARVER

DISTRICT COURT  
FIRST JUDICIAL DISTRICT  
PROBATE DIVISION

In Re:

Court File No.: 10-PR-16-46

Estate of Prince Rogers Nelson,

**REDACTED**

Deceased.

**MEMORANDUM IN OPPOSITION  
TO OMARR BAKER'S MOTIONS  
TO APPROVE PAYMENT OF  
ATTORNEYS' FEES AND COSTS**

Sharon L. Nelson, Norrine P. Nelson and John R. Nelson (“Sharon,” “Norrine,” and “John”, collectively referred to as “SNJ”) submit this Memorandum in Opposition to motions submitted by Omarr Baker (“Omarr”) seeking approval of payment of attorneys’ fees and costs from the Estate of Prince Rogers Nelson (the “Estate”). Omarr seeks \$860,361.85 in attorneys’ fees and cost reimbursement for efforts that allegedly benefited the Estate from June 2016 through January 2017. These fees are sweeping in scope, ambiguous, and include work that did not benefit the Estate. In fact, much of the work performed by Omarr’s attorneys has hindered efficient Estate administration. The claim continues the accumulation of attorneys’ fees requested from the Estate from counsel for non-excluded heirs in this matter, which presently exceeds \$4 million.

**FACTUAL BACKGROUND**

Omarr seeks \$860,361.85 in payment for work categorized as entertainment and non-entertainment fees incurred from June 23, 2016 through January 31, 2017. (Feb. 9,

2017 Mem. in Supp. of Omarr Baker's Mot. To Approve Payment of Attys' Fees at pp. 2, 6; Mar. 3, 2017 Mem. In Supp. of Omarr Baker's Mot. to Approve Attys' Fees Through Jan. 31, 2017, p. 12.) The entertainment fees appear to primarily consist of the following:

[REDACTED]

(Feb. 9, 2017 Mem. in Supp. of Omarr Baker's Mot. To Approve Payment of Attys' Fees at pp. 2–6; Mar. 3, 2017 Mem. In Supp. of Omarr Baker's Mot. to Approve Attys' Fees Through Jan. 31, 2017, pp. 1–2.) Of note and unlike other counsel involved in this case, no attorneys from Cozen O'Connor were selected as heir representatives following the objections to proposed deals and protocol development. Omarr also seeks fees related to non-entertainment work including the following categories:

- Proceedings to determine heirs;
- Selecting successor to Bremer Trust;
- Scrutinizing Special Administrator's request for attorneys' fees and costs;
- And helping appoint a personal representative.

(Feb. 9, 2017 Mem. in Supp. of Omarr Baker's Mot. To Approve Payment of Attys' Fees at pp. 6–8; Mar. 3, 2017 Mem. In Supp. of Omarr Baker's Mot. to Approve Attys' Fees Through Jan. 31, 2017, pp. 2–4.)

In Support of the request, Omarr relies on the affidavits of Cozen O'Connor attorneys Steven H. Sifton and Thomas P. Kane that include voluminous billing entries.

While the briefing quantifies purported savings as result of [REDACTED] much of the additional claimed benefit is less quantifiable. For example, Cozen O'Connor's work regarding the protocol issue allegedly benefitted the Estate by "again confirming the role of the Representatives in the negotiation process, and providing a level of certainty to the Heirs and the Estate's partners that the best interests of the Estate were being served by the proposed deals." (*Id.* at p. 14.) Another example is the work regarding the September 29, 2016 hearing that purportedly benefitted the Estate because it allowed the non-excluded heirs [REDACTED]

Not only are the fees excessive given the amount of work performed, but a large portion of the fees claimed are for ambiguous work descriptions that did not benefit the Estate. By way of just a few examples, bills and charges include entries for the following:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(*See* Feb. 9, 2017 Stilton Aff. at Ex. A; Mar. 3, 2017 Stilton Aff. at Ex. A.) The briefs do not delineate how work regarding [REDACTED] benefitted the Estate. It also includes billings that directly benefitted Omarr, such as many

billings detailing telephone conferences [REDACTED] Cozen O'Connor also includes its [REDACTED]

[REDACTED] Such efforts did not benefit the Estate as the Court [REDACTED]

[REDACTED]  
Comerica was already agreed upon among the non-excluded beneficiaries as the personal representative; [REDACTED]

[REDACTED]  
Omarr also seeks expenses related to [REDACTED] with over \$1,000 incurred [REDACTED]

[REDACTED] In addition, Omarr also seeks charges related to [REDACTED]

[REDACTED] (Mar. 3, 2017 Stilton Aff. at Ex. A.)

In addition, some of the fees are difficult to understand. For example, on September 12, 2016, Exhibit A reads:

[REDACTED]  
(*Id.*) There are at least three other [REDACTED] during the month of September, and it appears that such charges are not at all related to the case. These are but samples in a sea of billing ambiguity.

As the Court no-doubt knows, there are several pending requests for attorneys' fees and costs reimbursements in this matter. To date, those requests total over \$4 million. (Mar. 3, 2017 Bruntjen Aff., p. 10, ¶ 39; Mar. 3., 2017 Labate Aff. at ¶¶ 18, 38; Dec. 12, 2106 Thoreen Aff. ¶ 24; Dec. 12, 2016 Labate Aff. ¶¶ 39, 40; Dec. 16, 2016 Shea Aff. Ex. A, B; Dec. 20, 2016 Abdo Aff. ¶ 7.) SNJ opposes those requests in an effort to put each requesting party to their full burden of establishing entitlement to fees and prevent unnecessary depletion of the Estate.

SNJ are not alone in their objections. While potential categories of work were identified that could have benefitted the Estate, counsel for the previous Special Administrator also identified efforts from counsel that primarily benefitted the individual heirs or was detrimental to the Estate including:

- Dispute over advisors and motion to void the Advisor Agreement;
- Non-excluded heir counsel transition expenses;
- Paisley Park consulting agreements; and
- Motion to Modify Protocol.

(Jan. 6, 2017 Special Administrator's Resp. to Three Law Firms' Motions for Payment of Attorneys' Fees, at pp. 3-4.) Omarr and his attorneys participated in all of these detrimental matters.

SNJ continues to object to blanket requests from counsel for other non-excluded heirs for payment of legal expenses and respectfully submit that Minnesota law does not require Estates to fund litigation efforts of multiple potential heirs.

## ARGUMENT

### I. Omarr Fails to Establish that the Attorneys' Fees and Expenses Incurred Benefitted the Estate

The party seeking to recover fees and expenses from an estate has the burden to demonstrate that the fees and expenses incurred benefitted the estate. *Cf. In re Estate of Evenson*, 505 N.W.2d 90, 92 (Minn. Ct. App. 1993). Absent statutory authority, the general rule is that there is no allowance made from an estate for services rendered by an attorney not employed by the estate's personal representative. *See generally Distributors Supply Co. v. Shablow's Estate*, 253 Minn. 1, 8, 92 N.W.2d 83, 88 (1958). Even when authorized by statute, the ability to allow fees should be cautiously exercised. *Id.* at 88. 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)).

Minnesota statute permits an estate to pay fees for the services performed for an interested person that benefit the state:

[T]he 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 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.

Minn. Stat. § 524.3-720 (2016).

Courts have not clearly defined “benefit” to the estate, but have allowed recovery from an estate in varying circumstances. *See, e.g., Gellert v. Eginton*, 770 N.W.2d 190, 198 (Minn. Ct. App. 2009) (recovery of real estate allegedly conveyed to another party benefited the estate when gift deed returned to the estate); *In re Van Den Boom’s Estate*, 590 N.W.2d 350, 354 (Minn. Ct. App. 1999) (interested person, acted for the benefit of the estate by keeping a major asset intact). The courts, however, have consistently held that attorneys’ fees are not granted when a beneficiary is acting for his or her personal benefit and not for the benefit of the estate.<sup>1</sup> *Id.* at 354.

A district court has discretion to grant requests for attorney’s fees and expenses. Minn. Stat. §§ 525.515, 524.3-720 (2016); *See In re Estate of Wesberg*, 242 Minn. 150, 64 N.W.2d 370 (1954) (holding that the district court’s decision to reduce the requested amount of attorney’s fees was not an abuse of discretion). However, the decision “is discretionary only in the sense that no fixed rules determine the proper allowance, and it is not discretionary in the sense that courts are at liberty to give anything more than a fair and

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<sup>1</sup> Citing *In re Anthony J. Englund, Sr. Trust Agreement dated October 19, 1990*, Omarr claims that “[i]t is *undisputed* under Minnesota law that the Non-Excluded Heirs *should* have their attorneys’ fees related to disputing the accounting paid from the Estate.” (Mar. 3, 2017 Mem. In Supp. of Omarr Baker’s Mot. To Approve Payment of Atty’s Fees Through Jan. 31, 2017, p. 6.) (emphasis added), No. A12-0147, 2012 WL 5476124, at \*2 (Minn. Ct. App. Nov. 13, 2012). However, this case does not support such a broad statement. Instead, this case merely allows reasonable trustee fees for services that benefitted the trust. *Id.* at \*4.

reasonable compensation.” *In re Simmons’ Estate*, 214 Minn. 388, 388, 8 N.W.2d 222, 222 (1943).

In the present case, Omarr fails to establish his attorneys’ efforts benefited the Estate in at least two respects. First, the bills are largely duplicative and so ambiguous such that it is difficult to determine what work was performed and how it benefited the Estate. Second, even if the nature and type of work could be determined, Omarr fails to establish that the services contributed to the benefit of the estate. Instead, like Tyka Nelson, it appears that Omarr acted through his attorneys to seek greater influence than what is legally afforded to him as just one of six presumed heirs and in a manner detrimental to the Estate’s administration.

***A. The billing entries are vague and ambiguous.***

As indicated above, Omarr has the burden to establish the right to payment of his attorneys’ fees. Indeed, when seeking court-ordered fees, the requesting party should present detailed descriptions of the work performed such that the Court can conduct a meaningful review of the request. *See generally* Minn. R. Gen. Prac. 119.02 (“A description of each item of work performed.”) (emphasis added); *In re Pamela Andreas Stisser Grantor Trust*, 818 N.W.2d 495, 510 (Minn. 2012) (holding that the district court correctly refused to reimburse the estate’s personal representative for attorney fees because the trustee could not identify the specific tasks described in the invoices); *Horodenski v. Lyndale Green Townhome Ass’n, Inc.*, 804 N.W.2d 366, 368 (Minn. Ct. App. 2011) (stating that the respondent’s application for attorney fees was supported by *detailed* billing statements and invoices) (emphasis added).

Essential to meeting that burden is establishing a clear foundation or, in this case, providing billing entries that allow for proper review. In this case, many of the billing entries are vague, making it difficult to determine whether the work benefited the Estate or was warranted. Several examples follow:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Entries such as this and block billing are so vague that it precludes meaningful review of the time entries. Given Omarr's burden of proof in this case and the multitude of such entries, the request for fees should be denied.

***B. Omarr fails to establish that the expenses benefited the Estate.***

Even if he had provided detailed billings, Omarr still fails to establish that the services benefited the Estate. At the outset, Omarr's position presumes that non-excluded heirs should be able to perform work that should and/or is being performed by a special administrator or personal representative. Omarr's position is troubling in that many of the

claimed billing entries merely denote participation in the Estate proceedings with no reference to a particular benefit to the Estate. Such work is duplicative at best and provides no tangible benefit to the Estate. For example, Cozen O'Connor submits several billing entries for [REDACTED]. Such work was already undertaken by counsel for the Special Administrator and Omarr offers no argument that the work regarding [REDACTED] has provided any meaningful benefit to the Estate or was even necessary. The more likely scenario is that Cozen O'Connor's client, Omarr, had questions about the [REDACTED] in this matter. Regardless, he is not entitled to fees for work that was merely duplicative of work performed by the Special Administrator. To hold otherwise would create potential for multiple firms to perform duplicative work purportedly on behalf of an estate while unnecessarily bleeding the Estate's assets.

Indeed, the counsel for the Special Administrator has incurred legal fees with respect to a multitude of issues in this case for which Cozen O'Connor seeks payment as well—despite Omarr's objections to the Special Administrator's fees. While outside counsel can take action that benefits an Estate, Omarr fails to cite any case law for the proposition that a potential heir can challenge and seek to control an Estate through independent counsel when work is already properly performed by a special administrator or personal representative. Moreover, he fails to address the issue of multiple firms besides counsel for the Estate seeking payment for similar work.

In addition to duplicating efforts best left to the Estate representative, many of the entries are for work with no demonstrable benefit to the Estate and raise questions regarding whether Omarr's attorneys are seeking to benefit the Estate. For example, Cozen

O'Connor incurred [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Cozen

O'Connor later bills over [REDACTED] on December 7, 2016 to [REDACTED] [REDACTED] in addition to other items. Such efforts were likely counterproductive to the Estate's interest, and Omarr's current briefing provides no explanation for seeking payment for that time and expense.

Omarr also fails to establish any benefit to the Estate resulting from the voluminous hours related to his attorneys' review, participation, and objections regarding the entertainment deals. Omarr's filing to-date fail to establish that all of his attorneys who implicated themselves in issues involving entertainment had expertise allowing them to provide meaningful contributions in matters involving artist as sophisticated and unique as Prince or that the voluminous hours claimed actually benefitted the Estate. Moreover, none of his attorneys were selected to as a representative for the heirs regarding such deals. Under those circumstances, Omarr cannot meet his burden to recover related fees.

In addition, counsel for the Special Administrator correctly noted the counterproductive actions regarding disputes over advisors and motion to void the Advisor Agreement, Paisley Park consulting agreements, and protocol issues. (Jan. 6. 2017 Special Administrator's Resp. to Three Law Firms' Motions for Payment of Attorneys' Fees, at

pp. 3-4.) In addition, Omarr's actions contributed voluminous legal fees incurred by the Special Administrator for responses to objections to accountings that have yielded no results to-date and extended the hearing on that very issue. Moreover, Omarr seeks dozens of hours in fees associated with [REDACTED] [REDACTED] in addition to [REDACTED] without tangible results. The Estate incurred significant legal expenses responding to and hearing those issues, and these needless expenditures must be a factor in assessing whether those actions benefited the Estate. Other entries are for time not associated with the Estate.

Many of the entries also appear to be for efforts that were ultimately rejected. Similar to the failed effort [REDACTED] there are [REDACTED] [REDACTED] Such an [REDACTED] was never adopted. In addition, Omarr's objections to most of the deals and the entertainment advisors failed despite [REDACTED]

In summary, and like the issues with the other fee requests in this matter, awarding attorney fees for Omarr's attorneys will only encourage additional expense to the Estate as any "interested party" will seemingly be entitled to recouping attorney's fees for responsibilities assigned to and being performed by the Special Administrator and Personal Representative. Courts sought to avoid this scenario over half a century ago in noting that awarding fees to individuals unaffiliated with the personal representative should be the exception, not the norm. Accordingly, the request should be denied as the billing entries

preclude any meaningful review and it fails to demonstrate meaningful, specific benefits to the Estate.

## **II. Omarr seeks Payment of Attorneys' Fees and Costs that Fail to Commensurate with the Value of any Benefit to the Estate.**

After determining a party is entitled to attorney's fees from an estate, questions of fact remain regarding the value of the attorney services. *In re Baumgartner's Estate*, 274 Minn. 337, 346, 144 N.W.2d 574, 580 (1966); *In re Estate of Van Den Boom*, 590 N.W.2d at 354. In determining whether the attorney's fees sought are just and reasonable, a court weighs the following factors:

- (1) The time and labor required;
- (2) The experience and knowledge of the attorney;
- (3) The complexity and novelty of problems involved;
- (4) The extent of the responsibilities assumed and the results obtained; and
- (5) The sufficiency of assets properly available to pay for the services.

Minn. Stat. § 525.515(b) (2016). Consideration must be given to all the factors listed above, and the estate's value must not be the controlling factor in determining the reasonableness of attorney's fees. Minn. Stat. § 525.515(c). However, "[t]he courts have a duty to prevent dissipation of estates through the allowance of exorbitant fees to those who administer them." *In re Weisberg's Estate*, 242 Minn. 150, 152, 64 N.W.2d 370, 372 (1954).

Examples of unreasonable or excessive work can include excessive hours or multiple attorneys representing a client in a single court proceeding. *Cf. Jones v. Liberty*

*Mut. Ins.*, 474 N.W.2d 18 (Minn. Ct. App. 1991) (trial court did not abuse its discretion in deciding that attorney fees were unreasonable when two attorneys represented the employee at trial proceedings that were concluded in a single day); *Am. Cast Iron Pipe Co. v. Granite Re, Inc.*, No. CIV. 02-3467-ADM/JSM, 2003 WL 22477696, at \*4 (D. Minn. Oct. 31, 2003) (stating that the court may limit fees if “an unusually high number of hours” are spent on tasks that are not complex in nature and rather straightforward, “or are charged for performance by multiple attorneys of the same service”). In addition, parties are not entitled to fee reimbursement for unnecessary proceedings. In *In re Freeman’s Trust*, the Minnesota Supreme Court stated that “attorney’s fees and expenses incurred in good faith in litigation brought and prosecuted for the benefit of the estate may be allowed by the court. Not so if the issues are immaterial or trifling or if the party bringing the proceeding unnecessarily creates expenses for the estate.” *In re Freeman’s Trust*, 247 Minn. 50, 57, 75 N.W.2d 906, 911 (1956).

In the present case and like the other pending fee claims, Omarr’s claims fail for several reasons. First, he submits billing that is unreasonable and excessive. In addition to vague references to meetings with clients, much of the work appears duplicative. By way of just one brief example, [REDACTED]

[REDACTED]

[REDACTED]

Second, Omarr fails to establish the benefit to the Estate resulting from Cozen O’Connor’s services is commensurate with the claimed expenses. He fails to establish counsel for the Special Administrator would not have obtained similar results and further

fails to establish that any purported benefit is due to his efforts rather than one of the other three firms seeking payment. Other than seemingly claiming a significant role [REDACTED] [REDACTED] he fails to indicate any other quantifiable benefit to the Estate. Instead, he suggests that the fees are somehow justified by increased ability for the non-excluded heirs to offer comment and review potential deals and claimed fees. However, Omarr offers no detailed argument to suggest that the purported benefits warrant nearly an additional \$500,000 in fees for largely duplicative work. In essence, Omarr is again seeking reimbursement for participation.

If the Court were to award all the currently requested fees incurred by the non-excluded heirs, legal expenses would exceed \$4 million before factoring fees incurred by the Special Administrator. That number far exceeds the quantified benefits to the Estate and does not account for all the expense to the Estate incurred as result of the detrimental actions of Omarr and his attorneys.

### **CONCLUSION**

For the foregoing reasons, Sharon, Norrine, and John respectfully request that the Court deny Omarr's request for payment of attorneys' fees and costs from the Estate. As with the other outstanding requests for legal expenses from non-excluded heirs, approving this requests leaves the door open to each non-excluded heir to incur unnecessary expenses for the Estate while each move forward as a pseudo special administrator and personal representative contrary to Minnesota law. Moving forward in such manner essentially gives all the attorneys an unlimited budget that is ultimately paid from the other heirs' shares. If

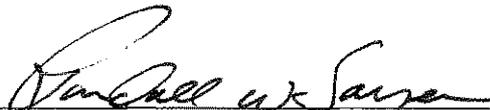
attorneys received an unlimited budget, they will spend it. All the while, the Court will be inundated with endless petitions and other legal challenges.

If the Court is inclined to award fees, SNJ respectfully requests that it hold Omarr to his full burden to provide work descriptions that provide meaningful review and to provide a meaningful explanation justifying almost a million dollars in expenses while also accounting for the unnecessary expense to the Estate brought on by the actions of Omarr and his attorneys.

Respectfully submitted,

Dated: March 10, 2017

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