

STATE OF MINNESOTA
COUNTY OF CARVER

FIRST JUDICIAL DISTRICT
DISTRICT COURT
PROBATE DIVISION

Court File No. 10-PR-16-46
Judge Kevin W. Eide

In re:

Estate of Prince Rogers Nelson,

S&J'S REPLY MEMORANDUM IN
SUPPORT OF THE MOTION TO
ESTABLISH ATTORNEYS' LIEN

Decedent.

INTRODUCTION

S&J offer this brief reply memorandum to reply to the January 17, 2019 Objections to Application of Establishment of Attorney's [sic] Lien filed by Sharon, Norrine, and John Nelson (collectively "SNJ"). As a threshold matter, the filing by SNJ is untimely and may be disregarded by the Court. If the argument contained within is considered, it is nonetheless clear under Minnesota law that S&J are entitled to the establishment of an attorneys' lien in the amount of \$180,935.12.

ARGUMENT

As a matter of procedure, the responsive memorandum filed by SNJ opposing the establishment of S&J's attorneys' lien is untimely and may be disregarded by the Court. This Court indicated that it considered an application for the establishment of an attorneys' lien to be a dispositive motion under the Minnesota Rules of General Practice. Consequently, filings by the moving parties were due at least 28 days prior to the January 23, 2019 hearing. Minn. R. Gen. P. 115.03. S&J complied with this deadline, filing its application on December 26, 2018.

Any responsive memorandum was required to be filed with the Court and served on opposing counsel at least nine days prior to the hearing. Minn. R. Gen. P. 115.03(b). SNJ's

responsive memorandum was not filed with the Court until January 17, 2019. Moreover, as of this writing, S&J have not been served with a copy of the filing, either by mail or through e-service. “Although some accommodations may be made for pro se litigants, this court has repeatedly emphasized that pro se litigants are generally held to the same standards as attorneys and must comply with court rules.” *Fitzgerald v. Fitzgerald*, 629 N.W.2d 115, 119 (Minn. Ct. App. 2001). Since SNJ’s responsive memorandum was untimely, it is within the Court’s authority to disregard it.

However, even if the Court chooses to consider the late-filed memorandum, the outcome should remain the same with respect to S&J’s motion. Under Minnesota law, the appropriate value of an attorney’s services when establishing an attorneys’ lien is made by reference to the retainer agreement. *Thomas A. Foster & Associates, LTD v. Paulson*, 699 N.W.2d 1, 6 (Minn. Ct. App. 2005) (citing *Blazek v. N. Am. Life & Cas. Co.*, 121 N.W.2d 339, 342-43 (Minn. 1963)). Only in the absence of a retainer agreement should the Court resort to a valuation of the services rendered in determining an appropriate lien amount. *Roerhdanz v. Schlink*, 368 N.W.2d 409, 412 (Minn. Ct. App. 1985). Here, SNJ signed a retainer agreement that clearly laid out the terms of compensation. (Skolnick Dec. Ex. 1).

The only issues raised by SNJ, with respect to S&J’s representation of them, are apparent dissatisfaction with the argument at the November 2017 hearing and the recommendation to select Justice James Gilbert as a mediator. Obviously, S&J strongly disagree that there were any deficiencies in the oral argument or in the selection of Justice Gilbert. However, the fact that SNJ may have been dissatisfied is immaterial to the question before the Court. As the Court is aware, attorneys’ lien proceedings are summary in nature, being immediate and abridging formal procedures. *Thomas A. Foster & Associates*, 699 N.W.2d at 6. Due to the summary nature of an

attorneys' lien hearing, it is not appropriate to consider complex questions related to the satisfaction, or lack thereof, in the services provided. *Id.* at 7. Instead, the issues that may be addressed in a summary hearing are the existence of a contract, the reasonableness of an hourly fee, or the number of hours worked. *Id.* at 7-8.

Here, SNJ do not argue against the existence of a contract, the number of hours worked, or the reasonableness of the hourly rates charged (in fact they acknowledge that S&J engaged in cost-management by using an associate to perform much of the work on the file). SNJ argue that Minn. R. Prof. Con. 1.5 acts as a bar to recovery without actually applying any of the eight factors to S&J's representation. Under Rule 1.5, the reasonableness of an attorney's fee considers the following factors:

1. The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
2. The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
3. The fee customarily charged in the locality for similar legal services;
4. The amount involved and the results obtained;
5. The time limitations imposed by the client or by the circumstances;
6. The nature and length of the professional relationship with the client;
7. The experience, reputation, and ability of the lawyer or lawyers performing the services; and
8. Whether the fee is fixed or contingent.

The billing submitted to the Court by S&J establishes the substantial amount of time and labor required. (Skolnick Dec. Ex. 4). Moreover, the unique and novel nature of this Estate and its proceedings have been acknowledged in a number of filings by the Court. Based on the filings from other attorneys seeking similar liens, there is no reasonable argument that Mr. Skolnick's hourly rate (\$475 in 2017 and \$500 in 2018) or Mr. Johnson's hourly rate (\$225 in 2017 and \$240 in 2018) are unreasonable. (*Compare* Barton Dec. Ex. C; O'Neill Aff. Ex. 2 *with* Skolnick Dec. Ex. 4). For over eight months, S&J dedicated substantial time to representing SNJ

in the Estate proceedings. The nature of S&J's fee structure—fixed hourly representation—was known by SNJ from the beginning of the representation and acknowledged in the retainer agreement. (Skolnick Dec. Ex. 1). In short, even if the Court considered SNJ's argument regarding their apparent dissatisfaction with two issues during the representation, the overwhelming weight of the factors under Minn. R. Prof. Con. 1.5 demonstrate the reasonableness of the requested fees.

CONCLUSION

For these reasons, S&J respectfully request that the Court establish S&J's attorneys' lien, in the amount of \$180,935.12, against SNJ's interest in the Estate.

SKOLNICK & JOYCE, P.A.

Dated: January 18, 2019

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