

STATE OF MINNESOTA  
COUNTY OF CARVER

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FIRST JUDICIAL DISTRICT  
DISTRICT COURT  
PROBATE DIVISION

In re:

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

Estate of Prince Rogers Nelson,

Decedent.

**SNJ'S REPLY MEMORANDUM**  
**OBJECTING TO COMERICA'S**  
**PETITION FOR FEES AND COSTS**

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**INTRODUCTION**

Comerica's memorandum supporting its petition for fees and costs not only mischaracterizes SNJ's arguments against the fees, but also highlights the need for the very controls SNJ urge this Court to impose. Comerica has so far been operating with a blank check, paying its attorneys, advisors, and experts an exorbitant amount with very little to show for their efforts. Likely panicked over the Court's statement that Comerica's fees have been excessive, Fredrikson & Byron ("Fredrikson") again submitted excessive briefing to respond to SNJ's objection.

What is conspicuously absent from Comerica's submissions is any evidence that Comerica even reviews Fredrikson's bills for reasonableness, let alone discuss a legal budget. Most clients are sensitive to what is charged by their lawyers since they have to pay the bill. Comerica is playing with someone else's money and there is no evidence that Comerica has ever uttered the words "bid" or "budget" in regards to legal fees. In ruling on Comerica's fee petition, and in considering their objection, SNJ implore the Court to consider the big picture of

this Estate, reduce the fees requested by Comerica to a realistic level, and set common sense limits on Comerica so that the fees it attempts to charge to the Estate in the future are reasonable.

### ARGUMENT

The primary complaint permeating Comerica's response is that the fees incurred by the Estate are the result of SNJ's petition and objections. (*See* Comerica Memorandum, p. 4). However, Comerica's frustration is also squarely directed at the Court-ordered process of obtaining Heir approval for large entertainment transactions that will impact the Heirs' inheritance. *Id.* at pp. 4-5. "This [process] has necessarily and not surprisingly resulted in increased expenses based on the substantial time the Personal Representative and its counsel spend informing, advising, and meeting with the Heirs, their counsel, and advisors; responding to comments from the Heirs and their counsel on transactions; and seeking Court approval of transactions when they are inevitably objected-to [sic] by the Nelsons." *Id.* at pp. 3-4.

Comerica is tasked with securing and safeguarding the Heirs' inheritance, but acts annoyed that its decisions have been challenged, lashes out at SNJ claiming that their resistance to Comerica has been baseless. "[I]f the Court allows the Nelsons to file baseless petitions and objections, and otherwise obstruct the administration of the Estate without any consequence, the Estate will continue incurring unnecessary fees and expenses." *Id.* at p. 4. In essence, Comerica wants SNJ to sit silently, despite legitimate disagreements with the way the Estate and Prince's legacy are being managed.

Comerica takes further aim at the Court, blaming the Court for Comerica's excessive fees. Fredrikson complains that it prepared for cross-examination of witnesses prior to the hearing on SNJ's Petition to Remove Comerica as Personal Representative. (Comerica Mem. p. 10). Not only is this argument insulting, but it misses the point. Comerica still used nine

attorneys and a paralegal to respond to the Petition. (Order Regarding Award of Attorney Fees, p. 3). Comerica still filed an overabundance of documents in response to the petition. *Id.* Moreover, Comerica did nothing to actually secure the witnesses it claims it would have examined. Comerica did not request specific witnesses to be present, nor did SNJ subpoena or ask witnesses from Comerica's side to be present. Rather, Comerica assumed it needed an army of attorneys, representatives, and advisors, and flew them all into town at the Estate's expense.

### **COMERICA MISCHARACTERIZES THE ARGUMENTS**

Not only has Comerica resorted to attacking SNJ and the Court's processes, but a number of its arguments against SNJ's objection are mischaracterizations. First, Comerica claims that Fredrikson's billing is reasonable because SNJ have "objected to only a handful of billing entries...." (Comerica Mem. p. 23). In noting those entries, SNJ specifically noted that "it is difficult for the individual Heirs to know if any particular entry in the F&B billings are appropriate or excessive" and "[t]his list is not intended to be inclusive of all issues, but is offered to demonstrate more of SNJ's concerns." (SNJ Objection, p. 13).

Comerica and Fredrikson are the gatekeepers of their own information. SNJ cannot compel them to disclose all of their records, nor are SNJ able to determine, with certain exceptions, if a particular entry on the 600 pages of billings is legitimate or not. Rather, SNJ must look at the broad picture and question whether Comerica has done all it can, or frankly anything, to control its fees in this. The billing submitted by Fredrikson and Comerica does not demonstrate that it has, and the specific concerns raised by SNJ are red flags that support this conclusion.

In arguing that it is entitled to fees for defending against SNJ's petition and in making its own fee petitions, Comerica misstates the law and holding in the *Meiners* decision, which did not

find that fees incurred in defending a petition to remove should be reimbursed, but rather reversed a district court's finding in that respect because there were insufficient findings and analysis in the order. *In re Estate of Meiners*, No. A07-0967, 2008 WL 2340695, at \*3 (Minn. Ct. App. June 10, 2008). In the other case cited by Comerica, *In re Guardianship of Glenn*, the personal representative of an estate claimed the guardian mismanaged the estate. 381 N.W.2d 77, 78 (Minn. Ct. App. 1986). The court held that while the guardian's attorney and the surety's attorney were entitled to some fees for defending against the accusations, there was unnecessary duplication of services and that some fees were unallowable. *Id.* at 80. Again, this case does not apply to the facts before this Court.

Comerica compounds its faulty legal analysis by claiming that the "results obtained" by its attorneys should not be a consideration for the Court. It cites to Minn. Stat. § 524.3-720, which states, "Any personal representative or person nominated as personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, or any interested person who successfully opposes the allowance of a will, is entitled to receive from the estate necessary expenses and disbursements including *reasonable attorneys' fees* incurred." (emphasis added). Minn. Stat. § 525.515 defines what are reasonable attorneys' fees, without reference to whether they are incurred by the personal representative's attorney or an interested party's. The factors articulated there require consideration of the results obtained. Minn. Stat. § 525.515(b)(4). *See In re Estate and Trust of Anderson*, 654 N.W.2d 682, 688-89 (Minn. Ct. App. 2002). Comerica's suggestion that it can be reimbursed for Fredrikson's work, regardless of the results obtained, is therefore without support.

Comerica seems to take the Court's order on the removal petition as a victory, stating "[t]he Court has already determined, however, that it was in the best interest of the Estate to

retain Comerica as the Personal Representative and that the Estate saved ‘millions of dollars’ by doing so.” (Comerica Mem. p. 11). First, successfully defending a removal petition brought by half the Heirs is not a win. Comerica’s job is to work for the benefit of the Heirs, securing and protecting their inheritance. The very fact that SNJ felt compelled to bring the petition demonstrates the fallacy of this argument. Moreover, the Court did not say that Comerica saved the Estate millions of dollars, only that changing the personal representative would cost millions of dollars. (December 18, 2017 Order, ¶ 62). There is a dramatic difference between saving millions and being too costly to replace.

The chart on page 24 of the Comerica memorandum is yet another attempt to twist the facts to suit its own narrative. In the chart, Comerica compares Fredrikson’s billing to Stinson Leonard Street’s (“Stinson”) in an attempt to show that Fredrikson’s fees are reasonable. (Comerica Mem., p. 24). First, while the Court has acknowledged the barrage of issues presented in the early days of the Estate, no one has argued that Stinson’s billing was reasonable, so comparing Fredrikson’s billing to Stinson’s is a poor indicator of reasonableness. (Order Regarding Award of Attorney Fees, p. 3). Fredrikson next presents a chart showing monthly attorney expenditures, but sets the bottom number of the left axis at \$200,000 rather than \$0, making it seem like Fredrikson’s fees are incredibly low. In reality, the minimum amount that Fredrikson has ever billed in a full month for fees and costs is \$252,058.10. Ultimately, the Court should consider whether it is reasonable for Fredrikson to incur an average monthly bill of \$343,210 for the period in question. By Fredrikson’s own analysis, the average monthly bill has gone down since Comerica took over, but that monthly average still represents \$4,118,517 billed to the Estate per year, just for attorneys’ fees and costs.

Comerica also claims it has a “near-perfect track record in court.” *Id.* That statement fails to acknowledge that a number of Fredrikson’s “wins” have been in frivolous matters or against small-time alleged infringers. For example, Comerica claims it scored a great win in the Cousins matter, saving the Estate almost \$600,000. (Comerica Mem. p. 13); (Cassioppi Dec. ¶ 15). [REDACTED]

Similarly, the Estate pursued litigation in the Habib matter, [REDACTED]

[REDACTED]

Fredrikson billed a substantial amount, both internally and to local counsel, in pursuing this small-time alleged infringer. Comerica took similar action in the Ly case, expending substantial amounts of money in suing a person who posted karaoke videos to YouTube. (Comerica Mem. p. 17); (Cassioppi Dec. ¶ 15). Finally, Comerica claims a substantial victory in the Roc Nation case because it won a motion to compel. [REDACTED]

[REDACTED]

[REDACTED] In total, Fredrikson’s “near-perfect track record” hardly justifies the excessive amounts billed on these and other matters.

#### FREDRIKSON’S FEES

As they said in their objection, SNJ do not object to all of Comerica and F&B’s fees. Such a position would be preposterous. (*See* Comerica Mem. p. 7). They understand that while this Estate is administered by an entity like Comerica, there will almost certainly be fees and costs involved. Similarly, the Estate has a number of legal matters that it must take care of, and

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<sup>1</sup> The Cousins matter is currently before the Minnesota Supreme Court on a Petition for Writ of Certiorari.

thus it must have competent legal counsel to represent it in those matters. Rather, the amount of the administration fees and the excessive legal fees are what is being challenged here. For example, Fredrikson should not be compensated for time spent preparing its own fee affidavits. *In re Bush's Estate*, 230 N.W.2d 33, 44 (Minn. 1975) (citing *In re Estate of Baumgartner*, 144 N.W.2d 574 (Minn. 1966)).

Comerica claims that it wrote off \$30,000 in fees for the period between October 2017 and January 2017. (Comerica Mem. p. 22); (Cassioppi Dec. ¶ 20). Not only is that figure wholly unsupported in the record, because Fredrikson's bills do not reflect a single no-charge or write-off, but that figure is laughably low compared to the total amount billed by Fredrikson to the Estate. For that time period, Fredrikson invoiced Comerica a total of \$1,191,881 in fees alone. Even if true, the write off of \$30,000 constitutes approximately 2.5% of the total Fredrikson bill. If Comerica was actually serious about controlling expenses, it would demand and exercise more control over Fredrikson's fees. Unfortunately, Comerica treats the Estate like an open checkbook and has no real incentive to manage the Estate's finances in that way.

SNJ proposed a flat monthly fee model for Comerica's counsel, similar to that of Comerica itself. As the Court likely knows, flat fee billing for legal work has been on the rise in the United States for a number of years. Flat fee billing not only takes the uncertainty out of billing for the attorneys involved, but it provides a measure of relief and an ability to budget for the client. With this Estate, a budget is exactly what Comerica needs but does not have. Not only does Comerica lack a budget for Estate expenses, but it has no business plan for closing out the Estate.

When Comerica became personal representative, it should have instituted a bidding process for legal services. There is no evidence that Comerica took any such action. It is

preposterous to believe that there are not a number of firms in the Twin Cities that would jump at the chance to be involved with the Prince Estate. If Comerica had engaged in competitive bidding, a process it apparently disfavors, it certainly would have been able to secure high quality legal representation at a fraction of Fredrikson's cost. Who knows, maybe even Fredrikson would have submitted a competitive bid. Importantly, it is not too late to engage in that process. Comerica certainly has the ability to select new legal counsel or retain its current firm on the basis of a reduced or flat fee.

There is no reason a flat fee model would not work well for the Estate. It would provide predictability and structure to what is otherwise one of the largest Estate expenses. A competitive flat fee would further help to control those expenses. No doubt there would be months where a flat fee firm incurred more actual fees than under the flat fee price, but there would also be months where it incurred fewer fees than the flat fee price, thus balancing out the income. Additionally, there is no reason that the flat fee could not be revisited by the Court if legal expenses rose or decreased substantially. Finally, under a flat fee system, Comerica's attorneys could assign as many partners as they wanted to the file and it would not impact the Estate's bottom line. If Messrs. Cassioppi and Greiner both believe they need to be at a meeting or hearing, or if Fredrikson believes it needs to bring multiple associates to an oral argument, it can do so without harm to the Estate under a flat fee model. (*See* Comerica Mem. p. 21).<sup>2</sup> In reality, the imposition of a flat fee would likely motivate the firm to control its fees each month

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<sup>2</sup> Comerica diverts attention away from the army of people it brought to the removal hearing, by noting that William Skolnick, Andrea Skolnick, and Samuel Johnson also attended the hearing. (Comerica Mem. p. 21). Such a diversion is meritless. SNJ have not sought repayment for those attorneys' time from the Estate, but Comerica has. Comerica also has no idea if any of that time was written off or no-charged. Finally, the combined hourly rates of the three cited individuals is not much more than Greiner's own \$650 hourly rate.

to keep billings close to the flat fee amount. In all cases, the Estate and the Heirs benefit by moving Comerica's counsel to a flat fee model.

Additional controls could also be imposed on Fredrikson's billing, either by the Court or by Comerica. For example, a limit could be imposed on how many different attorneys Fredrikson may assign to a particular matter or send to a hearing/meeting. Fredrikson could be limited in how many expensive shareholders are assigned to a project, or what portion of the total bill can be comprised of shareholder time. There are a myriad of ways that Comerica could control the expenses of its attorneys, like the above examples and the flat fee model, and it is well past time for those controls to be put in place.

#### COMERICA'S FEES

Comerica also defends its petition to have its monthly compensation remain at \$125,000 per month for the next year. (Comerica Mem. pp. 26-30). In that defense, Comerica notes that SNJ "object to the Personal Representative's request that its compensation remain the same for February 2018 through January 2019 based on the Nelson's misguided belief that the Estate will not require the same investment of time and resources going forward." *Id.* at p. 26.

Implicit in this statement is the argument that the Court was also misguided when it stated "that barrage [of issues] continues but to a lesser degree" and "Comerica is now faced with perhaps as many issues but the Court perceives it to be at a slower pace." (Order Regarding Award of Attorney Fees, p. 3). The Court's perception is correct, and all that Comerica's briefing does is demonstrate its disdain for the approval process it must undertake to engage in substantial entertainment transactions. (Comerica Mem. p. 27). Not only have SNJ **not** objected to **all** the entertainment transactions presented to them, but there would be little need for objections if Comerica presented better deals to the Heirs for consideration.

In response to SNJ's objection, Comerica notes another series of one-time tasks, but provides no detail on the amount of time that each of these tasks will take or how much it will incur in undertaking those tasks. (Comerica Mem. p. 28). [REDACTED]

[REDACTED]

[REDACTED] Additionally, Angela Aycock's affidavits on this topic both point to a number of tasks that Comerica is allegedly performing for the Estate, such as litigation, real estate, intellectual property protection, and tax services. However, these tasks are at least somewhat duplicative of the tasks performed by Fredrikson, resulting in double billing.

Comerica also touts the financial value they have allegedly added to the Estate by claiming [REDACTED]

[REDACTED] (Comerica Mem. p. 18). Comerica references [REDACTED]

[REDACTED] As argued separately in objections to [REDACTED] [REDACTED] the figures claimed by Comerica are misleading due to a number of issues, including

[REDACTED]

In total, there is scant information in the record to demonstrate the propriety of Comerica's requested fee amount. However, if Comerica's petition is granted, it will bill the Estate for \$1.5 million over the next year, plus substantial costs. Such a large amount will

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[REDACTED]

contribute to the dissipation of the Estate and does little to ensure Comerica is working hard to move the Estate towards closure. Thus, SNJ ask the Court to lower Comerica's monthly fee for administering the Estate, but with the imposition of a bonus or merit based system to encourage Comerica to take more proactive steps to establish a business plan and pay down the tax obligations.

In the most consequential line in their briefing, Comerica states, "Perhaps this is a good time for the Court and the parties to reevaluate how they want this Estate to be administered moving forward, with a full appreciation of the impact that decision will have on the expenses incurred by the Estate and how it will impact when the Estate can be closed and its assets distributed to the Heirs." (Comerica Mem. p. 4). SNJ agree that it is time to reevaluate the administration of the Estate. While SNJ speak solely for themselves in this memorandum, it is broadly understood that the Heirs wish to assume control of the Estate as soon as possible.

If Comerica does not like being challenged on the decisions it makes, it should start making better decisions, work faster to satisfy the Estate's tax obligations, or withdraw as the personal representative. In the meantime, the Court must work to control dissipation of the Estate by imposing restriction on the fees incurred by Comerica. As the Court stated, "this Estate is not an unlimited resource!" (Order Regarding Award of Attorney Fees, p. 3). SNJ greatly appreciate the Court's willingness to closely scrutinize all Estate submissions for fees and costs, and believe that such scrutiny will necessarily result in reductions to the amounts requested. *Id.*

### CONCLUSION

Comerica's attempt to blame SNJ for their lack of control over their own costs and fees and that of Fredrikson is unpersuasive and offensive. Not only should the amounts requested in

Comerica's and Fredrikson's fee petitions be scrutinized with a critical eye, but the Court should set boundaries and limits to control fees going forward. Comerica's monthly fee should be reduced from the current rate of \$125,000 per month, with merit based increases or bonuses, and Comerica's attorneys must be placed on a budget, either through a flat fee, or another type of fee structure that encourages Comerica to properly manage those it hires. For the reasons argued above, and in their opening memorandum, SNJ respectfully request that the Court review the fee submissions of Comerica and its attorneys and award a reduced amount that prevents the dissipation of the Heirs' inheritance.

**SKOLNICK & JOYCE, P.A.**

Dated: April 13, 2018

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