

GRIFT OF THE BRUNSTING'S A PROBATE MAFIA SAGA

NOT A PROBATE CASE, MATTER OR PROCEEDING

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AFFIDAVIT

I, Rik Wayne Munson, affiant herein, do declare and state under penalty of perjury pursuant to the laws of the United States and the great State of Texas that the following facts are true and correct, are based upon personal knowledge and are fully supported by the public record.

Conclusions drawn from these facts are my own.

I am a person interested in the outcome of these proceedings as I am providing the support to Candace Curtis that the Brunsting Family Trust was intended to provide.

1. Texas Property Code Sec. 111.004(7).

Tex. Prop. Code § 111.004

(7)"Interested person" means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

This is the only case of its kind!

2. While there are many cases involving people who have suffered at the hands of those who participate in this color-of-law criminal enterprise, this is the only case I know of that falls outside of both the [probate](#)

[exception](#) and the [Rooker-Feldman](#) doctrines.

INTRODUCTION

3. This is an extremely complex case history involving more than 13 courts that in essence, raises very simple questions of fiduciary and trust law that have not been answered. Beyond that it chronicles a convoluted [color-of-law conspiracy](#) for which there is both a front-end set up and back-end exploitation. The front-end appears to be a well-established bait and switch routine that creates the controversy. Controversy opens the door to third party interlopers who then engage in another bait and switch, working in concert to maximize their own benefit while foreclosing remedy for their clients who are the real parties in interest.

The Perfect Estate Plan

4. Elmer and Nelva Brunsting had a son and four daughters they wanted to benefit from their lifetime of acquired and inherited family wealth and having heard a great deal about [corruption in the Harris County Probate Court](#) they called an estate planning and asset protection firm. Their concerns were quite simply to [avoid guardianship](#) and to

transfer their assets to their five progeny in equal proportions at their passing, while minimizing death taxes and avoiding the probate courts. In order to accomplish this purpose they retained the assistance of estate planning attorney Albert Vacek Jr. who gave specific assurances that his products and services would accomplish these purposes.

5. The Brunsting's estate plan consisted of wills directing independent administration and devising solely to their family living trust. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011. Here is what really happened to the expensive estate planning Elmer and Nelva invested in:
6. The Brunsting family has been held hostage in Harris County Probate Court No. 4 for more than eleven years with absolutely no subject matter jurisdiction and not so much as a single fact being admitted into evidence. There is no estate to administer and no executor to administer an estate if there was one. It is well established that the estate is a necessary party to any proceeding in the probate court.
7. Texas Estates Code Chapter 32, Jurisdiction

*Sec. 32.001(d) The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. **The entire proceeding is a proceeding in rem.***

8. This two-part story illustrates a classic pattern. The design that emerges fits the description of a long con.

Long Con: noun slang

“An elaborate confidence game that develops in several stages over an extended period of time wherein the con man or swindler gains the victim’s trust, often bypassing small profits with the goal of reaping a much larger payout in the final maneuver: The key to pulling off a long con is giving your marks the illusion of control while you and your team manipulate their choices.”

9. The front end follows a pattern described in a document posted on the internet titled: “[How to Steal Your Family Inheritance](#)”¹. This is the bait. We know this estate planning ruse was a confidence game because the bare front end facts follow that roadmap step by step, replete with illicit late term changes to long standing estate plans that follow immediately on the heels of each “Hurrah”².
10. The settlor’s disloyal estate planning attorney betrayed the fiduciary duty of undivided loyalty owed to client’s Elmer H. and Nelva E.

Brunsting by entering into a covert confidential relationship with Anita Brunsting and baiting and exploiting Anita Brunstings dishonesty, greed vanity, and trust.

11. By generating improper trust instruments the estate planning attorneys created the controversy that opened Pandora's Box to the exploiters and spawned all of the evils that followed.
12. The backend involves parallel state and federal court litigation, with two-halves of the same action filed in separate state courts with one half improperly filed in a statutory probate court with an intention to interfere with federal court jurisdiction.

“Where the federal case is filed substantially prior to the state case, and significant proceedings have taken place in the federal case, we perceive little, if any, threat to our traditions of comity and federalism. See Moses H. Cone Hosp., 460 U.S. at 21-22, 103 S.Ct. at 940 (fact that substantial proceedings have occurred is a relevant factor to consider in deciding whether to abstain). In fact, by filing a state suit after a federal action has been filed, the state plaintiff can be viewed as attempting to use the state courts to interfere with the jurisdiction of the federal courts. We agree with Royal that if we were to hold that Jackson applied in this scenario, litigants could use Jackson as a sword, rather than a shield, defeating federal jurisdiction merely by filing a state court action. Neither Jackson nor the concerns underlying it mandate such a result.” Royal Ins. Co. of America v. Quinn-L Cap. Corp., 3 F.3d 877, 886 (5th Cir. 1993), [cited by](#) Texas Employers' Ins. Ass'n v. Jackson, 862

*F.2d 491, 506 (5th Cir. 1988) (en banc) Arroyo v. K-Mart, Inc.,
24 F. Supp. 2d 169 (D.P.R. 1998)*

13. In each of the federal cases mentioned the opposition argued probate case, probate matter and probate proceeding in effort to disparage the federal court from providing remedy. It will be shown from the public record and the published law that there was never any probate court jurisdiction over this inter vivos trust controversy.
14. While the case raises simple common law questions regarding fiduciary obligations, the facts also raise claims of forgery, fraud, collusion, conspiracy, extortion, money laundering, denial of due process; judgments void for want of subject matter jurisdiction; corruption of blood; res judicata; full faith and credit; perjury; contempt for a pending injunction issued in the Southern District of Texas; and extraordinary attorney misconduct and associated claims, all sharing one common nucleus of operative facts.
15. However, due to the divergent nature of the claims, it would seem prudent to file two separate lawsuits based on one fact statement and join them for purposes of trial. First, I will list the menagerie of courts this simple family trust case has visited and then, I will fill in the gaps.
16. Plaintiff and complainant herein, adopt and incorporate by reference,

the following list of cases, related by a common nucleus of operative facts, that elicits a design establishing the elements of enterprise with the predicate acts and artifice that show a pattern of racketeering activity as hereinafter more fully appears.

List of Courts

- 1. Southern District of Texas [SDTX-592] Cause No. 4:12-cv-592 (Feb 2012)**
- 2. Fifth Circuit No. 12-20164 [USCA5]**
- 3. Harris County Probate Court No. 4 Cause No 412248**
- 4. Harris County Probate Court No. 4 Cause No 412249**
- 5. Harris County District Court 180 [DC180]**
 - a. [USCA5] Curtis v. Brunsting 704 F.3d 406 (Jan 2013)**
- 6. Harris County District Court 164 [DC164]**
 - a. Southern District of Texas [SDTX] Cause No. 4:12-cv-592**
 - i. Injunction**
 - ii. Special Master**
- 7. [-401] Harris County Probate Court No. 4 Cause No 412249-401**
- 8. [-402] Harris County Probate Court No. 4 No 412249-402**
 - a. Remand from [SDTX-592] to Harris County Probate Court No. 4 entered as transfer order creating Estate of Nelva Brunsting No 412249-402. How did federal plaintiff Candace Curtis lose her lawsuit and her identity?**

9. **RICO Southern District of Texas [SDTX-1969] Cause No.4:16-cv-1969**
10. **Fifth Circuit [USCA5] No. 17-20360**
 - a. **[SDTX-592] Rule 60 Motion**
11. **Fifth Circuit [USCA5] No. 20-20566**
12. **[-403] Harris County Probate Court No. 4 Cause No 412249-403 [-403]**
13. **[-404] Harris County Probate Court No. 4 Cause No 412249-404 [-404]**
14. **[-405] Harris County Probate Court No. 4 Cause No 412249-405 [-405]**
15. **[SDTX-1129] Southern District of Texas [SDTX- Case 4:22-cv-01129]**
16. **[Texas First District Court of Appeal No. 01-22-00378-CV](#)**
17. **[Texas First District Court of Appeal No. 01-22-00513-cv](#)**
18. **[1st COA] Texas First District Court of Appeals, No. 01-23-00362-CV**

The Deafening Sound of Silence

1. I think it is reasonably apparent that the participating attorneys have not been representing their clients' interests. However, there is an exception and we will get to her in due course.
2. We have a very long chronology of litigation events **consuming more than twelve years**, visiting numerous theaters, not all of which can be

defined as courts of competent jurisdiction, and we have also been presented with demands for more than a million dollars in attorney fees.³ What we do not have is a declaratory judgment lawfully addressing the very first issues confronting the trust beneficiary's.

What instruments are we referring to when we talk about “the trust”?

3. This is a very simple legal question to answer so, before we fill in the back-end exploitation blanks, we will proceed with a chronology of the family trust instruments, family crisis events or “hurrah’s” and the change instruments that followed in the wake of each hurrah.

PART 1 – THE FRONT-END BAIT-AND-SWITCH

- The frontend shimmy shake will require a separate dissertation as it gets more intricately into the estate planning attorneys betrayal of their clients in fomenting the menagerie to follow so I will just skip to the trust chronology itself:

TRUST CHRONOLOGY

A. The Original 1996 Family Trust

4. In 1996 Elmer Brunsting and his wife Nelva created the “Brunsting Family Living Trust” for their benefit and for the benefit of their five adult progeny. Elmer and Nelva were the original co-trustees and Anita Brunsting was named as the sole successor trustee.

B. Irrevocable Life Insurance Trust

5. In 1999 Elmer and Nelva also created an irrevocable Life Insurance Trust for the benefit of their five issues, naming Anita Brunsting as the sole trustee.

C. January 12, 2005 – The Restatement

6. In 2005 Elmer and Nelva restated their trust, replacing the original 1996 trust agreement in its entirety. The [2005 Restatement](#) [8] removed Anita from becoming a successor trustee and replaced her with Carl and Amy as successor co-trustees with Candace Curtis as the alternate.

D. September 6, 2007 – The [2007 Amendment](#)

7. In 2007 Elmer and Nelva jointly amended Article IV of the [2005 Restatement](#) and replaced Amy Brunsting with Candace Curtis, making Carl Brunsting and Candace Curtis the successor co-trustees and naming Frost Bank as the alternate.

Elmer Brunsting was certified [Non Compos Mentis](#)

8. On June 9, 2008 Elmer Brunsting was certified [Non Compos Mentis](#) by three doctors and was no longer able to make legal or medical

decisions. From this point forward, no substantive changes could be made to the trust without the approval of a court of competent jurisdiction.

The Power to Alter or Amend

9. [Article III](#) of the [2005 Restatement](#) provides an “either/or” for making changes to the trust agreement. Either (1) the signature of both Settlers or (2) a court of competent jurisdiction, neither of which accompanied any instrument dated after June 9, 2008.

“Our Right to Amend or Revoke This Trust”

Section A. We May Revoke Our Trust

While we are both living, either of us may revoke our trust. However, this trust will become irrevocable upon the death of either of us. Any Trustee, who is serving in such capacity, may document the non-revocation of the trust with an affidavit setting forth that the trust remains in full force and effect. The affidavit may, at the Trustee's discretion, be filed in the deed records in each county in which real property held in trust is located or in the county in which the principal assets and records of the trust are located. The public and all persons interested in and dealing with the trust and the Trustee may rely upon a certified copy of the recorded affidavit as conclusive evidence that the trust remains in full force and effect.

Section B. We May Amend Our Trust

This trust declaration may be amended by us in whole or in part in a writing signed by both of us for so long as we both shall live. Except as to a change of trust situs, when one of us

dies, this trust shall not be subject to amendment, except by a court of competent jurisdiction.

Each of us may provide for a different disposition of our share in the trust by using a qualified beneficiary designation, as we define that term in this agreement, and the qualified beneficiary designation will be considered an amendment to this trust as to that Founder's share or interest alone.”

10. Elmer’s incapacity created a vacancy in the office of Co-Trustee.

Nelva could administer the trust alone but could not make changes without a court of competent jurisdiction standing in for the absent co-trustee, as exercising plenary jurisdiction over either trust share would result in a merger of legal and equitable titles, in which case the trust would fail. See [[Article III](#)], [Texas Property Code Section §112.051](#) and [Texas Property Code 112.034\(a\)](#). The provisions for administration and disposition of Nelva and Elmer Brunsting’s irrevocable trust remains those contained in the [2005 Restatement as amended in 2007](#). Plaintiff Candace Curtis is the de jure Co-trustee with her disabled brother Carl Henry Brunsting.

The Rupture

E. [July 1, 2008 Appointment and Certificates of Trust](#)

11. Within two weeks of Elmer’s incapacity estate planning attorney Candace Kunz-Freed, with the assistance of Vacek associate attorney

- Bernard Lisle Mathews III, began producing alterations to Elmer and Nelva's trust agreement, beginning with drafting instruments altering Article IV and installing their new client, Anita Brunsting, as successor co-trustee with Carl and issuing new certificates of trust.
12. Notwithstanding the fact that the trust had become effectively irrevocable, estate planning attorney Candace Kunz-Freed, with the assistance of Vacek associate attorney Bernard Lisle Mathews III, continued to produce incremental alterations to Elmer and Nelva's trust agreement in the wake of every family crisis.⁴
 13. None of the instruments authored after June 9, 2008 were signed by both Settlor's nor approved by a court of competent jurisdiction standing in for the absent co-trustee and none of the instruments created after that date could affect the trustee designations in Article IV or the disposition provisions expressed in Article X Section B; 1/5, 1/5, 1/5, 1/5.

Elmer passed April 1, 2009

- "Tex. Prop. Code § 112.051 (a) A settlor may revoke the trust unless it is irrevocable by the express terms of the instrument creating it or of an instrument modifying it." Tex. Prop. Code § 112.051*
14. When [Elmer passed on April 1, 2009](#) the successor co-trustees for the

“Irrevocable Family Trust could only be those named in the [2007 Amendment](#) as none of the instruments that followed Elmer’s incapacity conformed to the Article III requirements for amending the trust. The appointments of Anita and Amy as co-trustees were an improper attempt to amend Article IV and the associated Certificates are equally invalid as well.

15. Carl Brunsting and Candace Curtis are the lawful co-trustees for the irrevocable trust but the Candace Kunz-Freed, Anita Brunsting duo continued to generate illicit change instruments following each hurrah.

F. February 24, 2010 Appointment and [Certificates of Trust](#)

16. These are a repeat of the improperly drafted July 2008 change instruments that do not appear to have been signed at all.

G. June 15, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment

17. The only value for this instrument would be as part of an accounting ledger. It fails to qualify as a testamentary instrument because it was not signed by two disinterested witnesses as required of a testamentary instrument. Article III also identifies the “Qualified

Beneficiary Designation and Testamentary Power of Appointment” as an amendment. You cannot amend an irrevocable trust but that’s law and law appears to be the furthest from consideration when the All Mighty Dollar is the only God worshiped by the probate mafia.

H. July 3, 2010 [Carl falls ill with encephalitis and is in coma](#)

18. When Carl fell weak the Vacek & Freed team went to work exploiting this family crisis as another opportunity to continue their alterations of Elmer and Nelva's irrevocable trust agreement.
19. With Carl in a coma, Anita took that as an opportunity to launch a character attack on Carl’s wife Drina, thus distracting attention from the improperly drafted change instruments Anita and the Vacek crew were making to remove Carl as a successor co-trustee. Freed's notes say "*Anita called, Carl has encephalitis, amendment to trust, Anita and Amy to be co-trustees*". This is clearly where we begin to see the collusion between Anita, the Settlor’s disloyal estate planning attorneys, and the irrevocable trust rupturing instruments that followed Elmer’s incapacity and death.

I. August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust

Agreement

20. This is the second Qualified Beneficiary Designation and Testamentary Power of Appointment. It doesn't revoke the first but reinforces it and also fails to qualify as a testamentary instrument because it wasn't signed by two disinterested witnesses. This otherwise improperly drafted change instrument is believed to be a forgery as, after a number of disclosures, the alleged August 25, 2010 QBD/TPA shows up in the record with three distinctly different signature page variations.
21. [2010-08-25 3 certificates of trust dated 2010 08 25.pdf](#)
[2010-08-25 Appointment of Successor Trustee P1016-1020.pdf](#)
[2010-08-25 P1016-1020 Appointment of Successor Trustee.pdf](#)
[2010-08-25 P156-192 8-25-10 QBD Above the Line.pdf](#)
[2010-08-25 P193-229 8-25-10 QBD CAN before signature.pdf](#)
[2010-08-25 P407-443 8-25-10 QBD On the line.pdf](#)
[2010-08-25 P843-848a Certs of Trust.pdf](#)
[2010-08-25 QBD Signature Page Versions Binder.pdf](#)
[2010-08-25 QBD Version Binder.pdf](#)
[2010-08-25 Statement of First Witness.pdf](#)

Disclosed in [Anita's 156 page objections](#) filed December 5, 2014. The QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing Bates stamp [P229].

Case 4:12-cv-00592 [Document 1-12](#) (pgs. 1-30) and [Doc. 1-13](#) (pgs. 1-7), Filed TXSD on 02/27/12 with signature at Doc. 1-13 Page 7 of 20

In [Carole's 133 page objection](#) filed Feb. 17, 2015. The QBD appears at pdf pages 97 through 133 with signature page 37 appearing at p133 and bearing Bates stamp [P192].

August 25, 2010 [Appointment of Successor Trustees](#)

August 25, 2010 [Certificates of Trust](#) [V&F 000207-251]

22. These last two 8/25/2010 change instruments are a repeat of the same July 1, 2008 and February 24, 2010 change instruments.
23. The provisions for administration and disposition of Nelva and Elmer Brunsting's irrevocable trust remains those contained in the [2005 Restatement](#) as amended in 2007. The [September 6, 2007 Amendment](#) was the last family trust instrument signed by both Settlor. Carl and Candace are the de jure co-trustees.
24. At page 3 of 13, in their June 26, 2015 "[No-Evidence Motion for Summary Judgement](#)", alleged co-trustees Anita and Amy Brunsting argue that Plaintiff can produce no evidence "that Anita and/or Amy were present when Nelva signed the 8/25/2010 QBD".
25. "There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting was present when Nelva allegedly executed the

8/25/10 QBD. There is no evidence that Defendant Carole Brunsting was present when Nelva executed the 8/25/10 QBD.”

26. Thus, neither Anita, nor Amy, nor Carole claim to have been present when Nelva is alleged to have signed the instrument and yet each produced a different signature page version of the instrument. The Notary Public on all of the post June 2008 “change instruments” was estate planning attorney Candice Kunz-Freed, whose notes show that she received her instructions to “[change the trust](#)” from Anita [13] and we do have evidence of that. It should also be noted that [Kunz-Freed’s notary log](#) fails to show that three separate copies of the 8/25/2010 QBD were notarized as required by Gov’t Code § 406.014, if in fact three separate instruments had been signed on that date. As already stated, Texas Property Code Section §112.051 does not allow a Settlor to amend a trust that has become irrevocable by its own terms so this 8/25/2010 QBD is necessarily invalid as to Elmer’s share whether the instrument was signed by Nelva or not.

J. December 21, 2010 Resignation of Original Trustee [V&F906-915]

K. December 21, 2010 Appointment of Successor trustee [V&F240-245 & 906-915]

L. December 21, 2010 Certificates of Trust, [V&F906-915]

[2010-12-21 Certificate of Trust Decedent V&F 000232-234.pdf](#)

[2010-12-21 Certificate of trust for the NEW family trust VF 000237-239.pdf](#)

[2010-12-21 Certificate of Trust Survivor VF 000235-238.pdf](#)

Assuming Facts of No Value

27. The illicit August 25, 2010 QBD/TPA that Defendants point to as “the trust”, claims to have amended an irrevocable trust and is not in evidence in any event.
28. Until it has been introduced by eye witness testimony at an evidentiary hearing and qualified as evidence, beneficiary Candace Curtis objects to any reference to this instrument as assuming facts not in evidence.
29. The same objection is hereby made to the instruments dated December 21, 2010. Instruments from both dates appear to be scanned analog instruments bearing the signature of estate planning attorney/notary Candace Kunz-Freed, to which digital images of Nelva’s signature were added.

30. The fact remains, despite all other considerations, the instruments created after June 9, 2008 are invalid, as attempting to make changes that Nelva had no plenary legal capacity to make and which Anita and Amy and their attorneys seek to use in their attempt to achieve an unlawful end.

Probate actions are in rem, Trust actions are matters in equity

31. Equity presumes that what should have been done has been done and thus, the trust does not fail; these improperly drafted change instruments are what fail.

Nelva Brunsting's passed [November 11, 2011](#)

32. At the passing of Elmer Brunsting April 1, 2009, the trust corpus was divided into two separate shares. Nelva's share (The Survivors Trust) was to terminate at the passing of the last settlor to die [[Article VIII Section D](#)] and Elmer's share (The Decedent's Trust) was also intended to terminate at the passing of the last settlor to die [[Article IX Section D](#)]. The assets were to be divided by five and distributed into five separate but equal value shares [Article X]. None of this was possible without a proper accounting.
33. This completes the overview of the front-end estate planning bait and

switch and according to “[How to Steal Your Family Inheritance](#)”; this is where Anita Brunsting expected to laugh all the way to the bank.

PART 2 – THE BACK-END EXPLOITATION

34. Unfortunately, a lawsuit had to be brought to enforce the obligations of the trustee to account to the beneficiary and this was exactly what Anita thought she wanted in order to play the no-contest card built into the heinous extortion instrument.
35. The fact that Anita and Amy failed to perform these actions according to their fiduciary obligations makes them liable for any damages suffered by the beneficiary and accountable for any benefit they may have obtained as a result of their failure to perform the obligations of the office they claim to occupy.

I. Southern District of Texas Cause No. 4:12-cv-592 (Feb 27, 2012)

36. [SDTX-592] - Candace Curtis filed a breach of fiduciary action against Anita Brunsting and Amy Brunsting in the Southern District of Texas under diversity jurisdiction, seeking a proper accounting and fiduciary disclosures Feb 27, 2012. In her complaint she noted Anita’s

plan to steal the family trust in a way that if Carl or Candace object, Anita would get to keep it. Candace also alleged that the defendants had been stalking, wiretapping and email monitoring their Mothers communications. All of these allegations became self-authenticating in the course of the events that followed.

Rooker-Feldman Doctrine Inapposite

Exxon Mobil Corp. v. Saudi Basic Industries Corp., 544 U.S. 280, 291-294 (2005). *Held: the Rooker-Feldman doctrine is confined to cases of the kind from which it acquired its name: cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the federal district court proceedings commenced and inviting district court review and rejection of those judgments. Rooker-Feldman does not otherwise override or supplant preclusion doctrine or augment the circumscribed doctrines allowing federal courts to stay or dismiss proceedings in deference to state-court actions.*

37. The [SDTX-592] action was **dismissed under the probate exception** March 8, 2012 and Candace Curtis filed timely notice of appeal.

II. Fifth Circuit No. 12-20164 [USCA5]

38. At this juncture the pro se, having never been to law school and after filing her first ever lawsuit, was now confronted with the Federal Rules of Appellate Procedure and something called the “probate exception”.

39. In researching this question, Plaintiff came across seven hours of videos of Texas Senate Hearings on the Judiciary. Plaintiff also read a number of articles describing the experiences of others in the probate theater and found cases such as *Marshall v. Marshall*,⁵ involving a celebrity using the name “Anna Nicole Smith” a/k/a Vicky Lynne Marshall.
40. One treatise of particular interest was written by a Professor Peter Nicholas titled “*[Fighting the Probate Mafia](#) a dissection of the probate exception to federal jurisdiction*”. Professor Nicholas does not define the expression “probate mafia” and does not use the term in his dissertation.
41. In researching the probate exception, Plaintiff also found seven hours of Texas Senate Hearings on the Judiciary that were as enlightening as some of the horror stories describing others experiences with the color-of-law theft of family generational assets industry, being run out of state probate courts.

[791067a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791067b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791068a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791068b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791069a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791069b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791070a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791070b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791071a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791071b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791072a October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[791072b October 11 2006 Texas Senate Hearing on Jurisprudence.mp3](#)

[Robert Alpert Texas Senate Hearing on Jurisprudence.mp3](#)

42. While Fifth Circuit appeal No. 12-20164 was pending, parallel state court actions were initiated by Plaintiff's brother, Carl Brunsting.

III. Harris County Probate Court No. 4 Cause No 412248

43. Estate of Elmer H. Brunsting No. 412248. Will admitted to probate unchallenged, sole devise to living trust, Letters Testamentary for independent administration issued to Carl Henry Brunsting, represented by Attorney Bobbie G. Bayless.

IV. Harris County Probate Court No. 4 Cause No 412249

44. Estate of Nelva E. Brunsting No. 412249. Will admitted to probate

unchallenged, sole devise to living trust, Letters Testamentary for independent administration issued to Carl Henry Brunsting

V. Harris County District Court 180

45. [March 9, 2012](#) Carl Brunsting, represented by Attorney Bobbie G. Bayless, filed application to take Depositions before suit in Harris County's 180th Judicial District Court. This would be the state court with dominant jurisdiction.
46. Carl Brunsting, represented by Attorney Bobbie G. Bayless, obtained discovery from the estate planning attorneys conducting a video deposition of Carole Brunsting and no one else.

Probate Exception Inapplicable

Fifth Circuit No. 12-20164 [USCA5]

- a. [ROA 12-20164](#)
 - b. [2012-08-25 Appellants opening brief on appeal 12-20164](#)
 - c. [12-20164 BRIEF OF DEFENDANTS-APPELLEES](#)
 - d. [12-20164 APPELLANT'S REPLY BRIEF](#)
 - e. [2013-01-09 Curtis v. Brunsting 704 F.3d 406 5th Circuit Jan 2013](#)
47. ON January 9, 2013 the United States Court of Appeal for the Fifth Circuit reversed the District Court, in a unanimous decision and remanded for further proceedings, finding that the trust held no assets

belonging to a decedent's estate and that administration of the trust was unrelated to the ongoing probate proceedings. [Curtis v. Brunsting 704 F.3d 406 \(Jan 9, 2013\)](#)

VI. Harris County District Court 164 [DC164]

48. On January 29, 2013 Attorney Bobbie G. Bayless, representing a disabled independent executor client without an Ad Litem, filed a malpractice suit against the estate planning attorneys in Harris County Judicial District Court 164.

Southern District of Texas [SDTX] Cause No. 4:12-cv-592

49. Returning to the Southern District of Texas, Candace Curtis applied for an injunction.

a. [Preliminary and Permanent Injunction](#)

As the Texas Supreme Court reiterated in Butnaru, the purpose of a temporary injunction is preservation of the status quo and is an extraordinary remedy. Butnaru , [84 S.W.3d at 204](#). Obtaining a temporary injunction requires pleading and proving (1) a cause of action against the defendant; (2) a probable right to the relief sought; and (3) irreparable injury that is both probable and imminent if the relief is not granted. Id. Danbill Partners v. Sandoval, 621 S.W.3d 738 (Tex. App. 2020)

b. Appointment of a Special Master

50. Because Anita failed to perform the fiduciary obligation to establish and maintain books and records she was unable to account to the beneficiary as required by Article XII E of the trust a [Special Master had to be appointed](#) to establish a trust accounting and \$50,000 had to be spent on the Special Master to assemble books and records and establish a trust accounting.
51. **The Report of Special Master** exposed Anita's self-dealing, co-mingling and misapplication of fiduciary assets.

VII. Estate of Nelva Brunsting No. 412,249-401 Harris County Probate

52. [-401] On April 9, 2013, Carl Henry Brunsting, (Carl) one of five beneficiaries to the sole devisee trust, filed [civil tort claims in Harris County Probate Court No. 4](#), Individually and as Independent Executor for both of his parents' estates, naming three of the other four trust beneficiaries defendants and naming the federal plaintiff, Appellant Candace Curtis, a nominal defendant only.
53. Carl had no standing to file this non-probate related claim in the probate court in an independent administration of a pour-over will after the inventory, appraisal and list of claims had been filed by

the independent executor and approved by the court. [Carl's April 9, 2013 probate court suit](#) doesn't even mention the estates code!

Texas Estates Code Chapter 402 Subchapter A General Provisions

*Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisal, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, **further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.***

Added by Acts 2011, 82nd Leg., R.S., Ch. 1338 (S.B. [1198](#)), Sec. 2.53, eff. January 1, 2014.

54. This is the third action filed involving this family trust. The first case was filed in the Southern District of Texas Feb. 27, 2012 by the lawful trustee and beneficiary Candace Curtis. The second was filed in Harris County District Court 164 Jan. 29, 2013 by Carl Brunsting, individually and as Independent Executor of both of his parent's estates, and the third was filed in Harris County Probate Court No. 4 by Carl Brunsting, as Independent Executor of both of his parent's estates, on April 9, 2013, the same day as the injunction hearing in the

Southern District of Texas.

55. Thus, attorney Bayless filed two halves of the same law suit in separate courts when both actions share a common nucleus of operative facts and the second court cannot compose itself a court of competent jurisdiction. What were her intentions and what could possibly be the benefit to her client? The answer in hind sight is actually very simple. Bayless intentions were not to benefit her client. The Honorable Kenneth Hoyt made the answer clear at the injunction hearing and Bayless verified that by email.

56. [Transcript April 9, 2013 Hearing](#) on Candace Curtis Application for Preliminary Injunction in Southern District of Texas Case Number 4:12-cv-592. The Honorable Kenneth Hoyt Jr, United States District Court Judge for the Southern District of Texas:

“Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where we are sitting around churning the time out...” [Page 35](#)

So what I am telling the parties, and I am saying to you and to all those who have ears to hear, that this matter is going to get resolved. It's not going to turn into one of these long, drawn-out episodes like the ones we see on TV that go on for years where lawyers make money and people walk away broke. [Page 40](#)

57. Judge Hoyt summarized **the probate mafia staged litigation**

methodology in these two paragraphs. I came to understand it over time as, never having been to law school I was learning everything as a first. The particulars of this methodology can best be demonstrated by the case in point, which has so many things that happened in appearance that did not happen as a matter of law, that it baffles the mind.

58. Bayless herself says why in an email to Rik Munson dated august 18, 2023, to get the case Away from Judge Hoyt because Hoyt was going to settle it and the attorneys would not be allowed to play their staged litigation, extortion, wealth extraction and money laundering games.

59. [Attorney Bobbie G. Bayless email to Rik Munson Sun, 18 Aug 2013](#)

“This really needs to be away from Hoyt and under one umbrella so that Anita, Amy, and Carole have to account for what they did. Hoyt has already said he is going to resist doing anything except dividing what is left. Even if you can somehow convince him that isn't good enough, he is going to make your life miserable if you try to make him do more----and in the process potentially do real damage to the existing claims. Maybe my view is colored too much from having been in his court on other cases, but I just don't see any benefit to being over there, and I really don't see any benefit that outweighs the potential harm.”

The Complete Absence of Subject Matter jurisdiction

60. The record will show that the Decedents, Elmer H. and Nelva E.

Brunsting, both had pour-over wills naming their family living trust as the sole devisee and both wills called for independent administration.

61. The record will further show that [letters testamentary for independent administration](#) were issued to Carl Henry Brunsting on August 28, 2012; the [inventory, appraisal, and list of claims](#) had been filed by the independent executor March 27, 2013 and approved by the probate court April 5, 2013 and that [Carl Henry Brunsting filed his civil tort suit in the statutory probate court April 9, 2013](#), five days after the [inventory](#) had been [approved](#), and [Drop Order](#) issued without even mentioning the estates code.
62. The law on independent administration is clear. After the inventory has been approved further action of any nature may not be had in the probate court except where Title II of the Estates Code specifically and explicitly provides for some action in the probate court.

Tex. Est. Code § 402.001

When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisal, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisal, and list of claims has been filed by the independent executor, as long as the estate is represented by an

independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

63. The Action filed by Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting on April 9, 2013 [[ROA 5-24](#)] was filed five days after [the verified inventory](#) had been approved; was brought under the Texas Civil Practices and Remedies Code as ancillary to a closed probate and not only fails to cite to the provision in the estates code that specifically and explicitly authorized his action; he fails to even mention the estates code.

Statute of Limitations

64. The Action filed by Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting on [April 9, 2013](#) was filed four years and eight days after Elmer Brunsting passed, missing the statute of limitations by eight days, for bringing claims on behalf of Elmer's estate in any court.
65. Harris County Probate Court No. 4 never obtained subject matter jurisdiction over Carl Brunsting's -401 non-probate related tort action as a matter of law. Why attorney Bayless filed two halves of the same

lawsuit in separate courts certainly was not in her client's best interest.

I will return to this *infra*.

The Federal Pro Se Plaintiff Retained Assistance of Counsel

66. Appellant Candace Louise Curtis, a California resident, had been pro se thus far but at the end of 2013 she was ordered to retain Houston and without the ability to pay a retainer she managed to find attorney Jason Bradley Ostrom (Ostrom) who filed his appearance January 6, 2014.
67. Rather than litigate his client's claims in his client's choice of forum, Ostrom presented the federal court with a [bundle of unopposed motions](#) adding Carl Brunsting as an involuntary plaintiff to pollute diversity jurisdiction along with a motion for remand to a Harris County Probate Court from which the case was never removed and to which the case could not be returned.
68. The Southern District Court approved the bundle of unopposed motions on May 15, 2014 and the federal docket was administratively closed, showing the case to have been remanded to Harris County Probate Court Number 4, a statutory court with absolutely no jurisdiction over this trust controversy.

VIII. [-402] Harris County Probate Court No. 4

- a. Remand from SDTX to Harris County Probate Court No. 4 entered as transfer order Cause No 412249-402 [-402]
69. On May 28, 2014 Ostrom filed the federal remand order in the probate court in “Estate of Nelva Brunsting No. 412,249” as a motion to enter a transfer order [[ROA 268](#)] citing jurisdiction pursuant to Texas Estates Code § 32.005, Texas Estates Code § 32.006, and Texas Estates Code § 32.007, none of which has anything to do with independent administration of a pour-over will.
70. Curtis fired Ostrom and was immediately hit with a no-evidence Motion from the Defendants. June 26, 2015 Defendants' new attorneys in Probate Court No.4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that their alleged 8/25/2010 QBD is invalid.

The Wire Tap Recordings

71. On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings which were received by Plaintiff Curtis via certified mail with signature required containing the following audio files:

[BRUNSTING 5836.wav](#)

[BRUNSTING 5837.wav](#)

[BRUNSTING 5838.wav](#)

[BRUNSTING 5839.wav](#)

72. An analysis of the [file properties on that CD](#) is relevant when put in a time line context. These segments were extracted from a larger master around the time of Carl's resignation and the master would include Candace interstate conversations with Nelva and Nelva saying she did no such thing when asked about the 8/25/2010 QBD.

73. On 2015-07-13 Defendants counsel and Bayless filed [Notice of Hearing](#) on Defendant Co-Trustees [No Evidence Motion](#) 2015-07-13 and motions for summary judgment for set for August 3, 2015

74. Shortly thereafter Candace Curtis filed her response to the loyal co-trustees no-evidence motion objecting to assuming facts and demanding the Defendants produce [all three versions](#) with witness testimony qualifying the three alleged originals as evidence. They have not and they will not because they cannot.

Sleazing out of their illicit Docket Control Order

75. July 7, 2015 Carl Brunsting (Bayless representing Drina) filed a Motion for Protective Order regarding the illegally obtained wiretap

recordings. Then on July 9, 2015 Carl Brunsting (Bayless representing Drina) filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion.

**IX. Southern District of Texas [[SDTX-1969](#)] Cause No.4:16-cv-1969
filed SDTX July 5, 2016**

76. This was a pro se complaint filed under the federal racketeer influenced corrupt organization statutes [[RICO](#)]. RICO is the most difficult claim to plead in Title 18 of the United States Codes. As we have read in other similar RICO cases this is where the Rooker-Feldman Schnooker usually comes into play and Defendant Jill Willard-Young sued the “*disgruntled litigants seeking vengeance for being on the losing end of fully litigated state court determinations*”. Just as we said then, and continue to say now, “*there are no fully litigated state court determinations*”.
77. It is not possible to prove the nonexistence of a fact but the burden of bringing forth evidence has been shifted to the Defendants and they have not produced evidence of a single evidentiary hearing and they

will not because they cannot!

78. We did not have the necessary facts to prove RICO at that juncture but did not want to wait until they arrived at their intended destination (now) before pointing to where they were going. Since you cannot depose the opposing attorneys, it also seemed important to force the attorneys to assume a position they would later have to defend (judicial admissions). All of the defendants plead [“probate case”](#), [“probate matter”](#) and [“probate proceeding”](#) and they all lied to United States District Court Judge, the Honorable Albert H. Bennet, and went on to lie to the honorable Justices of the federal Fifth Circuit Court of Appeal.

Case 4-16-cv-01969 July 5, 2016 – May 16, 2017

Probate Case

Anita Brunsting [Doc 30 p.1](#)

Amy Brunsting [Doc 35, p.1](#) (Ghost written)

Steven Mendel [Doc 36 p2, 6](#)

County Attorneys for Judges Butts & Comstock [Doc 53, p2, 16, 30](#)

Jason Ostrom [Doc 78 p.1](#)

Gregory Lester [Doc 83 p.1](#)

Darlene Payne Smith [Doc 84 p.9, 10, 13, 14, 16, 17](#)

Probate Proceeding

Vacek & Freed [Doc 20, p.4, 6, 7](#)

Bobbie G. Bayless, [Doc 23, p.2, 3](#)

Neal Spielman [Doc 40, p.3](#)

County Attorneys for Judges Butts & Comstock [Doc 53, p3, 4, 7, 15, 29](#)

Darlene Payne Smith [Doc 84, p.8, 10](#)

Probate Matter

Jill Young [Doc 25, p.3](#)

Neal Spielman [Doc39, p1, 2](#) - [Doc 40, p.1, 2, 3](#)

County Attorneys for Judges Butts & Comstock [Doc 53, p.18](#) - [Doc 79 p.9, 10, 13, 14, 16, 17](#)

**PROBATE CASE, PROBATE MATTER, PROBATE
PROCEEDING**

79. Texas Estates Code § 22.029, defines probate matter; probate proceedings; proceeding in probate; and proceedings for probate as synonymous:

“The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate.”

Texas Estates Code § 31.001 Defines “Probate Proceeding”

The term "probate proceeding," as used in this code, includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate;

(7) a will construction suit; and

(8) a will modification or reformation proceeding under Subchapter J, Chapter 255.

PROBATE PROCEEDINGS ARE ACTIONS IN REM

80. Texas Estates Code § 32.001(d)

The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

81. RICO 7/05/2016-2/28/2018, Upon returning to the probate theater after the RICO appeal was decided a new Judge was elected to probate Court No. 4 and the first thing Mendel did was try to poison the court crying about being exposed to a RICO suit and alleging that Candace was a vexatious litigant that no longer bothered to appear in the probate court.

82. Candace had flown in from California for hearings that invariable turned into a status conference where nothing was ever resolved for

the litigants. However, it is rather apparent that she could not return to the probate theater pro se.

Hero's and Goats

83. We had mentioned that there were both good people and bad people in this story. One of the good people is Houston attorney Candice Schwager. Candace agreed to appear pro bono for Candace as we no longer had money due to the injuries suffered thus far and we owe Candice a great debt of gratitude including payment for her excellent service if we can ever pull out of this perpetual financial injury that has consumed nearly 20% of our life time.

Texas Estates Code § 402.001

Sec. 402.001. GENERAL SCOPE AND EXERCISE OF POWERS. When an independent administration has been created, and the order appointing an independent executor has been entered by the probate court, and the inventory, appraisement, and list of claims has been filed by the independent executor and approved by the court or an affidavit in lieu of the inventory, appraisement, and list of claims has been filed by the independent executor, as long as the estate is represented by an independent executor, further action of any nature may not be had in the probate court except where this title specifically and explicitly provides for some action in the court.

84. The Probate court never had subject matter jurisdiction over this trust

controversy nor any of the other matters labeled as ancillary to [the closed estate](#) of Nelva Brunsting

85. As one can easily see with a cursory examination of [the inventory](#), there was never anything to subject to an in rem proceeding and as previously held by the Honorable Justices of the Fifth Circuit Court of Appeal, the family trust does not hold any assets belonging to a decedent's estate. (see [Appellants brief on appeals court jurisdiction](#) filed in the 1st District Court of Appeals in Houston on March 6, 2024)

X. [Fifth Circuit \[USCA5\] No. 17-20360](#)

86. June 28, 2018, This was the appeal from the RICO suit properly dismissed for failure to state a claim and as the Appeals Court noted, the elements were pled correctly but we failed to supply sufficient supporting facts. We did not yet have the proof of claim but very much do now. It is as we said all along and continue to say now just as Judge Hoyt described on April 9, 2013!
87. It wasn't until after Judge Hoyt entered the preliminary injunction that Bayless fraudulently filed non-probate related tort claims in the probate court.

[SDTX-592] Rule 60 Motion # 2

88. Once having been betrayed by attorney Jason Bradley Ostrom, Candace Curtis found herself in a probate court treadmill theater defending against the assault mounted by the attorneys for the imposter co-trustees and not only wondering what happened to her lawsuit but asking one much larger and more consuming question. How to escape from the probate hell her former counsel had put her in.
89. When the RICO action was filed we also filed a motion to vacate the remand order recapping all of this same information and again struggling with not knowing the rules. That was Document 115 in SDTX 4:12-cv-592 and we mistakenly thought they would both be filed in the same court. I'll take the fall for that dysfunction.

XI. Fifth Circuit [USCA5] [No. 20-20566](#)

90. We tried to get out of the probate court and as a necessary part of that we had to study probate law in Texas. We tried to explain to the Probate Court that it did not have [subject matter jurisdiction](#) to no avail. Our plea to the Jurisdiction and Bill of Review fell on deaf ears but we were pro se unlearned in the law and just defending against a war of attrition and perpetual character attacks from the Defense

attorneys and ultimately from Bayless the [attorney for the alleged co-plaintiff](#).

XII. Harris County Probate Court No. 4 [Cause No 412249-403](#) [-403]

91. This case [was snatched out of District Court 164](#) on March 1, 2019 without a pending probate to be ancillary to. A pending probate administration is a prerequisite element as expressed in the snatching statute: [Texas Estates Code § 34.001](#)

Tex. Est. Code § 34.001

Section 34.001 - Transfer to Statutory Probate Court of Proceeding Related to Probate Proceeding

(a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

(b) Notwithstanding any other provision of this subtitle, Title 1, Chapter 51, 52, 53, 54, 55, or 151, or Section 351.001, 351.002, 351.053, 351.352, 351.353, 351.354, or 351.355, the proper venue for an action by or against a personal representative for personal injury, death, or property damages is determined under Section 15.007, Civil Practice and Remedies Code.

92. Harris County District Court 164 Cause No. 2013-05455 thus became “Estate of Nelva Brunsting No. 412249-403 without a pending probate administration to be ancillary to and, where it remains without a plaintiff. Section 15.007, Civil Practice and Remedies Code governs venue and not the estates code.
93. District Court 164 Cause No. 2013-05455 is not now, nor has it ever been in the probate court.

XIII. Harris County Probate Court No. 4 Cause No 412249-404 [-404]

94. On November 4, 2019, after seven years of being held hostage in stasis, Amy & Anita Brunsting filed what they called their [Original Counter claims](#). Their argument was that Candace and Carl violated the in Terrorem clause in the forged 8/25/2010 QBD. Invoking provisions for corruption of blood and, in which they claim Candace and Carl had forfeited their interest in the trust and that their shares were owed to the imposter co-trustees to pay their attorneys fees.

Probate Enemy No. 1

95. Once trapped in the probate theater it was made clear that Candace federal injunction, protecting the family trust from attorney pilfering,

made Candace the No. 1 enemy of probate mafia attorneys Stephen Mendel, Bobbie G. Bayless and Neil Spielman and their extortion, filthy lucre [extraction and money laundering scheme](#).

XIV. Harris County Probate Court No. 4 Cause No 412249-405

96. This unnecessary ancillary case was created at the [severance motion hearing](#) which sought to sever the fraudulent consolidation of “*estate of Nelva Brunsting 412249-402*”, [allegedly created by a remand that wasn’t a remand], from “*estate of Nelva Brunsting 412249-401*” The case filed by Carl individually [without standing] after Carl the independent executor had resigned thus, joining a case without a plaintiff with one neither remanded (returned) to, transferred to nor filed in the probate court. Where are the proofs of personal service?
97. The independent administration of the “estate of Nelva Brunsting” closed in the probate court when the inventories were approved, five days before Carl filed the 41229-401 action. Calling 41229-401 “*estate of Nelva Brunsting*” is a misnomer and fraud. There is no estate of Nelva Brunsting. Independent executor Carl Brunsting resigned in February 2015 and Candace Curtis federal lawsuit was not

refiled in the probate court.

- a. Federal district courts lack the power to remand a case to a court from which it had not been removed.

“A case may be remanded only to the court from which it was removed and the federal district court does not have the authority to remand a case originally brought in federal court.” See First National Bank of Pulaski v. Curry, 301 F.3d 456, 467 (6th Cir. 2002).

- b. Federal district courts lack the power to remand or transfer an action originally filed in federal court to state court.

In the present case, the United States District Court never had

jurisdiction of the action, and even if that court had jurisdiction, it did not have the power to transfer the action to the state courts. No statute authorizes a federal court to transfer such an action to state courts. See White v. CommercialStd. Fire Marine Co., [450 F.2d 785, 786](#) (5th Cir.

*1971). A federal court may not transfer an action commenced in that court to a state court. A federal court may remand an action to a state court only if the action was commenced in the state court and then removed to a federal court. See [28 U.S.C. §§ 1447 etseq.](#) See, e.g., *Edward Hansen, Inc. v. Kearny Post Office Assocs.*, [166 N.J. Super. 161](#) (Ch.Div. 1979). *Galligan v. Westfield Centre Service, Inc.*, 82 N.J. 188, 198 (N.J. 1980)*

- c. State courts lack the power to transfer an action originally filed in federal court to state court.

98. Texas Rule of Civil Procedure 174(a) allows any court in the state to transfer a case from another court to itself for purposes of consolidating that case with another case pending in the first court.

However, “*Rule 174(a) by its own language allows consolidation only*

of actions or cases that are then "pending before the court." Neither the rule itself, nor any cases interpreting it, suggests that it may be used to extend the court's authority to transfer and consolidate cases pending before *other courts*." Flores v. Peschel, 927 S.W.2d 209, 212-13 (Tex. App. 1996)

- a. State probate courts authority to transfer an action to itself requires a pending probate.

Texas Estates Code § 34.001 only allows a probate court to transfer an action to itself when the action to be transferred is incident to a pending probate. The Brunsting estate [closed April 4, 2013](#) and the purported transfer of the federal case occurred May 28, 2014 [[ROA 297-303](#)].

99. The first thing attorney Ostrom did after filing copies of federal court records in the closed base case 412249, was file a [motion for a \\$40,000.00 distribution](#) to pay his unearned fees.
100. Stephen A Mendel made his appearance November 14, 2015 and on page one of the very first pleading Mendel filed [[Tab 54](#)] December 5, 2015 makes four claims:

"1. Distributions to pay legal-fee creditors are not authorized by the trust and, therefore, the motions must be denied.

- 2. Distributions to pay legal-fee creditors are prohibited by the trust and, therefore, the motions must be denied.*
- 3. The Court lacks jurisdiction to decide the distributions for legal-fee creditor issue because there are no allegations of fraud, misconduct, or clear abuse of discretion with respect to Candace's and Carl's request that the trust pay their attorneys' fees.*
- 4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust.”*
101. By this judicial admission the alleged co-trustees [November 5, 2021 Motion for Summary Judgment](#) and [proposed order](#), is a challenge to the settlors trust agreement. Of note is their continued reference to “the trust” without a judicial determination on what instruments they are referring to.
102. Aside from thwarting the Defendant co-trustees constant attacks and learning estate planning and probate law in Texas, after firing Ostrom, federal plaintiff Candace Curtis continuously questioned the want of subject matter jurisdiction.
103. Among her efforts was a [Plea to the Jurisdiction](#) and [Proposed Order](#) that were [denied February 14, 2019](#).
104. On November 19, 2019 Candace Curtis filed a statutory [Bill of Review](#) somehow creating Cause No 412249-404 and the Attorneys

insisted on being physically served with process for the Bill of Review which only aided in their war of attrition.

No Proof of Service for any Counter Claims

105. On November 5, 2021 Defendants filed what they called “Original Counter Claims”. Thus, after nearly ten years of poser advocacy, litigation posturing, defamations and making threats, and after having failed to coerce Candace Curtis [Probate Enemy No. 1] into trading a silk purse for s sows ear [[settlement contract drawn up by attorney Stephen Mendel](#)], the Defendant imposter co-Trustees filed their original counter claims focusing on the in Terrorem clause in their forged and otherwise illicit 8/25/2010 QBD that is not in evidence and that they have done everything they can to avoid producing in an evidentiary hearing.
106. They did not serve Candace with their counter-claims and there are no proofs of service of any filing of Candace federal action in the probate court. The probate trawlers apparently don’t think the legal wind blows in both directions.

Rule 11

107. On December 5, 2021 Drina Brunsting, alleged attorney in fact for

- Carl Brunsting, and the Defendant imposter Co-Trustees, filed a Rule 11 agreement in which they agree not to prosecute their claims against each other. [[ROA 314-317](#)]
108. On January 5, 2022 Drina Brunsting, alleged attorney in fact for Carl Brunsting individually, moved to sever Carl's claims from those of Candace Curtis, [[ROA 318-320](#)] arguing that [Candace and Carl have no claims in common](#). The February 11, 2022 Hearing on Motion to Sever [[Reporter's Record Vol 2 of 3](#)] does not specifically identify any issues Carl and Candace have that are not in common, but merely [argues that Carl and Candace do not have claims in common](#) and somehow have conflicts of interests that prevent settling the controversy under one roof.
109. This raises interesting questions. The remand order is void because was no remand (return) and no court to remand to, the transfer order was invalid, there was no one representing the "estate of Nelva Brunsting" when the alleged consolidation occurred and after resolving nothing of a substantive nature, how could Carl Brunsting pollute diversity if he had no claims in common with Candace Curtis?
110. Fact: Carl and Candace are the legitimate co-trustees but Carl lacks

capacity and because he has no ad litem representing him, he has no standing in the probate theater.

XV. Southern District of Texas [SDTX- Case 4:22-cv-1129]

111. After the remand that wasn't a remand;

- a. the transfer that wasn't a transfer;
- b. the consolidation that wasn't a consolidation;
- c. compulsory counter claims filed in the probate theater six that were counter to no claims filed in probate;
- d. The Rule 11 agreement admitting there was no controversy between the pretended litigants;
- e. The severance Motion and Order that didn't sever what was never consolidated,
- f. a series of nonsuits, and
- g. Summary judgement against Candace Curtis without a single evidentiary hearing in a court with no subject matter jurisdiction
- h. Candace Curtis removed the case to the SDTX creating Case No. 4:22-cv-1129.

112. There has been no one representing "estate of Nelva Brunsting" in all these years and suddenly, in August 2024, the remaining "litigants" each deposit \$750.00

113.

114. Unfortunately, the way this game is played, one will not find all of the information in one place. Other than behind the curtain of

“confidential mediation” the probate theater record does not reflect any reference to the hundreds of thousands of dollars in attorney ransom demands they insist on laundering under a settlement contract that Candace refused to legitimize.

115. April 7, 2022 Candace filed a [Notice of Removal](#) of the alleged Co-Trustees’ counterclaims to the Southern District of Texas. While this may appear to be a futile effort, it did produce some very damning evidence that appears nowhere else in the public record. Co-Defendant’s attorneys filed their fee statements in Judge Rosenthal’s court, which they had never previously disclosed in the probate court.

Attorney Stephen Mendel Fee Disclosure

- a. [2022-04-08 02-12 Exhibit q Anita’s \(Mendel\) attorney Fee Disclosure](#)

116. On the cover page of his disclosure, Mendel makes the following claim:

“In Reference

To:

C.A. No. 412249 & 412249-401; *Candace Curtis v. Anita Brunsting, Et Al*; In Probate Court No. 4, Harris County, Texas.

C.A. No. 412249 & 412249-402; *Candace Curtis v. Anita Brunsting, Et Al - Plea in Abatement*; In Probate Court No.

4, Harris County, Texas.

C.A. No. 412249 & 412249-403; *Carl Henry Brunsting, Executor of the Estates of Elmer H. Brunsting & Nelva E. Brunsting; v. Candace L. Kunz-Greed & Vacek & Freed, PLLC*; In Probate Court No. 4, Harris County, Texas (transfer of C.A. 2013-05455 from the 164th District Court, Harris County, Texas).

C.A. No. 412249 & 412249-404; *Candace Curtis v. Anita Brunsting, Et Al - Bill of Review*; In Probate Court No. 4, Harris County, Texas.”

117. As a result of [Mendel lying to Judge Rosenthal](#) to give the appearance of a vexatious litigant and Rooker-Feldman, Judge Rosenthal remanded back to the probate theater saying [Curtis sued her siblings in the probate court](#).

118. However, Candace Curtis sued Anita and Amy Brunsting [in the Southern District of Texas](#) more than a year before [Carl’s 412,249-401 action](#) was filed in the probate court.

2015-01-09 the Mendel Law Firm makes note of Problems with the Remand

[02-12 Exhibit q Anita’s \(Mendel\) attorney Fee Disclosure](#)

[Case 4:22-cv-01129 Document 2-12 Filed on 04/08/22 in TXSD Page 10 of 56](#)

“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”

119. We see in Mendel’s fee disclosure that after stabbing his client in the

back and filing a motion to extract funds from the family trust, Ostrom was apparently negotiating an agreement to his extraction in exchange for non-suit of the federal injunction. None of this has ever been about the client.

120. We also see in Mendel's fee Disclosure that he claims his fees did not include the RICO. However, what we see in redacted entries are [fifteen pages of billing entries](#) during the time the RICO case was ongoing [7/05/2016-5/28/2018] when [nothing happened in the probate court at all](#). This is [the kind of blatant fraud](#) we see from Stephen Mendel everywhere we look.

Attorney Neil Spielman Fee Disclosure

- a. [2022-04-08 02-15 Exhibit R Amy's \(Spielman\) attorney fee disclosures.pdf](#)

Stephen Mendel: Anita threatens Carl with IME & Guardianship

May 19, 2015 there is a note in Neal Spielman's billing records regarding Defendant Anita Brunsting threatening Carl with a motion to compel IME to determine whether an action for guardianship against Carl would be necessary. This is clearly an intimidation tactic.

02-15 Exhibit R Amy's (Spielman) attorney fee disclosures

“5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with IME for Carl to assist in determination of whether guardian is needed for Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor.”

2015-05-29 Based on Spielman's Fee Disclosure statements Bayless apparently agreed not to prosecute Carl's claims in exchange for no IME or Guardianship action against Carl! If Anita and Stephen Mendel had a genuine concern about Carl there would be no ground for an agreement.

“5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing”

121. We do not see evidence of this agreement until December 5, 2021 when Bayless, counsel for the alleged Plaintiff, along with Mendel and Spielman, attorneys for Bayless Defendants, filed their [Rule 11 Agreement](#).

122. It is clear at this juncture that there was no controversy between the

original parties to the probate circus and that Candace Curtis lawsuit was never filed in the probate court.

An essential component of subject matter jurisdiction is the constitutional requirement of an existing case or controversy among the parties. “For a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal”. See United States v. Munsingwear, Inc., 340 U.S. 36, 39 (1950).

If a controversy ceases to exist — “the issues presented are no longer ‘live’ or the parties lack a legally cognizable interest in the outcome” — the case becomes moot. Murphy v. Hunt, 455 U.S. 478, 481 (1982); see also O’Shea v. Littleton, 414 U.S. 488, 495-96 (1974) Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001)

123. Let’s review the procedural history for a moment.

- a. Candace Curtis filed suit in the SDTX,
- b. Bayless began depositions before suit in state court.
- c. Candace wins her Fifth Circuit appeal
- d. Bayless filed a malpractice suit against the estate planning attorneys in Harris County District Court
 - i. Carl filed the verified inventory, appraisalment and list of claims. The [court approves the inventory](#) etc. and the probate is [dropped from the active docket](#). Case Closed!
- e. Candace obtains an [injunction from the SDTX](#) and;
- f. After filing a [malpractice suit](#) against the estate planning attorneys in Harris County District Court, Bayless filed [integrally related claims](#) against the entire Brunsting family of trust beneficiaries in the Harris County Probate Court, five days after nothing more could be filed in that court. Bayless failed to

cites to the estates code for jurisdiction.

- g. Ostrom obtains a remand to the probate court which he then filed in the probate court disguised as a transfer.
- h. Carl resigns and the next day there is an agreed Docket Control Order. Three weeks later there is an [Agreed Order to Consolidate Cases](#).
- i. Curtis fires Ostrom and the Agreed Order to Consolidate Cases vanishes from the electronic record.

124. Let's keep in mind that whether there was ever probate court jurisdiction over the claims Carl filed in that court, the estate is an indispensable party to any proceeding in the probate court. Once Carl resigned there was no executor, nothing to administer and no successor was ever appointed. Without a pending estate administration and no administrator, nothing could be done in "estate of Nelva Brunsting".

125. It should also be noted that the name of this case has been changed several times by these probate attorneys to suit the particular situation.

XVI. [Texas First District Court of Appeal No. 01-22-00378-CV](#)

126. (Appeal [Withdrawn](#)) The clerk will not compile a record from more than one case number. This would explain why the attorneys create a mess with multiple case file numbers when there is only one family

and one family trust at issue.

127. This case was simply too convoluted to be written in an opening brief in a mere 30 days and too many aspects to grasp in short order. The only valid issue is the complete absence of subject matter jurisdiction and the complete absence of the rule of law in the probate court theater.

XVII. [Texas First District Court of Appeal No. 01-22-00514-cv](#)

2022-07-12 [Petition for Writ of Mandamus](#) No. 01-22-00514-cv

2022-07-12 [Mandamus Record Index](#) No. 01-22-00514-cv

128. 2022-07-10 Petition for Writ of Mandamus was [denied with no explanation](#). I think petitioning for mandamus may be considered a collateral attack but I can't swear to it.

129.

XVIII. [1st COA] Texas First District Court of Appeals, No. 01-23-00362-CV

130. This appeal, [No. 01-23-00362-CV](#), was untimely according to the rules of appellate procedure but the case was simply too convoluted

and the only valid issue is the complete absence of subject matter jurisdiction in the probate court.

131. After holding this family hostage in stasis for almost 13 years in effort to coerce and extort a money laundering contract, Attorney Stephen Mendel, lead attorneys for the unified appellees, complained about statutes of limitations.

132. TEX. R. APP. P. 26.1 Notice of Appeal must be filed within 30 days after the challenged judgment is signed. The only issues not time barred by the rules of appellate procedure are want or excess of jurisdiction. The only question before the appeals court is subject matter Jurisdiction and whether orders entered in the court below are void for want of personam or subject matter jurisdiction or merely voidable on substantive and due process ground.

133. An appellate court has no jurisdiction to consider the merits of an appeal of a void order or judgment. See *id.* Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.), No. 05-19-01056-CV, at *9 (Tex. App. Feb. 20, 2020) and authorities cited therein.

134.

WTF NOW?

135. While the First District Court of Appeals action has been pending and statutory probate court jurisdiction has been made clearly stated to be the issue, Stephen Mendel continued to file motions in the probate court asking for official leave to continue ignoring the federal injunction and doing as he please.
136. At the same time the estate planning grifters thought they too would exploit the opportunity to file for status conferences. The status has not changed since Carl's resignation in 2015. There is no plaintiff in the malpractice case.

[2023-12-26 V&F Request for Status Conference.docx](#)
[2024 - 06.26.24 - Co-Trustees Brief In Support of Status Conference .pdf](#)
[2024-01-03 Ntc of Status Conference Hrg.pdf](#)
[2024-01-09 01-23-00362-CV SUBMISSION OA DENIED FILECOPY.pdf](#)
[2024-01-12 Amended Notice of Status Conference 412249-403.pdf](#)
[2024-02-01 Status Conference re Estate of Nelva Brunsting 412249-403.pdf](#)
[2024-02-28 Agrd Mtn to Sell Farm \(flmrkd\) \(2\).pdf](#)
[2024-03-06 Appellants Brief on Appellate Jurisdiction.pdf](#)
[2024-03-06 Appellants request to Support.pdf](#)
[2024-03-06 smart-cite-report- Appellants Brief on Appellate Jurisdiction.pdf](#)
[2024-03-07 Appellants Appendix of Exhibits.pdf](#)
[2024-05-06 Agreed Motion to Disburse \\$26000.pdf](#)
[2024-05-21 Agreed Motion to Disburse \\$26000.pdf](#)
[2024-06-03c Brunsting & Wissing R.E. Contract \(Sgnd\) \(4\).pdf](#)
[2024-06-06 01-23-00362-CV ORDER DIST LETTER FILECOPY.pdf](#)
[2024-06-06 01-23-00362-CV ORDER ISSD 06062024.pdf](#)
[2024-06-10 Motion to sell farm.pdf](#)
[2024-06-17 Web Inquiry Docket -401.pdf](#)
[2024-06-17 Web Inquiry Docket -403.pdf](#)
[2024-06-19 412248 Web Inquiry.pdf](#)
[2024-06-19 412249 Web Inquiry.pdf](#)

[2024-06-19 412249-403 Web Inquiry.pdf](#)
[2024-06-23 Demand Letter to Anita.pdf](#)
[2024-06-24 Curtis OBJECTION .pdf](#)
[2024-06-24 Exhibit 1 COA Notice.pdf](#)
[2024-06-24 Exhibit 3 Order directing appellees to reply .pdf](#)
[2024-06-24 Exhibit 4 Motion for Extension.pdf](#)
[2024-06-24 Exhibit 5 Order Granting Extension.pdf](#)
[2024-06-24 OBJECTION .pdf](#)
[2024-06-26 - Co-Trustees Brief In Support of Status Conference .pdf](#)
[2024-06-27 Order to Distribute funds.pdf](#)
[2024-06-28 Reply re No Jrsdctn \(Final\).pdf](#)
[2024-07-25 Docket 412249-401 Web Inquiry.pdf](#)
[2024-07-26 Notice of Order.pdf](#)
[2024-07-26 Order.pdf](#)
[2024-07-31 Rule 11 Agrmnt - Ct Rgstry.pdf](#)

137. The [July 26, 2024 Order](#) was for Anita Brunsting, Amy Brunsting, Carl Brunsting and Carole Brunsting were either to resolve or dismiss the professional negligence suit that none are formally parties to.
138. For Anita Brunsting and Amy Brunsting to successfully pursue these claims they would have to prove that they are not trustees, that the instruments they are using to claim the office of trustee and make counter claims against Candace are illicit.
139. Then you have Carole Brunsting that aided and abetted Anita and Amy's scheme and cannot take an opposing position without exposure.
140. Then you have the [disabled Carl Brunsting](#) with no ad litem and an attorney that has already taken [a quarter of a million dollars](#) from him [Pg77] for filing two halves of the same law suit in separate courts and resolving absolutely nothing for her client after twelve years of

- posing and posturing. The message to Carl in Candace alleged disinheritance is shut up and accept what little you are given or else!
141. Last but not least you have the bait and switch estate planning attorneys for whom, paying anything to anyone would effectively be an admission.
142. Carl et al., is Carl individually and Carl as independent executor. Candace Curtis can be disinherited from estate of Nelva Brunsting without effect as she is not an heir to any estate but that has nothing to do with the trust and as she is the lawful trustee, she is the only one anyone can negotiate with and expect closure.
- 143.

Dependent Administrator in 412249-403?

144. Remember, [-403] is the case snatched out of the District Court without a pending probate.
145. There has been no one representing “estate of Nelva Brunsting” in all these years and suddenly, in August 2024, the remaining “litigants” [each deposit \\$750.00](#) for the appointment of a dependent administrator to pursue the estates claims against the estate planning attorneys.

146. If one recalls correctly the wills were pour-over wills under independent administration and after the inventory was approved all right title and interest vested in the sole devisee and became trust business. It is the ghetto probate attorneys that insist upon inserting this unnecessary 3rd party called “estate” but estate requires representation and property and this one has neither.
147. The [Order issued on July 26, 2024](#) stated that if the parties are unable to settle they have to put \$750 each into the court’s registry to pay a dependent administrator to prosecute those claims or the case would be dismissed. How do we go from independent to dependent administration when the only assets are in a living trust and not an estate?

WELL ISN’T THIS A QUAGMIRE?

148. They sold the Elmer Brunsting Trust’s Farm in Iowa. However, Bayless probate court suit missed the four year statute of limitations for bringing claims on behalf of Elmer’s estate by eight days, there is an injunction and there is no probate court jurisdiction. What to do, what to do, what to do?
149. Mendel wants his million dollars in fee rewards for his participation.

150. The Thompson Coe attorneys have been sucking up the insurance company proceeds as fees for playing along and that leaves less to haggle over.
151. The change instruments drafted by Vacek & Freed after Elmer's incapacity are invalid. For V&F to co9p to that, it would be an admission that Anita and Amy are not trustees.
152. Anita and Amy have no incentive to argue with their facilitators at V&F and V&F have no incentive to argue with Anita and Amy.
153. That leaves the co-conspirators at V&F with Anita and Amy vs the disabled Carl with Carole straddling the fence. In any event, everyone involved has been compromised in one way or another.
154. They (the attorneys) will want to agree to a "confidential settlement agreement" in which no one would take any blame and the spoils would be divided and their ransom laundered by contract.
155. The summary judgment against Candace, for refusing the sow's ear exchange rate, under the 8/25/2010 QBD with its disinheritance and corruption of blood provisions has set the precedent for Carl and Carole not to object to their lean portion of the divvy.
156. [Funds have been deposited into the registry of the court](#) for the

- purpose of retaining a dependent administrator to prosecute the estate of Nelva Brunsting's -403 claims against the estate planning grifters.
157. You have to ask WTF at this point. How many rules can we bend, break and just ignore with absolute impunity? All the -405 case is are files copies from -401.
158. Cases ancillary to an action in rem are given separate case numbers because each case involves a different claim against the property itself. The only reason all of the ancillary case numbers are being generated here is to give the false appearance of an action in rem and generate confusion.
159. This is just one case that has grown exponentially, along with the injuries incurred from the exploitation efforts of these predatory probate attorneys.
- 160.

PART 3 – THE PARTICIPANTS

1. Anita Brunsting

161. Anita Brunsting Family Inheritance Thief, 203 Bloomingdale Circle
Victoria, Texas 77904.

162. Anita Brunsting is the youngest of the five Brunsting trust beneficiaries. Anita was named sole successor trustee to Elmer and Nelva in the original 1996 trust but was removed from Article IV's successor trustee designation with the [2005 Restatement](#). Anita was replaced with Carl Brunsting and Amy Brunsting as successor co-trustees. The [2005 Restatement](#) superseded and replaced the October 1996 Trust agreement in its entirety. Article IV of the [2005 Restatement](#) was amended in September of 2007 to replace Amy with Candace Curtis as successor co-trustee with Carl.
163. Anita schemed and conspired with her parent's disloyal estate planning attorneys to alter the terms of her parent's estate plan and insert herself as trustee of a new trust with terms completely different from the agreement Elmer and Nelva had put in place.
164. Anita planned to steal the family inheritance in such a way that if Carl or Candace complained, she would get to keep it. That allegation was made in [Candace Curtis Original February 27, 2012](#) Petition on [page 20 of 28, para 4](#).
165. Take note that all of the following instruments were an attempt to amend an irrevocable trust and that they all refer to the extinct 1996

trust and none refer to the [2005 Restatement](#) or the [2007 Amendment](#) when it is Article IV's successor trustee designations that are being illegally amended.

[1999-04-30 First Amendment re Anita 100k VF 000808.pdf](#)

[2006-12-31 Anita has Nelva's email Password.pdf](#)

[2007-04-02 Anita \\$2000 4 2 2007.pdf](#)

[2007-04-02 Anita bias towards Drina.pdf](#)

[2007-04-03 Nelva email to Anita Divided equally Thursday April 03 2007.pdf](#)

[2007-04-05 Nelva email to Anita Divided equally Thursday April 05 2007.pdf](#)

[2010-07-30 Freed Notes-Anita called-change the trust PBT-2015-258999-2.pdf](#)

[2010-07-30 Pdf pg 297 Anita Called Carl has Encephalitis Change the Trust VF 000687-691.pdf](#)

[2010-10-06 Anita email to Freed working on Nelva Resignation.pdf](#)

[2010-10-26 Candace Curtis and Carole emails Anita pushing nelva to resign and everything secret.pdf](#)

[2011-01-27 January 27, 2011 Anita Engagement letter.pdf](#)

166. The fish takes the hook thinking to find food but it is the fisher that enjoys the meal. Anita is in control of the check book and thought she would steal the family inheritance only to find herself hostage to a [Steven Mendel Attorney Fee Ransom](#) with an ever increasing payoff.

Attorney Stephen Mendel, [by his own judicial admission](#), is running the whole show.

In Terrorem

167.

2. Candace Kunz-Freed

168. Candace Kunz-Freed of Vacek & Freed P.L.L.P. Bar Card Number: 24041282, 9545 Katy Freeway, Suite 400, Houston, Texas 77024, 713-467-1060.

169. Gross incompetence or bait and switch? After reading Article III in the [2005 Restatement](#) and [Texas Estates Code § 112.034](#)(a) it is clear that the instruments signed by Nelva alone were improperly drafted and give the appearance of making changes that could not be made by Nelva acting alone without the merger of legal and equitable titles.

170. By generating improper trust instruments the estate planning attorneys created the controversy that opened Pandora's Box. All of the injury that follows is built upon these unholy grounds.

3. Bernard Lisle Mathews III

171. Vacek & Freed P.L.L.P. associate attorney Bernard Lisle Mathews III,

Texas State Bar No. 13187450,

172. When trust beneficiary and de jure trustee Candace Curtis filed breach of fiduciary claims in the SDTX Bernard Lyle Matthews III (Mathews) appeared on behalf of Vacek & Freed's new clients, against the beneficiaries disenfranchised by his own works, and he argued that the case fell within the probate exception. Mathews appeared using a Green and Mathew's law firm label to **conceal his conflict of interests**. See Disciplinary Rule 1.06 et seq. This is all fraud.

4. Bobbie G. Bayless

173. Attorney Bobbie G. Bayless Bar Card Number: 01940600, Bayless and Stokes 2931 Ferndale Street Houston, Texas 77098 Phone: 713-522-2224, Fax 713-522-2218. bayless@baylessstokes.com
174. Bayless knew Carl Brunsting had not fully recovered from his coma and she used his name to obtain letters testamentary and for conducting depositions before suit. Carl's disability was not apparent until his [deposition](#) as the only trust beneficiaries to physically appear in the probate court were Carole Brunsting and Candace Curtis.
- a. July 3, 2010 [Carl falls ill with encephalitis](#)

- b. July 29, 2015 [Carl's Deposition](#)
 - c. February 19, 2015 [Carl's Resignation](#) and substitution of his wife Drina as his alleged attorney in fact.
 - d. Bayless admissions at [severance motion hearing](#)
175. Bayless filed two lawsuits sharing a common nucleus of operative facts in two separate courts. This was clearly not for the purpose of pursuing remedy for her client.
176. Why Bayless filed Carl's trust related tort suit in the probate court it was clearly for the purpose of usurping federal court jurisdiction and foreclosing remedy for the trust beneficiaries. There was [never any jurisdiction](#) over this trust in the probate court.
177. [Attorney Bobbie G. Bayless email to Rik Munson Sun, 18 Aug 2013](#)
- "This really needs to be away from Hoyt and under one umbrella so that Anita, Amy, and Carole have to account for what they did. Hoyt has already said he is going to resist doing anything except dividing what is left. Even if you can somehow convince him that isn't good enough, he is going to make your life miserable if you try to make him do more----and in the process potentially do real damage to the existing claims. Maybe my view is colored too much from having been in his court on other cases, but I just don't see any benefit to being over there, and I really don't see any benefit that outweighs the potential harm."*
178. Bayless herself tells us why... to get the case [Away from Judge Hoyt](#) because Hoyt was going to settle it and the attorneys would not be

allowed to play their staged litigation and wealth extraction games.

“Where the federal case is filed substantially prior to the state case, and significant proceedings have taken place in the federal case, we perceive little, if any, threat to our traditions of comity and federalism. See Moses H. Cone Hosp., 460 U.S. at 21-22, 103 S.Ct. at 940 (fact that substantial proceedings have occurred is a relevant factor to consider in deciding whether to abstain). In fact, by filing a state suit after a federal action has been filed, the state plaintiff can be viewed as attempting to use the state courts to interfere with the jurisdiction of the federal courts. We agree with Royal that if we were to hold that Jackson applied in this scenario, litigants could use Jackson as a sword, rather than a shield, defeating federal jurisdiction merely by filing a state court action. Neither Jackson nor the concerns underlying it mandate such a result.” Royal Ins. Co. of America v. Quinn-L Cap. Corp., 3 F.3d 877, 886 (5th Cir. 1993), [cited by](#) Texas Employers' Ins. Ass'n v. Jackson, 862 F.2d 491, 506 (5th Cir. 1988) (en banc) Arroyo v. K-Mart, Inc., 24 F. Supp. 2d 169 (D.P.R. 1998)

179. There is no probate case, probate matter or probate proceeding. The probate court never had subject matter jurisdiction over the Brunsting trust controversy. None of the attorneys involved have earned any fees and they are not entitled to immunity because they have not been representing clients in litigation.

5. Cory S Reed

180. Attorney Cory S Reed, Texas Bar No. 24076640, Thompson Coe
4400 Post Oak Parkway Suite 1000 Houston, TX 77027 713-403-

8213. CReed@thompsoncoe.com

181. Thompson/Coe attorney is representing estate planning attorney Candace Kunz-Freed in [Harris County District Court 164 Cause No. 2013-05455](#), a malpractice case brought by Bayless on behalf of the estates of Elmer and Nelva Brunsting. This case was abandoned by Bayless when she filed Carl's resignation.
182. Thompson Coe Attorneys Cory S Reed and Zandra Foley were simultaneously [representing Clarinda Comstock](#), associate Judge for Harris County Probate Court No. 4, as a co-defendant in SHERRY LYNN JOHNSON vs. DAVID DEXEL, ET AL [SDTX Case 4:16-cv-03215](#). This **conflict of interest** was never disclosed to the parties.
183. The estate planning attorneys have been neatly sequestered in the District Court while the entire collection of injured parties have been held hostage in the probate court and the attorneys for the malpractice insurance company are the only attorneys that have filed claims alleging they are being held hostage. Candace Curtis made those claims in the RICO.

6. Stephen A. Mendel

184. Attorney Stephen A. Mendel Bar Card Number: 13930650, The

Mendel Law Firm, L.P. 1155 Dairy Ashford, Suite 104 Houston
77079 United States (US) Phone: (281) 759-3213 Fax: 281-759-3214.
steve@mendellawfirm.com

185. Mendel is pathologically dishonest. He has a number of games that he plays. One of his main artifices is sworn account. He likes to run up an outrageous bill before springing it on his client. When the client balks Mendel files a claim on a sworn account and gets a judgment in a purely administrative proceeding.
186. Mendel has another scam involving real estate and LLC's and trusts that I don't completely understand.
187. Anita thought she would steal the family inheritance only to find herself being held hostage to Mendel's fee demands. There is no evidence that Anita ever payed Mendel anything. It is fairly obvious and reasonable to conclude that under Anita's retainer agreement with Mendel that his fees were going to come from the trust and not Anita herself. That is a violation of the federal injunction and a conspiracy to misappropriate fiduciary assets.

7. Attorney Neal Spielman

188. Attorney Neal Even Spielman Bar Card Number: 00794678, TX

License Date: 11/03/1995, Griffin and Mathews 1155 Dairy Ashford
Suite 300, Houston, Texas 77079 Phone: 281-870-1124
nspielman@grifmatlaw.com

189. Mr. Billable Syllable is not too bright. He was brought into the game by his friend Brad Featherston who worked for Mendel. When Featherston quit Mendel, Spielman continue along following Mendel's lead.
190. Anita and Amy Brunsting were originally represented by attorneys from Mills Shirley. After the alleged remand and a mediation, the Mills Shirley attorneys filed a [motion to withdraw](#) citing a conflict with their clients. The motion was [heard in chambers and granted](#).
191. After Mendel and Spielman make their appearance's all of the pleadings were filed jointly. All Spielman had to do to defend Amy was file an exception to Anita's conduct but he chose to follow Mendel. A chain is only as strong as its weakest link.
192. The little B-Grade theatrical [shit show put on by Clarinda Comstock and Neal Spielman](#) on March 9, 2016, in the wake of Gregory Lester's fraudulent administrators report, was the final straw. I had read enough horror stories about the probate mob to know exactly where

they were headed. No docket control order, no executor, extortion threats in the privacy of mediation, refusal to divide the trust as required and failure to deposit income into an appropriate account for each beneficiary and inability to get an actual hearing without it being converted into a “status conference” made it clear where the mob was headed. This March 9, 2016 clown show compelled filing RICO claims then rather than making our position known now that they have arrived at the destination they were headed towards the whole time.

8. Gregory Albert Lester Esq.

193. Eligible to Practice in Texas Bar Card Number: 12235700, TX License Date: 11/02/1984, Primary Practice Location: Houston , Texas PO Box 79766 Houston, TX 77279-9766 Practice Areas: Wills-Trusts-Probate.
194. [\[Tab 60\]](#) After the wiretap recordings were used to eliminate the February 20, 2015 DCO and evade dispositive motions hearings, Attorney Gregory Lester was appointed Temporary Administrator for the “*estate of Nelva Brunsting*” for purposes of evaluating the “claims” in the case.

Tex. Est. Code § 52.002 CLAIM DOCKET

*(a) The county clerk **shall** maintain a record book titled "Claim Docket" and shall record in the book each claim that is presented against an estate for the court's approval.*

195. The Report of Temporary Administrator Gregory Lester [[Tab 59](#)] never mentions the will of Nelva Brunsting, fails to identify any property subject to in rem claims and never mentions a single claim against the “*estate of Nelva Brunsting*”.
196. Instead, Temporary Administrator Gregory Lester’s Report runs straight to the In Terrorem clause in the heinous extortion instrument referred to as the August 25, 2010 “[Qualified Beneficiary Designation and Testamentary Power of Appointment under living Trust Agreement](#)” (QBD) containing a no contest clause that includes corruption of blood. This instrument is not in evidence and the defendant alleged co-trustees will not produce the instrument and qualify it as evidence because they cannot. See [[Tab 77a](#)], yet they continue to act like it’s been held valid... by Gregory Lester.
197. “An honest temporary administrator’s report [[ROA.17-20360.611](#)] would have pointed these things out instead of attempting to validate the otherwise illicit QBD [forgery called 8/25/2010 QBD].

198. Defendants cling to this instrument in their assertions of fact, but refuse to produce it and qualify it as evidence. They will not because they cannot and even if they could it is not a legitimate trust instrument.
199. Gregory Lester's bill for services [[Tab 78](#)] shows that he spent the lion's share of his time with Attorney Neal Spielman and his statement does not match [Jill Young's statement](#) for the periods each billed for meeting with the other. Fraudulent Administrator Gregory Lester (administrator of nothing) also filed a supplement to his report that is patently false [[Tab 77](#)]. Candace Curtis was the alternate in Article IV of the [2005 Restatement](#).

9. Attorney Jason Bradley Ostrom (deceased)

200. The first thing Ostrom did after obtaining a fraudulent remand from SDTX and filing a "Motion to Transfer" in the probate court, was to file a [motion for a \\$40,000.00 trust distribution](#) (Aug. 27, 2014) to pay his alleged fees.
201. In response to Ostrom's motion probate theater plaintiff Carl Brunsting (attorney Bobbie G. Bayless) [filed an objection](#). Defendant's attorney Stephen Anthony Mendel also filed an opposition.

202. Candace Curtis fired Ostrom after looking for information in the various court dockets and seeing that Ostrom had caused the case to be juxtaposed to the probate theater that Candace had gone to the 5th Circuit to avoid and that her parents' had paid an estate planning firm to avoid.
203. Then we see the [independent executor resign](#) Feb 19, 2015, an [Agreed Docket Control Order](#) Feb 20, 2015, and an agreed Order to Consolidate "estate of Nelva Brunsting 412249-401" with "estate of Nelva Brunsting 412249-402" when there was nobody representing the closed estate in the 401 case and no actual plaintiff in the 402 that wasn't really there...
204. Ostrom showed up in the RICO action SDTX-Cause No.4:16-cv-1969 representing fraudulent administrator Gregory Lester against his former client that he stabbed in the back.
205. Attorney Jason Ostrom [Doc 78 p.1](#) also pled that the RICO arose from a "probate case".

Tamorah Christine Butts

206. Attorney Christine Riddle-Butts, former Judge for Harris county Probate Court Number 4, Texas State Bar No. 24004222,

207. It may have been imprudent or otherwise politically clumsy to name a sitting judge in a RICO suit but Christine Butts is Board Certified in estate planning and probate law. If anyone should know the probate court had no subject matter jurisdiction over this trust controversy, it would be someone board certified in estate planning and probate law in Texas.
208. Judge Butts only made one appearance, appointing Temporary Administrator Gregory Lester. After that Butts turned everything over to Associate Judge Clarinda Comstock, a co-defendant in [Johnston v Dexel et al.](#)
209. The Order appointing Lester says that all parties were represented by counsel but Candace Curtis was not represented by counsel.

Clarinda Comstock

210. County Employee/Appointee (Associate Judge) Clarinda Comstock was a codefendant with Christine Butts in SHERRY LYNN JOHNSON vs. DAVID DEXEL, ET AL [SDTX Case 4:16-cv-03215](#). Clarinda Comstock in that case was represented by Thompson Coe attorney Zandra Foley who, along with Thompson Coe attorney Cory Reed were also representing the Vacek & Freed estate planning

attorneys in the Brunsting trust case that was filed in the district court and going nowhere without a plaintiff; at the same time the Brunsting family was being held hostage in Probate Theater No. 4.

PART 4 – CIVIL, COMMON LAW, AND PREDICATE ACT CLAIMS

1. Denial of Substantive and Procedural Due Process 42 U.S.C. § 1983 (Civil)

211. Defendants cannot produce a transcript of a single evidentiary hearing had in any state court and cannot show a single finding of fact or conclusion of law following an evidentiary hearing in any state court.

2. Breach of Fiduciary (Common Law)

212. A fiduciary relationship exists. Defendants occupy and have failed to perform obligations of the office of trustee. Plaintiff has been injured by the de facto co-trustees failure to perform the fiduciary obligations of the office they claim to occupy.

3. Aiding and Abetting Texas Penal Code [§§ 7.01 - 7.02](#)

213. All traditional distinctions between accomplices and principals have been abolished.

4. Illegal Wiretap Recording

214. Candace Curtis original federal complaint, filed February 27, 2012, is an affidavit verified by Jurat, in which Candace alleges that Anita and Amy had been wiretapping Nelva's phone. Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28.

[2012-02-27-Wiretap-Recording-reference-in-Affidavit](#)

2015-02-27 [BRUNSTING 5836.wav](#)

2015-02-27 [BRUNSTING 5837.wav](#)

2011-04-22 [BRUNSTING 5838.wav](#)

2011-03-21 [BRUNSTING 5839.wav](#)

2015-07-22 [Emergency Motion for Protective Order](#)

[2015-08-03 Estate of Nelva E Brunsting August 3, 2015 Wiretap Transcript](#)

The CD is labelled with the Mendel Law Firm and dated 6/26/2015, the same day it was mailed and the same day they filed their no evidence motion.

Two of the .wav files are dated February 27, 2015

One is dated March 21, 2011 and one is dated April 22, 2011

All of the email .msg files show a modified date of March 18, 2015

The first message to contain a video (VIDEO0002.3gp) (Carole to Anita) is BRUNSTING5822 dated May 23, 2011

Then BRUNSTING5823 dated May 25, 2011 (Carole to Amy, Anita & herself) VIDEO0009.3gp

BRUNSTING5824 dated May 25, 2011 (Carole to Amy, Anita & herself) VIDEO0010.3gp

BRUNSTING5824 dated May 25, 2011 (Carole to Amy, Anita & herself) VIDEO0011.3gp

A receipt dated March 17, 2011 (Brunsting004570) shows one ICD-PX312 digital voice recorder purchased at Best Buy in Houston

The same Bates Document bears a 2nd receipt from Radio Shack for a 4200223 3' 1/8' M-M PATCH CABLE. Apparently Tino was reimbursed for the purchase from the Mom/Carole Account.

The Sony ICD-PX312 digital voice recorder has a 72 hour battery life and a USB AC power adaptor AC-U501AD. It has a built in 2GB memory and an SD expansion slot up to 16GB which is a lot of MP3 recording time.

It's capable of voice activation and could have been left connected to the phone in listening mode 24/7

A Sony ICDPX312D Recorder was bought by Tino¹ March 17, 2011

Recordings known March 21, 2011 and April 22, 2011

The .wav files dated 2/27/2015 were both created and changed on that date. That would imply that they were extracted from another recording media.

All of the email .msg files show a modified date of March 18, 2015

All of the emails containing attached video's are dated May 23 & 25, 2011

What can be presumed from what we have:

The voice recorder was purchased March 17, 2011 and used to intercept electronic communications on Nelva's phone line between March 21 and April 22, 2011

Carole made video recordings of Carl on her Android and sent them to herself, Amy and Anita May 23 & 25, 2011

¹ Care giver for Nelva Brunsting

Someone was playing with these files in February and March of 2015 but waited until late June 2015 to disseminate them.

215. The original master will have a recording of the conversation Candace had with Nelva where Nelva, when asked about the 8/25/2010 QBD, says she did not such thing. This would be the reason we got portions of recording that had been extracted from a larger master just before Carl's resignation.
216. After Attorney Jason Ostrom's
- a. fraudulent remand to the probate theater,
 - b. fraudulent transfer order,
 - c. resignation of Independent executor,
 - d. Agreed Docket Control Order,
 - e. Fraudulent consolidation agreement and
 - f. Candace Curtis firing of attorney Ostrom and defending against the imposter Co-Trustee defendants No-evidence Motion for Summary Judgment;
 - g. Illegal wiretap recordings were received via certified mail from the Mendel Law Firm. Bayless then filed an [Emergency Motion for Protective order](#), using the illegal wiretap recordings to evade the agreed DCO, summary judgment hearings and trial. No one testified at the [emergency order hearing](#) involving those recordings and no order was ever issued after that hearing.
 - h. There would not be another DCO in that court for more than six years. What do the [local rules](#) say about having a date certain for trial?

5. FRAUD

217. This entire charade is a conspiracy within a conspiracy involving

third party interception of family generational asset transfers. On the front end it is an [estate planning bait and switch](#) and on the backend we have an attorney collusion, wealth extraction and money laundering conspiracy committed under the color of law. The backend can properly be described as “Poser Advocacy” as there is no actual petitioning for a just remedy for the trust beneficiaries who are the real parties in interest. Poser Advocacy has also been given the label of “[conflictineering](#)”.

218. After the first Fifth Circuit appeal Candace Curtis returned to the Southern District of Texas seeking an injunction to protect the trust assets from pilferers and squanderers. [Transcript April 9, 2013 Hearing](#) on Candace Curtis Application for Preliminary Injunction in Southern District of Texas Case Number 4:12-cv-592. The Honorable Kenneth Hoyt Jr, United States District Court Judge for the Southern District of Texas summarized the probate mafia staged litigation methodology in these two paragraphs:

“Here's what I'm suggesting. I am suggesting that this will not become a feast and famine, feast for the lawyers and famine for the beneficiaries in this Court where

we are sitting around churning the time out...” Page 35

*So what I am telling the parties, and I am
saying to you and to all those who have ears to hear, that
this matter is going to get resolved. It's not going to turn
into one of these long, drawn-out episodes like the ones we
see on TV that go on for years where lawyers make money and
people walk away broke. Page 40*

219. This is exactly what we are seeing in the public record and it is a description of the mechanics of the money cow hostage ransom and money laundering operation.
220. In the complete absence of subject matter jurisdiction in the probate theater, none of the mediations can be considered confidential and those can be quite damning as well.

6. FORGERY

221. The August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement [8/25/2010 QBD/TPA] appears in the record with [three different signature page versions](#).
222. In the Probate court June 26, 2015 Defendants, ANITA AND AMY

BRUNSTING, filed a [No-Evidence Motion for Partial Summary Judgment](#) claiming there is no evidence that their precious August 25, 2010 Qualified Beneficiary Designation (Q.B.D.) and Testamentary Power of Appointment under Living Trust Agreement is invalid, PBT-2015-208305.

223. I have already explained that you cannot alter, amend or change an irrevocable trust by the abuse of language and the disregard for fundamental distinctions in definitions of the terms we use to define legal theories. The most heinous part of this passive aggressive “no contest” scheme is corruption of the blood, which can only serve to enlarge the villain beneficiaries share, and that **is** a violation of [the In Terrorem Clause](#). This scheme was pointed out in Candace Curtis original federal complaint. Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 [Page 20 of 28](#), paragraph 4.

- a. (1) [CAN before the signature.](#)
- b. (2) [Signature above the line](#)
- c. (3) [Signature on the line](#)

7. Extortion - The heinous Extortion Instrument

224. The August 25, 2010 QBD/TPA⁶ has been referred to as the “heinous

extortion instrument” because it contains an in Terrorem clause that violates public policy⁷ and literally contains provisions that are contrary to the fundamental nature of a trust relationship to wit, obligations of the trustee that are enforceable by the beneficiary. A trust relationship requires (1) separation of legal and equitable titles; (2) active and affirmative duties of the trustee and (3) the obligations of the trustee must be enforceable by the beneficiary. The August 25, 2010 QBD/TPA’s (3) do not qualify as a trust instrument, a testamentary instrument nor for any other purpose other than to create controversy and to threaten the victims of the money cow hostage, attorney fee ransom and launder by contract scheme called “Settlement Agreement”. Under no circumstance would anyone in the right mind enter into a contract with the likes of Stephen Mendel, attorney for inheritance thief Anita Brunsting.

225. The Attorneys used the threat of “Disinheritance” under the tainted extortion instrument referred to as the August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement [8/25/2010 QBD] in effort to coerce the victims into capitulating to their money laundering settlement

agreement scheme.

226. With the complete absence of subject matter jurisdiction the “confidential mediations” are not confidential.
227. Their forged 8/25/2010 QBD has been repeatedly objected to as **assuming facts** not in evidence and yet they [continue to act as if it is the controlling trust instrument](#). **They have not produced it (them) in attempt to qualify it (them) as evidence and they will not produce it (them) because they cannot produce it (them).** All three signature page versions are digital forgeries. Even if they could produce one version and qualify it as evidence it is invalid for numerous reasons including the fact that the QBD is considered an amendment and the trust became irrevocable with the passing of Elmer Brunsting April 1, 2009.
228. Elmer was declared NCM in June 2008; two weeks before the first set of illegitimate change instruments were created and Nelva held no plenary power to make changes to the trust without causing merger, in which case the trust would fail. see [Title 9 Texas Property Code 112.034](#). However, equity presumes that which should have been done has been done thus, the trust does not fail; the improper change

instruments fail.

229. The trust indenture is the [2005 Restatement](#) as Amended in 2007. Carl Brunsting and Candace Curtis are the de jure co-trustees and the performance of their fiduciary obligations has been tortuously interfered with for more than a decade.

8. Fraudulent Securing of Document Execution.

230. [Texas Penal Code § 32.46](#) - The Heinous Extortion Instrument was falsely notarized by estate planning attorney Candace Kunz-Freed and no matter how you measure it, the instrument is fraudulent. In examining Candace Kunz-Freed's case notes one can find no entry on or near August 25, 2010 when Nelva was alleged to have signed the QBD instrument that supposedly amended an irrevocable trust all by her lonesome.

9. Fraudulent Destruction, Removal, or Concealment of Writing

231. The heinous extortion instrument is not in evidence, has been objected to as assuming facts not in evidence and they have not produced it in effort to qualify it as evidence because they cannot produce it and qualify it as evidence.

232. While concealing these three forged instruments, [they continue to act as if it is the controlling trust instrument](#) in violation of [Texas Penal Code §§ 32.47](#) and [Texas Penal Code § 32.55](#) Financial Abuse of Elderly Individual. Using the corruption of blood provision in this forged and otherwise illicit creation they claim to have tainted the blood of Candace her son Andrew and grandson Andrew Jr. (AJ).

10. MISAPPLICATION OF FIDUCIARY PROPERTY

233. Misapplication of fiduciary property in excess of \$300,000.00 is a first degree felony theft crime under [Texas Penal Code § 32.45](#).

234. Candace Curtis original federal complaint, filed February 27, 2012, [identified Anita's plan](#) to use the heinous extortion instrument to steal the family trust in such a way that if Carl or Candace complained, she would get to keep it. They have proved that in spades.

11. Exploitation of Child, Elderly Individual, or Disabled Individual

235. Misapplication of fiduciary property held in trust for [elderly and disabled beneficiaries](#) is a felony violation of [Texas Penal Code § 32.53](#)

236. This would be a good time to take an inventory of the living trust

- beginning on December 21, 2010 when Anita Brunsting, with the excellent assistance of the settlors disloyal estate planning attorney Candice Kunz-Freed, seized control of the family trust.
237. At the passing of Nelva Brunsting on November 11, 2011, all right, title and interest in the family trust vested in the five beneficiaries in equal proportions. However, since the passing of Nelva Brunsting, the Beneficiaries have received little or no benefit from the family trust while several non-beneficiaries have enjoyed distributions from the Family Trust:

What assets have been distributed from the Brunsting family trust in the last thirteen years?

- a. \$5000.00 Attorney Jason Ostrom
- b. \$5000.00 Attorney George Vie III
- c. \$6500.00 Andrews Kurth L.L.P. mediation
- d. \$19,907.40 to attorney Gregory Lester, Temporary Administrator for the non-existent “Estate of Nelva Brunsting”. How is the trust supposed to recover loans to an estate that does not have a corpus?
- e. \$10,620.73 to Jill Willard-Young, attorney for attorney Gregory Lester, Temporary Administrator for the “Estate of Nelva Brunsting”. How is the trust supposed to recover loans to an estate that does not have a representative or a corpus?
- f. \$6500.00 Mediation with William Miller of Andrews Kurth LLP
- g. \$? Mediation with Judge Seymour - unknown
- h. \$? Mediation with Judge Davidson – unknown

- i. \$100,000 Distribution to Carole Brunsting
 - j. No distributions to Carl or Candace
 - k. -\$300,000.00+ in excess taxes due to trustee failure to distribute trust income to the beneficiaries.
238. None of this accounts for money spent on costs or fees already paid to attorneys by the beneficiaries such as [the \\$250,000 Carl testified that he had already paid Bayless.](#)
239. None of this account's for assets squandered and lost such as expired EE bonds no longer redeemable.
240. These figures also fail to include Anita's self-dealing or her non-disclosed and non-equalized distributions made in secret before Nelva passed. In the face of all this the alleged trustee defendants are demanding \$537,000.00 in legal fee allocations without evidence of a retainer agreement describing the work to be performed, or an accounting statement describing the work actually performed for which the beneficiaries of the trust would be liable under any theory. Fortunately these issues can be addressed by the Attorney Fee Disclosures made in Southern District of Texas [SDTX- Case 4:22-cv-1129]

12. Obstruction

241. Two halves of the same controversy was filed in separate state courts.

The first half was filed in Harris County District Court 164 and the other half in a probate court (with no subject matter jurisdiction) with the intent to interfere with the jurisdiction of a federal court.

242. Poser Advocacy is where the attorneys sit around churning out the billing hours and the real parties in interest cannot even buy an evidentiary.

- a. [Can't get a hearing 2016-08-03 Case 4-12-cv-00592 Doc 115 Rule 60 Motion Pages 9-10.pdf](#)
- b. [Can't get a hearing 2016-12-15 - CA H-16-1969 Transcript Preliminary hearing RICO Page 46.pdf](#)
- c. [Can't get a hearing 2017-08-13 Appellants Opening Brief on Appeal 17-20360 Pages 33-34.pdf](#)
- d. [Can't get a hearing 2017-09-26 RICO - Appellee Brief Binder Pages 20-21.pdf](#)
- e. [Can't get a hearing 2017-12-02 - Appellants Reply Brief on Appeal 17-20360 Page 15.pdf](#)
- f. [Can't get a hearing 2017-12-02 - Appellants Reply Brief on Appeal 17-20360 Pages 29-30.pdf](#)
- g. [Can't get a hearing 2018-09-05 Responses to Defendants Motions to Dismiss Combined Page 73.pdf](#)
- h. [Can't get a hearing 2021-01-03 ROA 20-20566 Page 1014.pdf](#)
- i. [Can't get a hearing 2021-04-19 Appellees Record Excerpts Page 168.pdf](#)
- j. [Can't get a hearing 2022-01-06 412249-401 Carole Emergency Motion Hearing Transcript Page 30.pdf](#)
- k. [Can't get a hearing 2022-07-12 01-22-00514-cv Mandamus Record Index Page 1700.pdf](#)

Complaints of Stasis by Design

- a. [2016-05-07 Case 4-12-cv-00592 Doc 115 Petition for Rule 60\(b\)\(6\) Relief Final.pdf](#)
- b. [2018-09-05 Responses to Defendants Motions to Dismiss Combined.pdf](#)
- c. [2021-01-03 ROA 20-20566.pdf](#)
- d. [2021-02-11 Appellants opening brief on appeal 20-20566.pdf](#)
- e. [2021-04-19 Appellees Record Excerpts.pdf Addendum to Original complaint.pdf Hostage](#)
- f. [Pages 1-1673 from 2017-06-27 ROA.17-20360 Curtis v Kunz-Freed.pdf](#)
- g. [Pages 1674-3430 from 2017-06-27 ROA.17-20360 Curtis v Kunz-Freed.pdf](#)
- h. [Part 1_2021-01-03 ROA 20-20566.pdf Sequestered](#)
- i. [Tab 100 2021-01-03 ROA 20-20566.pdf](#)
- j. [Tab 99 2017-06-27 ROA.17-20360 Curtis v Kunz-Freed.pdf](#)

Complaints of being held Hostage

- a. [2016-05-07 Case 4-12-cv-00592 Doc 115 Petition for Rule 60\(b\)\(6\) Relief Final.pdf](#)
- b. [2016-07-05 Case 4-16-cv-01969 Doc 1 Harris County RICO Complaint.pdf](#)
- c. [2017-08-13 Appellants Opening Brief on Appeal 17-20360 Filed.pdf](#)
[2021-07-04 412249-404 Reply to Carl's Answer.pdf](#)
- d. [Addendum to Original complaint.pdf](#)
- e. [Hearings had and Orders entered in 9 years 6 months 11 days in 412249-401.pdf](#)
- f. [Part 1_2021-01-03 ROA 20-20566.pdf](#)

- g. [Part 2 2021-01-03 ROA 20-20566.pdf](#)
- h. [Part 3 2021-01-03 ROA 20-20566.pdf](#)
- i. [Tab 110b 2022-07-10 Mandamus Record Index.pdf](#)

[Who should prosecute the malpractice claims against Vacek.pdf](#)

Perps Sequestered

243. Complaints about Vacek & freed being sequestered in the District court while the victims are held hostage for ransom in the probate theater.

- a. [2016-05-07 Case 4-12-cv-00592 Doc 115 Petition for Rule 60\(b\)\(6\) Relief Final.pdf](#)
- b. [2016-07-05 Case 4-16-cv-01969 Doc 1 Harris County RICO Complaint.pdf](#)
- c. [2018-09-05 Responses to Defendants Motions to Dismiss Combined.pdf](#)
- d. [2019-11-22 file stamped Bill of Review.pdf](#)
- e. [2021-01-03 ROA 20-20566.pdf](#)
[2021-07-04 412249-404 Reply to Carl's Answer.pdf](#)
- f. [2021-07-13 412249-404 Reply to Drina Brunsting.pdf](#)
- g. [2023-10-02 Appellees' Brief \(Final-v2\).pdf](#)
- h. [Addendum to Original complaint.pdf](#)
[Pages 1-1673 from 2017-06-27 ROA.17-20360 Curtis v Kunz-Freed.pdf](#)

13. Money laundering [Texas Penal Code § 34.02](#)

244. The heinous extortion instrument a/k/a the 8/25/2010 QBD, has been continually used to make disinheritance threats in effort to coerce the

beneficiaries to enter into a settlement agreement that would launder the attorneys ransom under the label of “[fees for legal services](#)” in violation of [Texas Penal Code § 34.02](#).

14. 18 U.S.C. [§ 1956](#) Laundering of Money Instruments

245. Section 1956 creates the crime of money laundering, and it takes dead aim at the attempt to launder dirty money. Why and how that money got dirty is defined in other statutes. Section 1956 does not penalize the underlying unlawful activity from which the tainted money is derived. That the money is represented to be the proceeds of one of the listed, illegal sources is, of course, essential to culpability. The statute, however, does not distinguish among these specified unlawful activities either in degrees of importance or levels of criminal culpability. All the specified unlawful activities are clustered, almost willy-nilly, under a single definition section of the statute. So long as the cash is represented to have come from *any* of these activities, a defendant is guilty of the substantive offense of money laundering.

U.S. v. Stavroulakis, 952 F.2d 686, 691 (2d Cir. 1992)

These observations apply with even greater force to Section(s) 1956(a)(1), which expressly extends the scope of the prohibition

to a person who merely knows that the money to be laundered was generated by "some form" of crime. Given Section(s) 1956(a)(1)'s distinction between the requirement that a defendant "know" that the money was the proceeds of "some form" of unlawful activity, and the requirement that "in fact" it was the proceeds of a "specified" unlawful activity, we conclude that a violation of Section(s) 1956(a)(1)(B)(i) is established if the government proves (1) that the defendant conducted a financial transaction; (2) that the transaction in fact involved the proceeds of specified unlawful activity as defined in Section(s) 1956(c)(7); (3) that the defendant knew that the property involved in the financial transaction represented the proceeds of some form of unlawful activity; and (4) that the defendant knew that the financial transaction was designed in whole or in part to conceal or disguise the source, ownership, control, etc., of those proceeds. U.S. v. Maher, 108 F.3d 1513, 1527-28 (2d Cir. 1997)

246.

247.

15. Docket Tampering

248. The Agreed order to consolidate cases was [removed from the digital record](#) shortly after Candace Curtis fired Jason Ostrom. [I purchased a copy](#) as soon as I saw it in the docket but I didn't want to get a certified copy because I did not want anyone to take particular note. You will see that [my copy](#) does not have a watermark saying "UNOFFICIAL".

249. There is an email thread between Associate Judge Clarinda Comstock

and Carole Brunsting where Comstock says consolidation never happened. Then Bayless gets involved and the hard copy is suddenly found rolling around in a drawer. Comstock has no idea how it never made it to the digital record. I'm wondering how it was removed?²

16. PERJURY

250. On March 6, 2012, in the SDTX, Amy Brunsting files a [sworn affidavit](#) claiming “Personal Asset trusts” had been setup for the beneficiary as is the case for Candace. The concept of “Personal Asset trusts” came in with [the heinous 8/25/2010 extortion instrument](#), after the trust became irrevocable and is not part of the lawful trust agreement between the settlors.

² [2019 01 28 emails re consolidation order](#)

[2019-01-28 email Bayless Fw_ 412,249-401 Agreed Order to Consolidate Cases found rolling around in a drawer](#)

17. Violation of the Injunction

251. Violation of [Preliminary Injunction](#): The alleged Co-Trustees were ordered to deposit income into an appropriate account for the beneficiary. No accounts have been “set up” for the beneficiary as Amy’s affidavit claims and no income has been distributed.
252. Anita could not enter into a contract to pay Mendel from the trust without the approval of a court of competent jurisdiction and Mendel has already received \$10,000 from the trust without permission. The trust is still in force and they have nowhere to go for permission because the probate court has no subject matter jurisdiction over this trust and never did.
253. We need to see Anita’s retainer agreement with Mendel because he seems to think he gets his fees from the [Candace share of the trust](#). The 1st thing Ostrom did in the probate court was ask for \$40,000 from the trust to pay his fees. [Mendel’s answer](#) points out on page 1 that distributions to pay attorney fee creditors are not authorized by the trust but in fact prohibited by the trust. By this judicial admission the alleged co-trustees summary judgment motion and proposed order is a challenge to the settlors trust agreement.

254. It is believed that Anita's contract with Mendel will show that Anita promised Mendel that his fees would come out of "the trust" which is not only champerty, but a violation of the [preliminary injunction](#) and [a judicial admission that Anita is challenging the trust](#). Mendel has pursued his [fraudulent fee claims](#) while obstructing due process, making disinheritance threats and extortion demands based upon a forgery that is not a legal document even if they could produce it and qualify it as evidence. As one will note, Mendel lied to Judge Rosenthal claiming that Candace Curtis sued her siblings in the probate court. Candace sued imposter co-trustees Anita Brunsting and Amy Brunsting in the Southern District of Texas and in no other courts. Attorney [Neal Spielman also filed his fee claims](#) in the SDTX and in no other court.

18. Tortuous Interference With Fiduciary Obligations

255. The "trust agreement" is contained in the [2005 Restatement](#) and the [September 6, 2007 Amendment](#). Carl Henry Brunsting and Candace Louise Curtis are the lawful co-trustees. The de facto co-trustees are in breach of fiduciary pursuant to de facto officer doctrine and remain in wrongful possession of the trust corpus. Their attorneys belong

behind bars with co-conspirator Bobbie G. Bayless.

Enterprise 18 U.S.C. §1962(d)

256. Third Party Interception (theft) of family generational asset transfers is a color of law criminal enterprise being run out of state probate courts. The methods are (1) probate, (2) family trust busting and (3) the abduction, robbery and hospice processing of our elders and anyone else with substantial wealth who may be vulnerable clothing the nakedness of this human trafficking crime with the glorifying banner of “Guardianship Protection”.

257.

Pattern of Racketeering Activity

258. The objective is obvious and is accomplished through staged litigation themes such as seen in the case in point where all of the predicate acts are either a part of the objective or an artifice used in accomplishing the objective.⁸

259. I think it also obvious that there has been [agreement](#) between the [predatory attorneys](#) from the onset. We can gather this solely from the fact the bait and switch grifters have been sequestered while the suckers have been held in stasis and fed high price tag bullshit.

PART 5 – DAMAGES

260. The damages are substantial and include everything from excess taxes paid due to refusal to distribute income as commanded by the federal injunction to misapplication, self-dealings and attorney thefts.

261. My domestic partner, trust beneficiary and de jure trustee Candace Curtis, is an accountant who can decipher the monetary damages when she is able to obtain access to the necessary information.

- *“It is doubtless true that an administrator or trustee in handling trust property is required to keep a strict and accurate account of such assets and that he is chargeable with all assets coming into ...” Maxwell's Unknown Heirs v. Bolding, 36 S.W.2d 267, 268 (Tex. Civ. App. 1931)*

262. I am more concerned with the public trust and the injuries suffered by ordinary people at the hands of color of law grifting predators on a national scale. I am not seeking remuneration for myself.

PART 6– SYNOPSIS OF ISSUES AND BULLET POINTS

263. There are many questions that arise from an examination of the conduct of the probate theater actors but few answers if any.

1) **Dominant Jurisdiction**

Southern District of Texas
Harris County District Court 164
Harris County Probate Court No. 4 (no estate to administer and thus,
no ancillary jurisdiction)

“A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending.” Bailey, 862 S.W.2d at 585; Estate of Hanau, 806 S.W.2d 900, 904 (Tex.App.-Corpus Christi 1991, writ denied). Texas Comm. Bk. v. Correa, 28 S.W.3d 723, 727 (Tex. App. 2000)”

2) **Independent Administration; Pour-over into inter vivos trust**

264. Once the estate pours over, all right title and interest vests in the sole devisee and become trust business. An “estate” is a legal fiction defined as personal property. Property is governed under the property code. If we use Estates Code Section 32.006 to establish subject matter jurisdiction over an inter vivos trust in a statutory probate court in an independent administration without a pending estate administration to be ancillary to, what other estates codes would apply to this controversy?

265. Does “Independent Administration” mean the probate court has plenary jurisdiction over the administration of an estate?

3) **Absence of Statutory Probate Court Jurisdiction**

266. Was the Settlor a Decedent in a probate matter pending in the probate court at the time the independent executor filed his trust related tort suit in the probate court? [[Local Rule 2.6.5](#) and [Property Code § 115](#)] Independent administration ends when the debts are paid and the assets have been distributed. Independent administration means independent of probate court jurisdiction.

267. Was the independent executor foreclosed from filing his trust related tort suit in the probate court by the Decedents Will? See [Tex. Est. Code § 402.001](#) and dominant case law? Did Trust beneficiary Carl Brunsting ever have individual standing in the administration of the Settlor's estates when the only Devisee was the trust? Was Carl ever competent to occupy the office of Independent Executor?

STANDING

268. Carl is not a devisee and never had individual standing in the probate of the estate of Nelva Brunsting.

269. After the recording of [the Decedents Will](#) and the filing of the verified inventory the Decedents Will foreclosed the independent executor

from taking any further action in the probate court. Independent executor was foreclosed by statute from taking any further action in the probate court unless specifically authorized under Title II of the estates code. [Tex. Est. Code § 402.001](#)

270. Carl's [April 9, 2013](#) tort suit fails to even mention the estates code.

4) Was there a Remand?

271. Where there was no removal there can be no return. "Remand" means 'send back.' It does not mean 'send elsewhere.'" Taliaferro v. Goodyear Tire, 265 F. App'x 240, 244 (5th Cir. 2008)

"A case may be remanded only to the court from which it was removed and the federal district court does not have the authority to remand a case originally brought in federal court." See First National Bank of Pulaski v. Curry, 301 F.3d 456, 467 (6th Cir. 2002).

5) Was there ever a transfer?

272. Federal to State Transfer Theory Fails 28 U.S.C. § 1404. "Under 28 U.S.C. § 1404, a federal court only has authority to transfer a case to another federal court, with no authority to transfer to a state or foreign court." *Southeastern Consulting Group, Inc. v. Maximus, Inc.*, 387 F. Supp. 2d 681, 683 n.2 (S.D. Miss. 2005). "While a case improperly removed from a state

to a federal court may be remanded, there is no authority to transfer a case from a federal to a state court.” *Ridgway v. Baker*, 720 F.2d 1409, 1412 (5th Cir. 1983

6) Was there a consolidation?

273. 2015-03-16 [Tab 46](#) Docket -402 Certified “[Agreed Order to Consolidate](#)” ordering that all pleadings filed under 412,249-402 be moved into 412,249-401 and that -402 be closed to further filing (There is no evidence that anything was actually moved or copied into -401.)

274. There was no executor or personal representative for estate of Nelva Brunsting on March 16, 2015 when this agreed order was signed. Drina could not legitimately stand in for Carl in either capacity, individually nor as independent executor.

275. The federal case, “*Candace Louise Curtis vs Anita Brunsting et al. No. 4:12-cv-592*” is not the *estate of Nelva Brunsting*. There was never an “estate of Nelva Brunsting -402”. Where are the motions to consolidate and when was the hearing?

276. [Carl resigned due to want of capacity](#) on February 19, 2015.

277. If this is probate, who was representing Estate of Nelva Brunsting when the “[Agreed DCO Order](#)” was signed on February 20, 2015?

278. Who was representing Estate of Nelva Brunsting when the [Agreed Order to Consolidate](#) estate of Nelva Brunsting 412249-402 with estate of Nelva Brunsting 412249-401 was signed on March 16, 2015?

CONSOLIDATION

HONG KONG DEV v. NGUYEN, No. 01-04-00586-CV, at *1 (Tex. App. Nov. 9, 2006) (“Two types of consolidation exist: true consolidation and consolidation for trial. *McDonald Carlson*, supra, at 775; see also 7 *Dorsaneo*, supra, at § 112.01[1][a]. True consolidation, as occurred here, involves merging separate suits into a single proceeding under one docket number. *McDonald Carlson*, supra, at 775. “When actions are properly consolidated they become merged and are thereafter treated as one suit. . . .” *Perry v. Del Rio*, [53 S.W.3d 818, 825](#) n. 6 (Tex.App.-Austin 2001) (quoting 1 Tex. Jur. 3d *Actions* § 77 (1993)), pet. *dism'd*, [66 S.W.3d 239](#) (Tex. 2001); see *Rust v. Tex. Pac. Ry. Co.*, [107 Tex. 385, 387](#), [180 S.W. 95, 95](#) (1915) (“In the present case, the order of consolidation having been properly made, there remained no separable cause of action. It became but one suit. . . .”). Therefore, when a court orders true consolidation of two or more cases, the actions are merged and thereafter proceed as a single action, as though they had been filed initially as a single suit. See *Perry*, [53 S.W.3d at 825](#) n. 6; *Rust*, [107 Tex. at 387](#), [180 S.W. at 95](#); *McDonald Carlson*, supra, at 775. ”)

7) SEVERANCE

279. If Carl lacked capacity how did he qualify as independent executor?

280. How did Carl pollute diversity if, according to Bayless, Carl and Candace had [no claims in common](#) when nothing substantive was ever resolved in the probate theater? Can you sever what has never been joined?

281. Rule 41 of the Texas Rules of Civil Procedure states that “[a]ny claim against a party may be severed and proceeded with separately.” [Tex.R. Civ. P. 41](#). **The effect of a severance is to divide a lawsuit into two or more independent suits that will be adjudicated by distinct and separate judgments.** See *Van Dyke v. Boswell, O'Toole, Davis & Pickering*, [697 S.W.2d 381, 383](#) (Tex.1985); see also *Beckham Grp., P.C. v. Snyder*, [315 S.W.3d 244, 245](#) (Tex.App.-Dallas 2010, no pet.). The controlling reasons for a severance are to effect justice, avoid prejudice, and for convenience. See *F.F.P. Oper. Partners v. Duenez*, [237 S.W.3d 680, 693](#) (Tex.2007); *Guaranty Fed. Savs. Bank v. Horseshoe Operating Co.*, [793 S.W.2d 652, 658](#) (Tex.1990).

8) Was there a Severance?

282. March 11, 2022 an Order Granting Motion to Sever Carl from Candace Curtis was entered, creating ancillary cause No. 412,249-405 as a place for Drina Brunsting and the Defendant Co-Trustees to move their no

longer being prosecuted tort claims. [[ROA 321-326](#)]

283. Whether or not the [order to sever](#) is valid is dependent upon the validity of the remand, transfer and consolidation orders. [[ROA 327-329](#)]

9) Was the federal action ever refiled in the probate court?

284. It could never have been filed in the probate court without a pending estate administration to be ancillary to and it could never have been filed in the probate court in an independent administration of a pour-over will after the inventory had been approved, unless specifically authorized by the estates code. [Tex. Est. Code § 402.001](#)

285. Can you consolidate a case with no plaintiff with a case that was never filed in the probate court? If Candace federal case was filed in the probate court where is the filing and where are the proofs of service?

286. Wasn't the state District Court lawsuit one half of the same lawsuit filed later in the state probate court and wouldn't both actions require determination as to what change instruments are valid after Elmer's incapacity?

287. No change instruments were valid after Elmer's incapacity. The

lawful Co-Trustees are Carl and Candace and with Carl disabled, that leaves Candace as the sole trustee.

10) Was there really a summary judgment?

288. There was never a court or an evidentiary hearing and one must wonder how you can resolve a controversy without facts. The record is devoid of any findings of fact or conclusions of law with the exception of the [Memorandum of Preliminary Injunction](#). No documents were actually qualified by witness testimony in open court. All we have are judicial admissions and disclosures. No declaratory judgments have ever been entered and thus, the issue identified by George Vie III at the preliminary injunction hearing April 9, 2013 (P. 38, ln.20-23) and all of the facts remain in dispute except the admissions filed with their original March 1, 2013 answer and the fiduciary disclosures received from Defendants in the SDTX that Defendant Appellees now call hearsay. (See [Transcript of Injunction hearing](#)) See [Defendants Original Answer](#) filed March 1, 2013 in which they admit to owing Appellant fiduciary obligations. They cannot show they ever performed any of their obligations because they have not performed any fiduciary obligations and [never intended to](#).

11) **Failure to Render**

Jurisdiction is something possessed by courts, not judges. Davis, [956 S.W.2d at 557](#). A judge is an officer of the court, not the court itself. Id. at 557-58. However, "[a]lthough a judge is not a court, and jurisdiction is ordinarily vested in the court and not in its judges, the act of a judge within his jurisdiction may constitute the act of the court." Davis, [956 S.W.2d at 557](#).

*The rules of practice and procedure in civil district court allow district judges to exchange courts and transfer cases from one court to another. See [Tex. R. Civ. P. 330\(e\)](#); see also Tex. Const. art. V, § 11 ("And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient . . ."); In re Catapult Realty Cap., L.L.C., No. 05-19-01056-CV, 2020 WL 831611, at *5 (Tex. App.-Dallas Feb. 20, 2020, orig. proceeding) (mem. op.). Further, the rules allow district judges to "hear any part of any case or proceeding pending . . . and determine the same" and "to hear and determine any question in any case, and any other judge may complete the hearing and render judgment in the case." [Tex.R.Civ.P. 330\(g\)](#); see also In re Catapult, 2020 WL 831611, at *5. However, the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. In re Catapult, 2020 WL 831611, at *5. Fischer v. Clifford Fischer & Co., No. 05-20-00196-CV, at *6-7 (Tex. App. Aug. 16, 2022)*

The rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. See Masa Custom Homes, [547 S.W.3d at 335](#); W.C. Bank, Inc. v. Team, Inc., [783 S.W.2d 783, 785](#) (Tex. App.—Houston [1st Dist.] 1990, no writ). When a judge has no authority to render an order or judgment, that order or judgment is void. See Masa Custom Homes, [547 S.W.3d at 338](#). An appellate court has no jurisdiction to consider the merits of an appeal of a void order

*or judgment. See id. Catapult Realty Capital, L.L.C. v. Johnson (In re Catapult Realty Capital, L.L.C.), No. 05-19-01056-CV, at *9 (Tex. App. Feb. 20, 2020) and authorities cited therein.*

12) Were there really any counter claims?

289. Original Suit filed Feb. 27, 2012 in the Southern District of Texas – Defendants Original Answer filed March 1, 2013 in the Southern District of Texas – Defendant’s Original Counter Claims filed November 4, 2019 in the probate court theater.

1. Counter claims are compulsory, Tex. R. Civ. P. 97(a), and waived when not brought with an original answer
2. Defendant Appellee Anita Brunsting and Amy Brunsting filed their original answer in the SDTX on March 1, 2013.
3. Defendant’s Anita Brunsting and Amy Brunsting filed their “original counter claims” in Harris County Probate Court No. 4 on November 4, 2019. (6 yrs. 8 Mo’s) without bothering with the formality of a jurisdictional statement.
4. Defendant’s Anita Brunsting and Amy Brunsting never served Carl or Candace with their supposed counter claims.

13) Failure to State a claim

290. Court is defined as “competent jurisdiction”, an abstraction of the mind composed of certain specific elements. Those elements always involve jurisdiction of the subject matter and jurisdiction of the persons. Other elements such as case or controversy, amount in controversy etc. may vary depending upon the type of action, type of court and relief sought.

291. Probate is an action in rem. Controversies involving trusts are matters in equity brought in personam. Such matters can only be construed as quasi in rem as “a trust” defines a fiduciary relationship in regard to equitable interests in property.

292. Defendant Anita Brunsting and Defendant Amy Brunsting filed their Original Counter Claims November 4, 2019 individually and as Co-Trustees of The Restatement of The Brunsting Family Living Trust (the "Brunsting Family Living Trust"). Not only are the claims vague, they are disloyal, substantively absurd, foreclosed of trustees by Article XII Section B of the Trust and barred by limitations. Defendant’s Original Counterclaims, filed November 4, 2019, fails to contain a jurisdictional statement affirmatively declaring the jurisdiction of the court in which the action was brought.

The general rule is that the allegations of the plaintiff's petition must state facts which affirmatively show the jurisdiction of the court in which the action is brought. Brown v. Peters, [127 Tex. 300, 94 S.W.2d 129](#) (1936); Smith v. Horton, [92 Tex. 21, 46 S.W. 627](#) (1898); Texas N.O.R.R. Co. v. Farrington (Tex.Com.App., 1905), [40 Tex. Civ. App. 205, 88 S.W. 889](#). Richardson v. First Nat. Life Ins. Co., [419 S.W.2d 836, 839](#) (Tex. 1967)

*“The pleader is required to allege facts that affirmatively demonstrate the court's jurisdiction to hear a case. See Tex. Ass'n of Bus., [852 S.W.2d at 446](#). ” **It was not Fidelity's burden to plead specific facts that would disprove subject matter***

jurisdiction. James, as the plaintiff, had the initial burden of alleging facts and framing legal arguments that would affirmatively demonstrate the trial court's jurisdiction to hear her claims. Miranda, [133 S.W.3d at 225–26](#) (citing Texas Ass'n of Bus., [852 S.W.2d at 446](#)). Unsupported legal conclusions do not suffice. See Creedmoor–Maha Water Supply Corp. v. Tex. Comm'n on Env't'l Quality, [307 S.W.3d 505, 515–16](#) & nn. 7 & 8 (Tex.App.-Austin 2010, no pet.). James v. Underwood, 438 S.W.3d 704, 716 (Tex. App. 2014)

14) Subject Matter Jurisdiction and Standard of Review

"Subject matter jurisdiction cannot be waived or conferred by agreement' and 'can be raised at any time,' including in an interlocutory appeal." Anderson v. Truelove, 446 S.W.3d 87, 91 (Tex App-Houston [1st Dist] 2014, no pet) (quoting Rusk State Hosp v. Black, 392 S.W.3d 88, 103 (Tex 2012) (Lehrmann, J, concurring in part and dissenting in part)). We review the existence of subject matter jurisdiction de novo. State v. Holland, 221 S.W.3d 639, 642 (Tex. 2007); Tex. Dep't of Parks & Wildlife v. Miranda, 133 S.W.3d 217, 226 (Tex. 2004). The pleader must allege facts that affirmatively demonstrate the trial court's jurisdiction to hear the cause. Dall. Cnty. Appraisal Dist. v. Funds Recovery, Inc., 887 S.W.2d 465, 469 (Tex. App.-Dallas 1994, writ denied) (citing Tex. Ass'n of Bus. v. Tex. Air Control Bd., 852 S.W.2d 440, 446 (Tex. 1993)). When reviewing subject matter jurisdiction, we must construe the petition in favor of the pleader and, if necessary, review the entire record to determine if any evidence supports jurisdiction. Id. (citing Tex. Ass'n of Bus., 852 S.W.2d at 446); see Wise Reg'l Health Sys. v. Brittain, 268 S.W.3d 799, 804 (Tex. App.-Fort Worth 2008, no pet.).

Bookout v. Shelley, No. 02-22-00055-CV, at *8-9 (Tex. App. Nov. 23, 2022)

See TX Far W., Ltd. v. Tex. Invs. Mgmt., Inc., [127 S.W.3d 295, 307](#) (Tex. App.-Austin 2004, no pet.) ("It is well established that

'assertions of fact . . . in the live pleadings of a party are regarded as formal judicial admissions.'" (quoting *Holy Cross Church of God in Christ v. Wolf*, [44 S.W.3d 562, 568](#) (Tex. 2001))).

Bookout v. Shelley, No. 02-22-00055-CV, at *24 n.13 (Tex. App. Nov. 23, 2022)

15) Preliminary Injunction

293. According to the honorable Judge Stone, the preliminary injunction issued in response to federal Plaintiff Candace Curtis application remains in full force and effect. To what Court would the Defendant Co-Trustee Appellees turn for permission to perform acts prohibited by the federal court without court approval?

16) What was the effect of Non-suit?

294. March 18, 2022, Drina filed a Notice of Nonsuit of Defendant Carole Brunsting. March 18, 2022, Drina also filed a Notice of Nonsuit of nominal Defendant Candace Curtis.

295. Assuming Carl had individual standing (or that Drina had standing at all), as of March 18, 2022 there is officially no dispute between Carl and Candace and no evidence that there ever was. Does Carl have Appellee

standing? If he does, [it is because he is aligned with his defendants.](#)

According to Bayless, they just want some kind of closure but they have done everything imaginable to avoid substantive resolution of any nature beginning with step one.

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. Allstate Ins. Co. v. Hallman, 159 S.W.3d 640, 642 (Tex. 2005); Bd. of Adjustment of San Antonio v. Wende, 92 S.W.3d 424, 427 (Tex. 2002); Williams v. Lara, 52 S.W.3d 171, 184 (Tex. 2001).

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings. See In re Kellogg Brown & Root, Inc., 166 S.W.3d 732, 737 (Tex. 2005). Appellate courts lack jurisdiction over moot controversies. See Olley v. HCM, LLC, 449 S.W.3d 572, 575 (Tex. App.-Houston [14th Dist.] 2014, pet. denied).

What is Carl's legally cognizable interest in the outcome of this appeal?

8/31/2023 OPPOSED SECOND JOINT MOTION FOR EXTENSION OF TIME TO FILE THE APPELLEES BRIEF OF CO-TRUSTEE ANITA K. BRUNSTING, COTRUSTEE AMY R. BRUNSTING, & CARL H. BRUNSTING:

“Appellees’ counsels have been working diligently to prepare their response briefs, which require a coordinated effort due to the aligned and complementary interest among Appellees. Coordinating the schedules of multiple lawyers across the three law firms representing the three Appellees is also more art than science.”

17) Absence of a controversy renders case moot

Bayless (Carl) named California resident and federal plaintiff Candace Curtis a Nominal Defendant only. Following the severance of the alleged consolidation of Carl and Candace claims, Bayless (Carl) filed a nonsuit making it clear that Bayless (Carl) never had a claim against Candace Curtis. Any argument Bayless (Carl) may have regarding this appeal is rendered moot by the absence of a controversy between the parties.

*A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings. See In re Kellogg Brown & Root, Inc., [166 S.W.3d 732, 737](#) (Tex. 2005). Appellate courts lack jurisdiction over moot controversies. See Olley v. HCM, LLC, 449 S.W.3d 572, 575 (Tex. App.-Houston [14th Dist.] 2014, pet. denied). In re L.M., No. 05-22-00048-CV, at *1 (Tex. App. Aug. 18, 2022)*

18) Rule 13 Sanctions

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal. In re Kellogg Brown & Root, Inc., [166 S.W.3d 732, 737](#) (Tex. 2005). [Rule 13](#) sanctions serve both deterrent and compensatory purposes. Scott & White Mem'l Hosp. v. Schexnider, 940 S.W.2d 594, 596 (Tex. 1996). Courts impose sanctions against parties filing frivolous claims to deter similar conduct in the future and to compensate the aggrieved party by reimbursing the costs incurred in responding to baseless pleadings. Id. at 596-97. As a result, the Texas Supreme Court has held that [Rule 13](#) sanctions can survive a nonsuit. Id. at 597. The Texas Supreme Court reasoned that it would frustrate

*the purpose of [Rule 13](#) to allow a party to escape sanctions by nonsuiting his case. Id. In re Marriage of Pratz, No. 12-20-00187-CV, at *5 (Tex. App. Dec. 21, 2021)*

- [Hemphill v. Hummell](#)

No. 13-05-00515-CV (Tex. App. Jul. 31, 2008) [Cited 1 time](#)

Under rule 13, "the signatures of attorneys or parties constitute a certificate by them that they have read the pleading, motion, or other paper; that to the best of their knowledge, information, and belief formed after reasonable inquiry the instrument is not groundless and brought in bad faith or groundless and brought for the purpose of harassment." TEX. R. CIV. P. 13. Courts may, under rule 13, "impose sanctions against parties filing frivolous claims to deter similar conduct in the future and to compensate the aggrieved party by reimbursing the costs incurred in responding to baseless pleadings." Scott White Mem'l Hosp. v. Schexnider, 940 S.W.2d 594, 596-97 (Tex. 1996).

296. There hasn't even been an evidentiary hearing in the probate theater charade. Candace Curtis could never get an evidentiary hearing and without a hearing there is no evidence and without evidence there can be no judgment entered. Oh, but let us not let law get in the way when stealing money is the only real object.

19) 2015-02-17 Carl submits resignation

297. Carl resigned the office of independent executor in February 2015, leaving the office vacant. Carl substituted his wife Drina but Carl is not a devisee of the estate and has no standing in probate. Carl is a beneficiary of

the sole devisee and his individual standing is derivative and not direct. Drina has no standing in probate but is an interested person in the trust controversy and has the standing of an interested person as defined under Texas Property Code Sec. 111.004(7).

Tex. Prop. Code § 111.004

(7)"Interested person" means a trustee, beneficiary, or any other person having an interest in or a claim against the trust or any person who is affected by the administration of the trust. Whether a person, excluding a trustee or named beneficiary, is an interested person may vary from time to time and must be determined according to the particular purposes of and matter involved in any proceeding.

20) 2013-02-20 Agreed Docket Control Order

298. Summary Judgment August 3, 2015 and Trial in September 2015.

Who was representing the estate when this agreed order was signed? Who was representing the estate when this agreed order was signed?

21) 2015-03-16 [Agreed Order to Consolidate](#) Estate of Nelva Brunsting with estate of Nelva Brunsting

299. Who was representing the estate when this agreed order was signed?

22) Stephen Mendel: Anita threatens Carl with IME & Guardianship

May 19, 2015 there is a note in [Neal Spielman's billing records](#) (counsel for Amy Brunsting) regarding Defendant Anita Brunsting threatening Carl with a motion to compel IME to determine whether an action for guardianship against Carl would be necessary.

[02-15 Exhibit R Amy's \(Spielman\) attorney fee disclosures](#)

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“5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with

IME for Carl to assist in determination of whether guardian is needed for

Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor.”

23) 2015-05-29 Bayless agrees not to prosecute Carl's claims in exchange for no IME or Guardianship action against Carl!

“5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing”

300. On June 26, 2015 Defendants' new attorneys in Probate Court No.4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that their alleged 8/25/2010 QBD is invalid.

301. 2015-07-13 Case 412249-401 PBT-2015-226432 Defendants counsel and Bayless file Notice of hearing on No Evidence Motion 2015-07-13 and motions for summary judgment for August 3, 2015.

24) 2015-07-13 Case 412249-401 Curtis Response to No-evidence motion PBT-2015-227757

302. On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings which were received by Plaintiff Curtis via certified mail with signature required.

303. July 7, 2015 Carl Brunsting (Drina) filed a Motion for Protective Order regarding the illegally obtained wiretap recordings.

304. July 9, 2015 Carl Brunsting (Drina) filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion.

305. Curtis answers, objecting to assuming facts, and demanding production and witness testimony qualifying three alleged originals as

evidence. Suddenly Bayless files an “[emergency Motion for Protective Order](#)” and summary judgment hearings become a [hearing on Bayless emergency motion](#). There would not be another docket control order or trial date for more than six years.

25) 2021-12-06 Rule 11 Agreement

There have been no evidentiary hearings and no declaratory judgment entered. After four and one half years Bayless, Mendel and Spielman disclose their 2015 agreement not to prosecute their claims against one another.

*“1. Plaintiff Carl Brunsting requests that the Court **not** rule on the portion of his July 9, 2015 motion for partial summary judgment, which relates to the issue of:*

Carl also seeks a determination, as a matter of law, that disbursements in 2011 of Exxon Mobil stock and Chevron stock were improper distributions for which Anita, as the trustee making the disbursements is liable, and for which the beneficiaries who received benefits from those distributions are also liable pursuant to TEX. PROP. CODE §114.031, including through an offset of the applicable beneficiary’s liability against that beneficiary’s remaining interest in the trust estate.

*2. Defendant & Co-Trustee Anita Brunsting and Defendant & Co-Trustee Amy Brunsting request that the Court **not** rule on any portion of the Co-Trustees Motion for Summary Judgment,*

filed on November 5, 2021, to the extent that the motion relates in whole or in part to Plaintiff Carl Brunsting. Rather, the Court should construe the motion for summary judgment as filed solely against Candace Louise Curtis."

26) Is Appellee Bayless Answer Moot?

In general a case becomes moot "when the issues presented are no longer "live" or the parties lack a legally cognizable interest in the outcome." United States Parole Comm'n v. Geraghty, [445 U.S. 388, 396](#) (1980), quoting Powell v. McCormack, [395 U.S. 486, 496](#) (1969). It would seem clear that under this general rule Hunt's claim to pretrial bail was moot once he was convicted. The question was no longer live because even a favorable decision on it would not have entitled Hunt to bail. For the same reason, Hunt no longer had a legally cognizable interest in the result in this case. He had not prayed for damages nor had he sought to represent a class of pretrial detainees.

For a plaintiff to have standing, a controversy must exist between the parties at every stage of the legal proceedings, including the appeal. See United States v. Munsingwear, Inc., [340 U.S. 36, 39](#) (1950). If a controversy ceases to exist — "the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome" — the case becomes moot. Murphy v. Hunt, [455 U.S. 478, 481](#) (1982); see also O'Shea v. Littleton, [414 U.S. 488, 495-96](#) (1974)

1. Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits; the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.
2. Common grounds for a collateral attack include a lack of personal

- jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.
3. Civil litigants do not lose their separate identity when their case is consolidated with another.
 4. Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 is not ESTATE OF NELVA BRUNSTING
 5. Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (*Curtis v Brunsting*) is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).
 6. *ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlers that created the family trust which, is the sole devisee of both decedents’ wills.
 7. Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.
 8. There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

DUE PROCESS

306. A trust is defined by an indenture. The indenture defines a relationship between a trustee (a fiduciary) and a beneficiary (cestui que) in regard to the property (Corpus) held in trust. After ten years, Appellee’s cannot produce a declaratory judgment or even a transcript of a substantive hearing in which a discussion was had and determinations were made regarding which instruments are being referred to when we say “The Trust”.

307. After ten years Defendant Appellee's cannot produce, for the court's review, even one substantive hearing in which sworn testimony was taken in evidence. After ten years Appellee's cannot describe even one benefit enjoyed by the beneficiaries of this trust including their own clients but Appellant can provide evidence that [the attorneys expect hundreds of thousands of dollars](#) and that hundreds of thousands of dollars in losses have occurred in the ten years this money cow and its beneficiaries have been held hostage in a probate theater.

Substantive issues are not before the 1st District Court of Appeals

27) What Instruments?

In all of the thousands of pleadings and years of "litigation" Appellee's refer to as problematic in preparing their answer they will not be able to produce a declaratory judgment defining what instruments we are referring to when we say "the trust". This is the first step towards problem resolution because the trust instruments that compose the trust indenture contain the obligations of the trustees and the rights of the beneficiary. We answered this question in Part 1 with a ten page chronology that follows the pattern laid out in [How to steal your family Inheritance](#). The [2005 Restatement](#) as amended in 2007 is the valid trust instruments. Carl and

Candace are the lawful Co-Trustees and Candace Kunz-Freed is responsible for creating the controversy and the other named participants are responsible for their part in attempting to exploit the front end estate planning bait and switch.

308.

309. 1st QBD was a valid ledger entry and no more. It fails on substantive ground and fails procedurally due to absence of two independent witness signatures. The QBD only applies to Nelva's trust share but could not be exercised without a court of competent jurisdiction sitting in for the absent co-trustee because it is considered to be an amendment ([Article III](#)). The Testamentary Power also fails on substantive ground and fails procedurally due to the absence of two independent witness signatures.

310. The 2nd QBD is not valid on substantive ground, Instrument objected to as not in evidence and they have not produced three originals to match their three signature page versions. They have not attempted to introduce these three signature page versions and qualify them as evidence by witness testimony because they cannot. The [2nd alleged QBD](#) does not rescind the [1st QBD](#) but affirms it.

311. The QBD only applies to the share of the Settlor that exercised the power (only applies to Nelva's trust) and the Testamentary Power fails on substantive ground and fails procedurally due to absence of two independent witness signatures. Substantively it seeks to amend an irrevocable trust, is self-contradictory and the corruption of blood provisions offend public policy. It was a greedy beneficiary that colluded with the estate planning attorneys to create a series of illicit change instruments after the trust could no longer be altered or amended.

312. It may be hearsay that Nelva, when asked about the 2nd QBD, said she did no such thing! [Three different signature pages](#) have arisen as one version was filed into the record by Carole's counsel, one version was filed by Anita and one by Amy. The Notary log shows 3 COT's signed on August 25, 2010 but only 1 QBD. There is more but why beat a dead horse?

313. Changes made by the Vacek Law Firm working in concert with Anita Brunsting are what gave Anita Control over the trust. Anita's intentional failure to account and failure to disclose is what compelled litigation and as alleged from the onset ([In SDTX 2/27/2012 Doc 1 pg 20 para 4](#)) Anita planned to steal the trust in such a way that if anyone complained, she'd get

to keep it.

314. Anita intentionally caused litigation to be brought in order to advance her 2nd QBD/TPA in Terrorem clause with corruption of blood, a theory that, if true, would enlarge her share. That is exactly what the Co-Trustee defendant's conduct has since proven and it is exactly what is prohibited by Elmer and Nelva's trust agreement.

315. Co-Trustee Anita Brunsting had no standing to file counter claims against beneficiary Candace Curtis or beneficiary Carl Brunsting ([Art. XII Section B 2005 Restatement](#)) [Tab 4]. Neither beneficiary Anita Brunsting nor beneficiary Anita Brunsting had ground to sue against beneficiary Candace Curtis or beneficiary Carl Brunsting as all of the beneficiaries have the same rights. The trustees have obligations of a fiduciary nature. It is Co-Trustee Anita Brunsting that failed in her duty to account, ([Art. XII Section E 2005 Restatement](#))

316. The [Report of Special Master](#) in the Southern District of Texas and the hearing that followed showed that Anita failed to establish books and records of accounts, self-dealt and co-mingled assets and made unequal distributions that excluded Carl and Candace and that none of these dealings

were disclosed to Carl or Candace.

28) Res Judicata

317. Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits; the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

318. Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court. The full faith and credit clause seems to forbid collateral attack in civil cases. The state courts cannot ignore the federal courts rulings and orders.

319. Civil litigants do not lose their separate identity when their case is consolidated with another. Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 in the Southern District of Texas is not ESTATE OF NELVA BRUNSTING in any court.

320. Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (*Curtis v Brunsting*) is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

321. *ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlers that created the family trust which, is the sole devisee of both decedents’ pour-over wills.

322. Both Decedents wills require independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed. There was never an inventory of any substantial worth and independent administration is considered closed when [the verified inventory for Elmer has been filed with and approved by the probate court](#) and [the verified inventory for Nelva](#) has been filed with and [approved by the probate court](#).

323.

324. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

29) Boundaries of Order

Litigants do not lose their separate identity when their case is consolidated.

30) Admissions

"Assertions of fact, not plead in the alternative, in the live pleadings of a party are regarded as formal judicial admissions." Houston First Am. Sav. v. Musick, [650 S.W.2d 764, 767](#) (Tex. 1983). A judicial admission that is clear and unequivocal has conclusive effect and bars the admitting party from later disputing the admitted fact. Gevinson v. Manhattan Constr. Co., [449 S.W.2d 458, 467](#) (Tex. 1969). Here, Wolf's summary-judgment response and counter-motion for summary judgment states: "Defendant accepts Plaintiff's argument that the note was accelerated by the [sic] MITC on August 15, 1994, and that the statute of limitations began to run on that date." And at the summary-judgment hearing and in his court of appeals' brief Wolf consistently agreed that MITC accelerated the Church's note on August 15, 1994. Wolf's agreement amounted to a judicial admission of the acceleration date. Once Wolf's judicial admission established the acceleration date, the trial court could apply the law to conclude as a matter of law that accrual occurred upon this acceleration and that limitations then began running. Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 568 (Tex. 2001)

The Supreme Court of Texas has defined a judicial admission as "[a]ssertions of fact, not plead in the alternative, in the live pleadings of a party." Holy Cross Church of God in Christ v. Wolf, 44 S.W.3d 562, 568 (Tex. 2001) (citing Houston First Am. Sav. v. Musick, 650 S.W.2d 764, 767 (Tex. 1983)). "A judicial admission that is clear and unequivocal has conclusive effect

*and bars the admitting party from later disputing the admitted fact." Id.; In re Spooner, 333 S.W.3d 759, 764 (Tex. App.—Houston [1st Dist.] 2010, orig. proceeding) ("A judicially admitted fact is established as a matter of law, and the admitting party may not dispute it or introduce evidence contrary to it."). MMR Constructors, Inc. v. Dow Chem. Co., No. 01-19-00039-CV, at *24 (Tex. App. Dec. 3, 2020)*

1. A federal lawsuit relating to a family trust filed by a trust beneficiary is dismissed under the probate exception and goes on appeal. In the interim the trust settlor's wills are recorded in Harris County Probate Court No.4 with application for letters soon to follow. Letters for independent administration are granted and Depositions before suit are soon conducted in the 180th District Court in Houston by the independent executor.
2. A unanimous Fifth Circuit Opinion reverses dismissal of the federal case as outside the probate exception January 9, 2013.
3. January 29, 2013 the independent executor files professional negligence claims against the estate planning attorneys in Harris County's 164th District Court.
4. A preliminary injunction was entered April 9, 2013 against the Co-Trustee defendant/Appellees in the Southern District of Texas.
5. On the same day a preliminary injunction was entered against the Co-Trustee defendants in the Southern District of Texas a competing action was filed by the independent executor against the Co-Trustee defendants in Harris County Statutory Probate Court No. 4.
6. The "probate case" involved a pour-over will, with a sole devise to a living trust. The Will was admitted without challenge, Letters for independent administration were issued, and a verified inventory was submitted and approved without challenge. At this point the probate is closed as all right, title and interest in the estate officially became part of the corpus of the sole devisee "Trust".
7. The will foreclosed the authority of the independent executor from further filing in the probate court after the inventory was approved. The independent executor in his individual capacity was not a devisee and had no individual standing in the administration of the estate in any event. Statute recognizes the right of the Testator to direct

independent administration [[Tex. Est. Code § 402.001](#)] and [Local Rule 2.6.5](#) regarding ancillary matters that belong in a different file with an ancillary or related case designation includes Intervivos Trust Actions where the settlor is the decedent in probate proceeding actually pending in the subject court.

“However, we hold that the Estate's administration was closed when the foreclosure suit was filed.” A court empowered with probate jurisdiction may only exercise its probate jurisdiction over matters incident to an estate when a probate matter proceeding related to such matter is already pending.” Bailey, [862 S.W.2d at 585](#); Estate of Hanau, [806 S.W.2d 900, 904](#) (Tex.App.-Corpus Christi 1991, writ denied). Texas Comm. Bk. v. Correa, 28 S.W.3d 723, 727 (Tex. App. 2000)”

8. An independent administration does not require formal closing procedures. see [Texas Comm. Bk. v. Correa, 28 S.W.3d 723](#) (Tex. App. 2000)

“an independent administration is considered closed when debts have been paid so far as the assets will permit and all property has been distributed. Tex. Prob. Code Ann. § 151; Hanau, 806 S.W.2d at 903. ” Texas Comm. Bk. v. Correa, 28 S.W.3d 723, 728 (Tex. App. 2000)”

9. The federal pro se Plaintiff was ordered to retain counsel, did so and later discovered the non-probate case was remanded to the probate court from whence it had not been removed.
10. The remand Order was not the return of a removed case and is admittedly void as stated by the Honorable Kenneth Hoyt Jr., United States District Judge [[Tab 112](#)] Federal Rule 60 Hearing Transcript.
11. The Order accepting transfer from federal to state court is equally void for want of authority.
12. A (complete) consolidation of the federal case with an estate that has no representative and no interest in the outcome is not logistically possible and it would follow that such a merger would not be legally plausible. Can there be a probate case in which the estate has no tangible interest in the outcome?

13. Summary Judgment motion based on the false thesis that the beneficiary suing the trustee to compel specific performance triggers the forfeiture provisions in instruments that are not in evidence.
14. Summary Judgment entered without a hearing, not rendered but signed on Judicial hearsay in a probate case where there is no estate, no executor, and no declaratory judgment defining what instruments we are talking about when we say “the trust”. (A fact issue in dispute)
15. According to the [summary judgment order](#) the federal preliminary injunction remains in full force and effect.

What court has the jurisdiction to authorize the Co-Trustee Defendant/Appellees to perform any of the acts enjoined?

16. Co-Trustee Counter claims filed more than six years after a Defendants original answer when Rule 7.1 of the [local rules](#) for the probate court requires resolution within three years of commencement of an action. Counter claims filed more than six years after a Defendants original answer are barred by Rule 97(a) Texas Rules of Civil Procedure, the Compulsory Counter Claim Rule.
17. Co-Trustee Counter claims were inconsistent with the right of the beneficiary to the enjoyment of her beneficial interests [Art XII B] and thus exceeded the authority granted to trustees by the trust instrument.

31) **Active or Passive?**

1. Either the obligations of the trustee are affirmative and active or the trust is passive. The alleged co-trustee conspirators are either in breach of the affirmative duties prescribed by an active trust or they are in wrongful possession of the assets of a dry trust but in either instance they have misapplied fiduciary property held in trust for the benefit of elderly and disabled beneficiaries and that is a felony under both Tex. Penal Code §§ 32.45 & 32.53. There are no accessories in Texas. Everyone that participated in perpetrating this fraud is a principal.
2. A Severance of the cases never actually consolidated but given the appearance of a complete consolidation when a complete consolidation, as opposed to a consolidation for trial, cannot be

- severed on the basis of alleged conflicts of interest that were never delineated and what has changed since the consolidation?
3. Carl's (Drina's) Non-suit of the severed plaintiff terminated any controversy or conflict between Carl and Candace, if there ever actually was any.
 4. According to the Appellee's [SECOND JOINT MOTION FOR EXTENSION OF TIME TO FILE THE APPELLEES BRIEF](#)
"This litigation has a decade-long, complex procedural history in federal district and appellate courts, and in state district, probate, and appellate courts."
 5. One would think that after a decade-long procedural history Appellee's would be able to point to the record where findings of fact and conclusions of law answering the first question necessary to resolving the controversy among the real parties in interest: What instruments we are referring to when we say "THE TRUST?"

SUMMARY

325. An estate planning attorney bait and switch guaranteeing the controversy necessary to the 3rd party interception of family generational asset transfers. (Facilitator for the probate mafia) This malpractice/professional negligence case has never been to trial and has never even seen an evidentiary hearing.

326. The bait and switch estate planning grifters are sued by an independent executor (a trust beneficiary) in the District Court and then the independent executor/trust beneficiary sued all of his trust co-beneficiary

siblings in the state probate court, in an (1) independent administration of an estate, (2) with no tangible assets, (3) after the inventory, appraisement and list of claims had been approved and (4) the probate of the pour-over estate was removed from the active docket (closed)

327. This sequestered the estate planning bait and switch grifters in the District Court while trapping the entire family of victims in the probate court. This all occurred after an integrally related lawsuit for breach of fiduciary was pending in the SDTX, and after dismissal of the federal case under the **probate exception** had been reversed and remanded by the 5th Circuit.

328. There is no excuse for the conduct of these predatory attorners. This conduct is criminal and you cannot clothe the nakedness of their color-of-law criminal enterprise behind doctrines of immunity.

¹ Exhibit 1 A document that can be located on the internet by name

² *The "hurrah"*

A sudden manufactured crisis or change of events forces the victim to act or make a decision immediately. This is the point at which the con succeeds or fails. With a financial scam, the con artist may tell the victim that the "window of opportunity" to make a large investment in the scheme is about to suddenly close forever.

³ Kept secreted from the record by making demands and threats during confidential mediations
[SDTX- Case 4:22-cv-01129]

⁴ CONFLICT: It should be noted here that when litigation was brought in effort to obtain an accounting and fiduciary disclosures, Anita Brunsting, and her new co-trustee Amy Brunsting, were represented by Vacek & Freed Attorneys Candace Kunz-Freed and Bernard Lisle Mathews III, infra. These conflicts of interest are violations of Rule 1.06(a), (d), (e) and (f) of the Disciplinary Rules of Professional Conduct and is thus conduct ultra vires the office of attorney.

⁵ Marshall v Marshall 547 U.S. 293, 126 S. Ct. 1735

⁶ "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement"

⁷ "Attainers, outlawry, deprivation of property except by due process of law, and corruption of

blood or forfeiture of estate as a result of conviction of crime, are expressly prohibited by the organic law. ”
Davis v. Laning, 85 Tex. 39, 40 (Tex. 1892)

Article 1, Section 21, of the Constitution of Texas is as follows:

"No conviction shall work corruption of blood or forfeiture of estate; and the estates of those who destroy their own lives shall descend or vest as in case of natural death."

Article 2465, Vernon's Civil Statutes provides as follows:

"No conviction shall work corruption of blood or forfeiture of estate, nor shall there be any forfeiture by reason of death by casualty; and the estate of those who destroy their own lives shall descend or vest as in the case of natural death."

It being the policy of the State as declared by these constitutional and statutory provisions that no conviction shall work corruption of blood or forfeiture of estate, as applied to the inheritable estate of the party executed, we cannot see any reason why the same declaration should not be made to apply to the proceeds of an insurance policy, payable to beneficiaries who were in nowise a party to the offense against the law and, as in this case, who would be under our statute of descent and distribution the parties who would benefit by the inheritable estate.

American Nat. Ins. Co. v. Coates, 112 Tex. 267, 276 (Tex. 1923)

⁸ Thanks to the wonderful assistance of attorney Candice Schwager, the rag in the mouth artifice (vexatious litigant label) used to gag the victim, failed to materialize as Stephen Mendel had hoped when addressing the new court, after the RICO.