

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS

Plaintiff,

V.

ANITA KAY BRUNSTING, AND
AMY RUTH BRUNSTING

Defendants.

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4:12-CV-00592

DEFENDANTS' RESPONSE TO
PLAINTIFF'S MOTION FOR APPROVAL TO PAY RETAINER

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting file this Response to plaintiff's Motion which seeks leave to pay a retainer from the Trust for employment of counsel (Dkt. No. 90). Defendants do not oppose the relief sought but request a similar distribution to pay attorney's fees they have incurred since the Court's temporary injunction order entered April 19, 2013.

1. Without a conference before filing, plaintiff has filed a motion for leave to pay a retainer in the amount of \$5000, from trust assets, for employment of counsel.¹

¹ LR 7.1(D) requires that the movant confer with respondent before filing a motion, and that the motion contain an averment that counsel cannot agree about the disposition of the motion. Pro se status does not excuse plaintiff from following the Local Rules or the Federal Rules. *Anderson v. Astrue*, 7:07-CV-0079-O, 2008 WL 2152024 (N.D. Tex. May 21, 2008). See also *LaBlanche v. Ahmad*, 4:11-CV-4504, 2012 WL 1717639 (S.D. Tex. May 11, 2012).

2. Defendants do not oppose the relief sought. Defendant reserve the right to have the Court determine at a later date whether the attorney's fees and expenses of plaintiff paid from the Trust should be charged against her share of the Trust.

3. Defendants' counsel had received a retainer check in the amount of \$10,000 issued on April 2, 2013, from the Survivor's Trust account (check #143 as noted in the Master's Report at page 13 of the Detail of Accounts, Legal Fees). In light of the Court's temporary injunction order and the discussions at the temporary injunction hearing, counsel for defendants reimbursed the Trust on May 24, 2013, by issuing a check to the Trust in the amount of \$10,000 (shown as EJ20120434 in the Master's Report at page 13 of the Detail of Accounts, Legal Fees). Counsel has not been paid any fees or expenses in this case since the hearing on the temporary injunction.

4. As a matter of fairness, defendants request that the Court permit a check in the amount of \$5000 to issue to their attorneys for attorney's fees incurred, such disbursement to be made on the same terms as the Court may order for plaintiff's requested retainer. The Court is requested to take judicial notice of the proceedings that have occurred before it at the temporary injunction hearing and thereafter in this regard.

CONCLUSION AND RELIEF SOUGHT.

5. Defendants Anita Kay Brunsting and Amy Ruth Brunsting pray that the Court enter the Defendants' proposed Order in connection with Plaintiff's Motion.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing; those who are not filing users will be served by email and regular mail.

/s/ George W. Vie III
George W. Vie III