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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS, ET AL . C.A. NO. H-16-1969
VS. . HOUSTON, TEXAS
. DECEMBER 15, 2016
CANDACE KUNZ-FREED, et al . 11:50 A.M. to 1:00 P.M.

TRANSCRIPT of MOTION HEARING
BEFORE THE HONORABLE ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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P R O C E E D I N G S

1
2 *THE COURT:* Cause No. 16-cv-1969, Candace Curtis,
3 et al, versus Candace Freed, et al. Come on up.

4 We have a third table over here as well, with a
5 microphone, so, please.

6 *UNIDENTIFIED SPEAKER:* This one over here?

7 *THE COURT:* Yes. And given the size, I do not mind if
8 you take a seat on this side of the table with your back to me,
9 I understand. I'm not going to be offended, I understand.

10 Having called Cause No. 16-cv-1969, I'm now going
11 to take the appearance of counsel, starting from my right.

12 *MR. ABRAMS:* Good morning, Your Honor. Barry Abrams
13 for the defendant Darlene Payne Smith.

14 *MS. BAYLESS:* Bobbie Bayless on my own behalf.

15 *MR. HARRELL:* Bob Harrell and Rafe Schaefer on behalf
16 of Jill Young.

17 *THE COURT:* Wait. I didn't hear the name.

18 *MR. HARRELL:* Jill Young.

19 *THE COURT:* Very well.

20 *MS. BECKMAN HEDGE:* Hello, Your Honor. Laura Beckman
21 Hedge. I'm here on behalf of Judge Christine Riddle Butts,
22 Judge Clarinda Comstock and Toni Biamonte.

23 *THE COURT:* Very well.

24 *MS. CURTIS:* Candace Curtis here --

25 *THE COURT:* Use the microphone so that --

1 *MS. CURTIS:* Candace Curtis on behalf of myself.

2 *THE COURT:* Very well.

3 *MR. MUNSON:* My name is Rik Munson. I'm a private
4 attorney general plaintiff, pro se.

5 *THE COURT:* Very well.

6 *MR. REID:* Eron Reid on behalf of Neal Spielman.

7 *THE COURT:* I'm sorry, on behalf of?

8 *MR. REID:* Neal Spielman.

9 *THE COURT:* Counsel?

10 *MR. GREENE:* Adraon Greene, Your Honor, on behalf of
11 Stephen Mendel and Bradley Featherston.

12 *THE COURT:* Counsel? Oh, right here.

13 *MR. SPIELMAN:* Oh, Your Honor, I'm just -- I'm the
14 client -- or the defendant, Neal Spielman.

15 *THE COURT:* Oh, very well.

16 *UNIDENTIFIED SPEAKER:* I'm likewise a client of
17 Mr. Greene.

18 *THE COURT:* Very well.

19 *MR. REED:* Cory Reed on behalf of Candace Freed and Al
20 Vacek.

21 *MS. FOLEY:* Zandra Foley on behalf of Candace Freed
22 and Al Vacek.

23 *MR. MATHEWS:* Bernard Mathews. I'm representing
24 myself, Your Honor.

25 *MR. OSTROM:* Your Honor, Jason Ostrom on behalf of my

1 myself and Gregory Lester.

2 *THE COURT:* You said on behalf of yourself?

3 *MR. OSTROM:* Myself and Gregory Lester.

4 *THE COURT:* Are you an attorney?

5 *MR. OSTROM:* I am.

6 *THE COURT:* Very well.

7 *MS. ANITA BRUNSTING:* Anita Brunsting on behalf of
8 myself.

9 *THE COURT:* Very well.

10 *MS. AMY BRUNSTING:* Amy Brunsting on behalf of myself.

11 *THE COURT:* Very well.

12 Counsel, for today's hearing there are a number
13 of motions to dismiss and I'm going to call them out,
14 hopefully, and I won't miss them. Defendants Candace Freed and
15 Albert Vacek's motion to dismiss for failure to state a claim.

16 *MS. FOLEY:* Yes, Your Honor.

17 *THE COURT:* Defendants Candace Freed and Albert
18 Vacek's motion to dismiss for lack of subject matter
19 jurisdiction.

20 *MS. FOLEY:* I just said yes, Your Honor.

21 *THE COURT REPORTER:* Can you state your name?

22 *THE COURT:* Oh, state your name.

23 *MS. FOLEY:* Zandra Foley.

24 *THE COURT:* Yes, when you speak, state your name
25 again. With this cast of Spartacus before us, the court

1 reporter will greatly appreciate the assist.

2 Bobbie Bayless's motion to dismiss for failure to
3 state a claim.

4 *MS. BAYLESS:* Bobbie Bayless, yes, Your Honor.

5 *THE COURT:* Defendant Brunsting's motion for access to
6 electronic filing. Is that in this?

7 *UNIDENTIFIED SPEAKER:* Which one?

8 *THE COURT:* Oh, Anita.

9 *MS. ANITA BRUNSTING:* Yes.

10 *THE COURT:* Is that on today's docket?

11 *MS. ANITA BRUNSTING:* I believe that was approved.

12 *THE COURT:* Okay. Defendant Jill Willard Young's
13 12(b) (6) motion to dismiss.

14 *MR. HARRELL:* Bob Harrell. Yes.

15 *THE COURT:* Defendant Anita Brunsting's Rule 12(b) (6)
16 motion to dismiss for plaintiffs' failure to state a claim.

17 *MS. ANITA BRUNSTING:* Yes.

18 *THE COURT:* And you are?

19 *MS. ANITA BRUNSTING:* I'm Anita Brunsting.

20 *THE COURT:* Very well.

21 Defendant Amy Brunsting's Rule 12(b) (6) motion to
22 dismiss for plaintiffs' failure to state a claim.

23 *MS. AMY BRUNSTING:* Amy Brunsting. Yes, Your Honor.

24 *THE COURT:* Defendants Mendel and Featherston's Rule
25 12(b) (6) motion to dismiss for plaintiffs' failure to state a

1 claim.

2 *MR. GREENE:* Adraon Greene. Yes, Your Honor.

3 *THE COURT:* Defendant Jill Willard Young's motion to
4 strike plaintiffs' addendum and memorandum in support of RICO
5 complaint.

6 *MR. HARRELL:* Bob Harrell. Yes, Your Honor.

7 *THE COURT:* And that's on today's --

8 *MR. HARRELL:* It's part of the motion to dismiss, so,
9 yes, Your Honor.

10 *THE COURT:* Very well.

11 Defendant Neal Spielman's motion to dismiss.

12 *MR. REID:* Eron Reid. Yes, Your Honor.

13 *THE COURT:* And there was also Defendant Neal
14 Spielman's motion to dismiss based on lack of subject matter
15 jurisdiction.

16 *MR. REID:* Eron Reid. Yes, Your Honor.

17 *THE COURT:* I also have in my folder plaintiffs'
18 motion for consolidation of related cases pursuant to 28 U.S.C.
19 Section 1367, Rule 42(a) of the Federal Rules of Civil
20 Procedure and Local Rule 7.6 with supporting memoranda.

21 *MS. CURTIS:* Yes, Your Honor. Candace Curtis.

22 *THE COURT:* Defendant Judge Christine Butts, Judge
23 Comstock, et al, motion to dismiss complaint pursuant to
24 Federal Rule of Civil Procedure 12(b)(1) and (6).

25 *MS. BECKMAN HEDGE:* Laura Beckman Hedge. Yes, Your

1 Honor.

2 *THE COURT:* Plaintiffs' motion for -- I covered that
3 one.

4 Defendants Mendel and Featherston's joinder in
5 Jill Willard Young's motion to strike plaintiffs' addendum to
6 memorandum in support of RICO complaint.

7 *MR. GREENE:* Adraon Greene. Yes, Your Honor.

8 *THE COURT:* And Defendant Jill Willard Young's motion
9 for sanctions.

10 *MR. HARRELL:* Bob Harrell. And we filed it. I don't
11 know if it's technically on the docket today but --

12 *THE COURT:* For today. Okay. Thank you.

13 Defendant Jason Ostrom's motion to dismiss
14 complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

15 *MR. OSTROM:* Yes, Your Honor. Jason Ostrom.

16 *THE COURT:* Motion to dismiss Defendant Bernard
17 Mathews.

18 *MR. MATHEWS:* Bernard Mathews. That is correct, Your
19 Honor.

20 *THE COURT:* Very well.

21 And Defendant Gregory Lester's motion to dismiss
22 pursuant to Federal Rule of Civil Procedure 12(b)(6).

23 *MR. OSTROM:* Jason Ostrom. Yes, that's correct.

24 *THE COURT:* And, finally, Defendant Darlene Payne
25 Smith, motion to dismiss for lack of subject matter

1 jurisdiction and failure to state a claim.

2 *MR. ABRAMS:* Barry Abrams. Yes, Your Honor.

3 *THE COURT:* Okay. Did I miss anyone's motion to
4 dismiss?

5 *MS. FOLEY:* Your Honor, Zandra Foley. We also had a
6 motion to dismiss for lack of subject matter jurisdiction that
7 was filed separately from the motion to dismiss for failure to
8 state a claim.

9 *THE COURT:* Very well.

10 Anyone else on this side, did I miss your motion
11 that was under consideration for today?

12 *MS. BECKMAN HEDGE:* Laura Beckman Hedge, Your Honor.
13 The defendants, Judge Butts, Judge Comstock, and Toni Biamonte
14 joined in the motion that you mentioned earlier that Jill
15 Willard Young filed, striking -- motion to strike plaintiffs'
16 addendum of memorandum in support of RICO complaint.

17 *THE COURT:* Very well.

18 *MS. BECKMAN HEDGE:* Thank you.

19 *THE COURT:* Well, to be most efficient, we have a lot
20 of 12(b)(6) motions, which I assume making similar arguments.
21 There may be individual facts for each defendant. So, why
22 don't we pick someone to present a motion, perhaps the first
23 one that was filed, and then we can move from that and you can
24 tell me if there are specifics, but you do not need to reurge
25 the essence of the legal arguments in the first motion. That

1 way we can save a little time.

2 Mr. Harrell, I see you rising to your feet.

3 *MR. HARRELL:* Yes, Your Honor. If it please the
4 Court, we're prepared to give an overview of the motions and
5 the law. And if it please the Court, our lawyer, Rafe
6 Schaefer, would like to make that presentation.

7 *THE COURT:* All in accord with that? Any objections
8 from any of the defendants? Very well.

9 *MR. SCHAEFER:* Thank you, Your Honor. My name is Rafe
10 Schaefer with Norton Rose Fulbright, along with Bob Harrell.
11 We represent Defendant Jill Willard Young, who is in the
12 courtroom here today, who is an attorney with the law firm of
13 MacIntyre, McCulloch, Stanfield and Young here in Houston. **She**
14 **practices probate law.**

15 Plaintiffs in this matter have sued, as you can
16 see, more than 15 defendants who are lawyers, judges, other
17 legal professionals, like court reporters, and other
18 participants in a probate matter who practice in Harris County
19 Probate Court No. 4.

20 Plaintiffs' claims in their complaint consist of
21 an allegation that the defendants collectively are members of a
22 secret society and what plaintiffs call a cabal that they call
23 Harris County Tomb Raiders Association. They also call it the
24 Harris County Probate Mafia.

25 Plaintiffs' allegation comes down to a RICO

1 claim, and plaintiffs allege that the folks in this courtroom
2 are members of a shadow organization that engage in poser
3 advocacy. And plaintiffs appear to say that poser advocacy is
4 the fake practice of law by the attorneys and lawyers -- or the
5 attorneys and judges and court reporters in this room that's
6 designed to, in plaintiffs' words, highjack familiar wealth
7 from decedent's estates in the probate system.

8 Effectively, Your Honor, the best I can tell,
9 plaintiffs allege that the folks in this room are in this
10 probate mafia and they engage in the fake practice of law in
11 Probate Court No. 4 to generate attorneys' fees, which
12 plaintiffs say defund the estates in the probate court. And
13 that's plaintiffs' theory of the case and theory of how they're
14 entitled to damages.


15 Against Ms. Young, plaintiffs purport to allege
16 ten causes of action. They allege a RICO cause of action;
17 three claims for honest services fraud; a claim for wire fraud;
18 a claim for fraud under 18 U.S.C. Section 1001; a Hobbs Act
19 claim; and three conspiracy claims.

20 Now, those claims all fail for three very simple
21 reasons. The first reason they fail is a reason that applies
22 to everyone in this room; and that is, that plaintiffs have
23 simply failed to state a claim on which relief can be granted
24 under Twombly and Iqbal and the plausibility standard of Rule
25 12, but also just that plaintiffs' complaint itself is

1 delusional and fanciful and this Court should use its inherent
2 powers to dismiss that complaint.


3 The second basis and the second reason
4 plaintiffs' complaint should be dismissed also applies to
5 everyone in this room, and it's that plaintiffs have failed to
6 show they have standing to sue for RICO and the other causes of
7 action that they've sued for are criminal causes of action that
8 aren't privately actionable in federal court. And we've cited
9 a lot of case law, that they can't bring it. And so the only
10 claim that they really can bring is the RICO claim, and they've
11 alleged no direct injury that would give them standing to sue.

12 The third reason why plaintiffs' complaint should
13 be dismissed against Ms. Young is -- particularly Ms. Young and
14 some other folks in here, but Ms. Young is protected by Texas's
15 attorney immunity doctrine, which I'll talk about very briefly,
16 Your Honor. I mentioned plaintiffs' allegations. They appear
17 to relate to a probate matter in Harris County Probate Court
18 No. 4. **Plaintiffs call that the Curtis v. Brunsting matter.**
19 They don't ever mention a cause number. I think, Your Honor,
20 since they've sued Ms. Young, the only matter Ms. Young was
21 ever involved in that involved plaintiff Curtis is the matter
22 of ***In re: Estate of Nelva Brunsting***, which is in Probate Court
23 No. 4.

24 But Plaintiff Munson wasn't a party to that
25 matter.  He wasn't a beneficiary to that estate. He doesn't

1 have any relationship to Ms. Young. He doesn't appear to have
2 standing to sue at all in this matter.

3 In the Brunsting matter, Ms. Young, my client,
4 was an attorney for Temporary Administrator Lester, who is also
5 a defendant here today. Temporary Administrator Lester was
6 appointed by Probate Court No. 4 to prepare a single written
7 report. Ms. Young assisted him as his attorney in preparation
8 of that single report, and that's all she did. All of the
9 actions taken by Ms. Young in that probate matter were in her
10 role as attorney to Ms. -- I'm sorry, to Mr. Lester. The
11 plaintiffs don't dispute that. Ms. Young never had a fiduciary
12 relationship with either plaintiff. Plaintiffs don't dispute
13 that.

14 In fact, nowhere in their entire complaint do
15 plaintiffs allege Ms. Young committed a single wrongful act or
16 did anything other than act as an attorney for Temporary
17 Administrator Lester. 

18 So, I want to go through very briefly, Your
19 Honor, the three bases for dismissal that I mentioned earlier.
20 The first is that plaintiffs' complaint doesn't state a claim
21 for relief. And that's under Twombly and Iqbal, but also just
22 that it's delusional, Your Honor, and that this Court should
23 use its powers to dismiss that. Under Rule 12, as this Court
24 knows, plaintiffs' complaint must be dismissed under Twombly
25 and Iqbal if it's too implausible to state a claim for relief.

1 This means that the Court should ignore all legal conclusions
2 in the complaint, and it has to look at whether the
3 well-pleaded facts permit the Court to infer more than the mere
4 possibility of misconduct.

5 Here there is nothing in the complaint but
6 boilerplate legal conclusions, Your Honor. There are no
7 allegations of wrongful acts by Ms. Young. There are no
8 allegations of wrongful acts, you know, pleaded with any sort
9 of specificity that can identify an alleged actual wrongful act
10 by plaintiffs, other than plaintiffs' allegation that there's
11 this probate mafia engaging in **poser advocacy**, but there's no
12 actual examples of what that is or how that took place.

13 *THE COURT:* Is the operative complaint Document No. 1?

14 *MR. SCHAEFER:* Yes, Your Honor.

15 *THE COURT:* Very well.

16 *MR. SCHAEFER:* Other courts in this district have
17 dismissed RICO cases very similar for this exact same reason.
18 There's a matter that we cited to in our motion to dismiss
19 called *Freeman v. Texas*, which is a 2008 case decided by Judge
20 Rosenthal, where Judge Rosenthal dismissed is a complaint
21 alleging a probate court was a RICO enterprise comprised of
22 judges who, quote, conspired against pro se litigants that
23 virtually looted the pro se litigant's homestead through a
24 probate proceeding. And the Court -- Judge Rosenthal held that
25 even if all of those allegations were true, they failed to

1 state a racketeering activity because plaintiff hadn't alleged
2 sufficient facts to raise a colorable claim that any violation
3 of any of the predicate RICO acts had actually occurred. So,
4 the Court held in light of the absence of any well-pleaded
5 facts sufficient to state a RICO claim, that claim was
6 dismissed.

7 The same is true here, Your Honor. But in
8 addition to just being implausible on its face, the complaint
9 is frivolous and delusional, and just a facial reading of the
10 complaint shows the Court that that's true. And this Court has
11 inherent authority to dismiss a pro se litigant's frivolous or
12 malicious complaint.

13 To determine whether a complaint is frivolous or
14 malicious, a court has to look at the complaint and see whether
15 the allegations are clearly baseless, which means the
16 allegations are fanciful, fantastical, or delusional. Here,
17 again, plaintiffs allege that the folks in this courtroom are
18 members of a secret society called the Harris County Tomb
19 Raiders that defraud estates through poser advocacy by all
20 these mafia members -- probate mafia members. Your Honor,
21 these allegations are fanciful and delusional.

22 I would direct you to a very recent decision from
23 an order from Judge Hoyt, who considered an almost identical
24 case, called *Sheshtawy versus Conservative Club of Houston*. We
25 have cited that. I have the order, if you would like to see a

1 copy of it.

2 There the Court was considering, you know, almost
3 identical allegations, Your Honor, although dealing with
4 Probate Court No. 1 instead of Probate Court No. 4. And the
5 Court held in that order that the allegations that Probate
6 Court No. 1 in Harris County and all the litigants and parties
7 in that court were a RICO enterprise. The Court said that
8 legal theory is, quote, "pure zanyism." The same is true here.
9 We've cited the *Sheshtawy* order in our briefing. You now have
10 a copy of it. This allegation, too, is pure zanyism. It's
11 fanciful, it's delusional, and it fails to state a claim for
12 relief that can be granted by this Court.

13 The second basis that -- for why plaintiffs'
14 claim fails, is they don't have standing to sue on any of the
15 causes of action they've alleged. First, I want to talk about
16 RICO. And, again, this applies to everyone in this courtroom.
17 Plaintiffs don't have standing to bring suit under RICO,
18 because RICO requires a direct injury in order for a party to
19 sue. A plaintiff can only sue if they can show some RICO
20 violation was a direct and but for cause of the injury. The
21 court in *Sheshtawy*, in that same order I just handed to you,
22 Your Honor, held that plaintiffs had failed to show they had
23 standing to bring a RICO case because, quote, "Routine
24 litigation conduct cannot become a basis for a RICO suit."

25 That's all that's going on here. Ms. Young

1 represented Temporary Administrator Lester, who was appointed
2 by the Court. But even if they alleged real allegations of
3 wrongdoing, their assertion that the way there's damage is
4 through this poser advocacy that defunds estates, it's not
5 actionable by them individually as potential beneficiaries of
6 the estate. There's a Sixth Circuit case that we've cited to
7 titled *Firestone*, Your Honor. And in that case the
8 beneficiaries of the Firestone Tire family estate asserted RICO
9 claims against the executor of the estate and the trustee of
10 the estate. And the Sixth Circuit affirmed the district
11 court's dismissal, saying that those plaintiffs, the
12 beneficiaries, didn't have standing to sue. The alleged RICO
13 harm was that the executor of the estate and the trustee of the
14 estate had lowered the value of the estate, such that when the
15 estate paid out, the beneficiaries of the estate didn't get as
16 much money as they should have.

17 The Court said this is basically like a
18 corporate -- like a corporate -- corporation versus shareholder
19 lawsuit, and there aren't derivative claims here where
20 shareholders can bring the claims. The injury is to the
21 estate. Like when a corporation is injured, the injury is to
22 the corporation. The shareholders to a corporation can't bring
23 suit for an injury that happens to the corporation, just like
24 the beneficiaries of an estate can't bring suit for harm to the
25 estate.

1 Here it couldn't be more clear. The allegation
2 is all of these people engaged in this advocacy that lowered
3 the value of the estate. If that is a real harm that is really
4 actionable, it's the estate's claim. It's not these
5 individuals' claim.

6 And then, again, for everyone in this room, Your
7 Honor, the other claims asserted by plaintiffs, the Hobbs Act
8 claim, wire fraud, fraud under 18 U.S.C. Section 1001, honest
9 services fraud, none of those causes of action create -- I'm
10 sorry, none of those statutes create private causes of action.
11 They're all federal criminal statutes that can only be brought
12 by the government. We've cited a plethora of case law in our
13 motion to dismiss, showing that plaintiffs can't bring those
14 claims. That hasn't been responded to. And they should be
15 dismissed.

16 The third reason that is particular to Ms. Young
17 for why plaintiffs' claims should be dismissed is that
18 Ms. Young is protected by Texas's attorney immunity doctrine.
19 Under Texas law, an attorney is immune from civil liability to
20 a non-client, quote, "for actions taken in connection with
21 representing a client in litigation even when that conduct is
22 wrongful conduct in the underlying litigation." That's a Texas
23 Supreme Court case that held that, *Cantey Hanger versus Byrd*.
24 Here, again, there's no allegation that Ms. Young did anything
25 other than assist Temporary Administrator Lester in his

1 preparation of this report. That is action she took as an
2 attorney for someone else. She didn't owe a fiduciary duty to
3 plaintiffs. She is immune from suit under Texas's attorney
4 immunity doctrine.

5 Your Honor briefly mentioned earlier the motion
6 for sanctions that we had filed. Actually in the *Sheshtawy*
7 matter that I mentioned to you, the Court yesterday -- Judge
8 Hoyt yesterday issued an order granting sanctions against the
9 plaintiffs in that matter. We served plaintiffs with our
10 motion for sanctions on September 27th, 2016. Under Rule 11,
11 the safe harbor provision, we waited until October 27th, 2016,
12 to file that motion. Plaintiffs haven't even bothered to
13 respond to that motion. Thus, we ask that when this Court
14 dismisses plaintiffs' complaint, it also grant the motion for
15 sanctions.

16 *THE COURT:* Very well.

17 *MR. SCHAEFFER:* Thank you, Your Honor.

18 *THE COURT:* Let's start from my right. Counsel, are
19 there any individual arguments that need to be made on behalf
20 of your client other than what have been asserted by way of
21 this general background?

22 *MR. ABRAMS:* The only factual point --

23 *THE COURT:* Name and client.


24 *MR. ABRAMS:* Thank you, Your Honor. Barry Abrams for
25 Darlene Payne Smith. The only factual point I want to make is

1 there's one -- only one paragraph in the complaint mentioning
2 Ms. Smith. And the conduct attributed to Ms. Smith was
3 opposing a motion for protection, which is conduct as a lawyer
4 in a litigated matter that falls within the immunity. That's
5 the only factual allegation with regard to Ms. Smith. I join
6 in all the other arguments counsel has made.

7 *THE COURT:* Very well.

8 Ms. Bayless?

9 *MS. BAYLESS:* Yes, Your Honor. Bobbie Bayless on my
10 own behalf.

11 The only point I will make is that factually the
12 only allegation made against me -- I represent one of the
13 Brunsting siblings. And the only allegation made against me is
14 that I withdrew or passed a hearing on a motion for partial 
15 summary judgment that I had filed on my client's behalf when he
16 resigned as executor. So, not only did it need to be passed,
17 because at that point there was a vacancy in that position and
18 it would have only been a partial hearing on a partial motion
19 for summary judgment on only his individual claims and not the
20 estate's claims until that vacancy could be filled, but it's
21 also my own motion and I can pass at any time I want to. And
22 that is the allegation against me.

23 *THE COURT:* Very well. Ms. Hedge?

24 *MS. BECKMAN HEDGE:* Yes, Your Honor. May I approach
25 the lecturn?

1 *THE COURT:* Yes.

2 *MS. BECKMAN HEDGE:* Thank you. Laura Beckman Hedge.
3 I represent Judge Comstock, Judge Butts, and Toni Biamonte.


4 Your Honor, there's -- I want to talk about some
5 specific things to my clients and then there's just a few other
6 additional arguments that I would like to add to what's already
7 been discussed that hasn't actually been covered, but that I
8 would want the Court to consider in its ruling.

9 The claims that have been made against the judges
10 and against the court reporter who -- Toni Biamonte, Your
11 Honor, was a substitute court reporter, not the one that's
12 normally assigned to this probate judge, but actually covered a
13 single hearing and for that has been sued in this case.

14 They have all been accused of being blatantly
15 corrupt, conspiring to loot assets, exploiting the elders of
16 society, and unjustly enriching the attorneys in this case.
17 The predicate acts that have been alleged in this case against
18 the judges is referral of a case to what the plaintiffs refer
19 to Judge Davidson as an extortionist, thug mediator, and
20 removing a motion for summary judgment from a hearing docket.

21 With regard to Mr. Biamonte, he has been alleged
22 to have knowingly and willfully destroyed some unidentified
23 material evidence. Your Honor, when a response was filed to
24 our motion to dismiss, the grounds that were given why
25 Mr. Biamonte was sued was because they were not satisfied with

1 his response concerning the unavailability of a transcript from
2 the single hearing that he recorded. They said that he was
3 sued because he didn't respond to their e-mail. Clearly that
4 is frivolous, and I would argue sanctionable, Your Honor, for
5 bringing him into this lawsuit.

6 The plaintiffs have sued my clients for at least
7 15 different claims. With respect to the subject matter
8 jurisdiction argument, counsel's already covered the fact that
9 there was no direct injury. You must have a tangible financial
10 loss. Even the plaintiffs have stated in their pleadings that
11 they are suing for threats of injury to property rights of what
12 Ms. Curtis has, as she has defined, an expectancy interest 

13 Mr. Munson has no expectancy interest, period.
14 He has identified himself as the domestic partner of
15 Ms. Curtis.

16 Further, Your Honor, they have alleged fraud,
17 various counts of fraud. They are unspecified. And under Rule
18 9(b), it requires specificity. **They have to state the who,**
19 **what, when, where, and how.** They have a 59-page complaint, 217
20 paragraphs. They have not been specific and have not met the
21 requirements. There has not been any unlawful act alleged.
22 There are no facts supporting any actionable predicate act.
23 The numerous claims they've made are generalized, and they are
24 not predicate acts of racketeering activity. The claims
25 against my client to which I would refer, and I'm not going to

1 list them all by name, I'll just refer to them by number,
2 Claims 12, 38, 23, 44, 46, and 47.

3 The judges, Your Honor, have a unique immunity in
4 this case, and that is judicial immunity. There is case law
5 cited in our motion concerning judicial immunity. The
6 plaintiffs have attempted to get around the judicial immunity
7 argument, because they know it's a winner, by trying to contend
8 that the actions were nonjudicial. However, when you look at
9 the acts they've actually complained of, they are clearly
10 judicial. The factors that are considered are: Is the action
11 normally performed by a judge? Did the act occur in the
12 courtroom? Does the controversy center on a pending case
13 before a judge? Does the act arise from an exchange with the
14 judge in his or her official capacity?

15 Now, importantly, Your Honor, those factors are
16 construed broadly in favor of immunity, and not all of them are
17 required. In fact, just one factor alone would be sufficient
18 for a finding of judicial -- that there was a judicial act.

19 The only two exceptions to judicial immunity are:
20 Number one, if it's nonjudicial; or, number two, if the
21 judicial act was taken in a complete absence of jurisdiction.
22 There has been no allegation that any of the actions taken were
23 done in a complete absence of jurisdiction. And there's
24 certainly no facts supporting that.

25 Additionally, Your Honor, the judges are entitled

1 to the Eleventh Amendment protection and governmental immunity
2 for claims for them acting in their official capacity. The
3 Fifth Circuit in *Kirkendall versus Grambling* at 4 F.3d 989,
4 that involved a case of RICO violations against three judges
5 and the court's secretary. The court in that case found that
6 they were entitled to judicial immunity and that the court's
7 secretary was entitled to quasi-judicial immunity. The court
8 in that case rejected the plaintiffs' arguments that immunity
9 did not apply as frivolous.

10 The actions complained of, Your Honor, concerning
11 the judges, that they have obstructed justice by removing the
12 summary judgment motion from the calendar and creating what
13 they call stasis, for conspiring to redirect the litigation
14 away from the public record to a staged mediation, which, Your
15 Honor, actually never took place. Those actions that I've just
16 described, those are functions normally performed by a judge.
17 Clearly what they are complaining about are judicial acts.

18 Your Honor, I want to turn now to Toni Biamonte,
19 the substitute court reporter. He is entitled to official
20 immunity. He is entitled to that because they have sued him as
21 the, quote, "official court reporter for the probate court."
22 They have not alleged that he's been sued in any individual
23 capacity. When you sue an official in their official capacity,
24 it is the same as suing the county. And Harris County cannot
25 be liable for a RICO violation. And the reason for that is

1 because, number one, they cannot form the mens rea to commit a
2 criminal act, and intent is required under RICO. And, number
3 two, because RICO is punitive in nature. And municipal
4 entities have common law immunity from punitive damages.

5 In fact, Your Honor, it was mentioned a minute
6 ago that Judge Hoyt issued an order yesterday of sanctions.
7 And I just want to direct the Court to one thing in particular.
8 And I do have a copy of that order, if it please the Court.

9 And, Your Honor, I apologize. We do not have a
10 copy of that for the plaintiffs. But I can get that for them
11 as soon as the hearing is over.

12 *MR. SCHAEFER:* Your Honor, Rafe Schaefer. I've got a
13 copy. I can pass one on.

14 *MS. BECKMAN HEDGE:* Your Honor, what I would just like
15 to point the Court to, on the first page of the order granting
16 sanctions, when the Court granted it, it said it's based on the
17 following findings of fact and conclusions of law. And the one
18 paragraph in here that I want to my highlight for the Court is
19 Paragraph 18. And I just want to read two sentences out of
20 that.

21 "This motion for a new trial comes on the
22 backdrop of additional claims that were frivolous and that
23 Mr. Cheatham and Mr. Gabel" -- those were the lawyers for the
24 plaintiffs, Your Honor -- "should have known lacked basis.
25 Those include the following: One, there was no basis for

1 breach of a fiduciary duty claim against opposing attorneys,
2 such as CCJ attorneys; two, there is a litigation privilege in
3 Texas for opposing attorneys like CCJ attorneys with no general
4 fraud exception; three, that the honorable judges and court
5 coordinator are entitled to immunity; four, Harris County, as a
6 governmental entity, cannot be liable under RICO."

7 Your Honor, there is precedent. As I just read,
8 even Judge Hoyt agrees, that there is immunity that applies and
9 that Harris County cannot be liable. And, therefore, Toni
10 Biamonte in this case cannot be liable.

11 Finally, Your Honor, there is another immunity
12 that applies here and that is called qualified immunity. It
13 requires the plaintiff to allege that there has been a
14 constitutional violation. There has been no such allegation
15 made and certainly no facts to support it. In, *Bagby versus*
16 *King*, a case out of the Western District of Texas, the court
17 there held that the claims against the judges, the district
18 clerk, the appeals court clerk were barred by judicial or
19 qualified immunity. In that particular case, Your Honor, there
20 were allegations regarding the way that the case had been
21 handled and the disposition of the cases.

22 Finally, Your Honor, with respect to the failure
23 to state a claim, which is applicable to all of the defendants
24 here, a few additional points I just want to add. One is that
25 the plaintiffs have failed to allege a conspiracy. They have

1 used only conclusory language throughout their complaint. The
2 civil conspiracy that they have alleged is a derivative tort.
3 It requires an agreement to commit predicate acts. There are
4 no allegations of any agreement and certainly no facts to
5 support that.

6 Additionally, Your Honor, they have failed to
7 allege the existence of an enterprise or of an association, in
8 fact, also required for a RICO violation. They contend that
9 Probate Court 4 is an enterprise because it's involved in
10 various aspects of interstate and foreign commerce by a
11 adjudicating suits involving persons and property outside of
12 Texas. A conclusion, Your Honor. There is no facts to support
13 that there is an enterprise in Probate Court 4. It is not a
14 legal entity and cannot be an enterprise.

15 Additionally, Your Honor, they have also not pled
16 that there has been any pattern of racketeering activity. They
17 only make conclusory allegations.

18 Thank you, Your Honor. I appreciate your time.

19 *THE COURT:* Continuing to move to my left as to
20 defendants as to specific facts or arguments that need to be
21 articulated on behalf of the defendants that you represent -- I
22 don't need to hear a repeat. If you want to adopt what has
23 been said, note that; and if there's anything additional that
24 you need to say, let me know that. So, first, counsel.

25 *MR. REID:* Your Honor, Eron Reid for Neal Spielman.

1 My client represented Amy Brunsting in the Probate Matter 4.
2 The only allegations -- the specific factual allegations him
3 are for his conduct in the March 9th status conference hearing.
4 That's the only additional thing I would add is covered under
5 the attorney immunity.

6 *THE COURT:* Very well. Hold it. Anything else?

7 *MR. REID:* Nothing other than I adopt everything else.

8 *THE COURT:* Very well.

9 Counsel?

10 *UNIDENTIFIED SPEAKER:* Yes, sir --

11 *THE COURT:* Hold on.

12 *UNIDENTIFIED SPEAKER:* I'm sorry.

13 *THE COURT:* I'm going to go here, across the front.

14 *MR. GREENE:* Your Honor, Adraon Greene for Defendants
15 Stephen Mendel and Bradley Featherston. The only thing we
16 would like to add, Your Honor, is our clients also represented
17 Mrs. Anita Brunsting as of November 2014. All of the acts
18 alleged against my clients arose from that representation,
19 specifically disseminating -- the dissemination of voice
20 recordings, which they're required to do under the Texas Rules
21 of Civil Procedure, because those voice recordings are
22 witness -- are witness statements.

23 The objection that was filed to trust
24 distributions, which the court in the probate court sustained,
25 because the court found that that request for a distribution

1 was not for the health, education, maintenance, and support of
2 any trustee, instead it was for a request to pay attorney's
3 fees.

4 And, finally, the last act was simply to schedule
5 mediation, which obviously pursuant to the representation of
6 Mr. Brunsting, they thought that was the appropriate thing to
7 do. Otherwise, Your Honor, we adopt all the previously made
8 arguments.

9 *THE COURT:* Very well. Coming around this way.

10 *MS. AMY BRUNSTING:* Me?

11 *THE COURT:* Yes, ma'am.

12 *MS. AMY BRUNSTING:* Amy Brunsting.

13 *THE COURT:* Why don't you have that mike -- there you
14 go. Thank you.

15 *MS. AMY BRUNSTING:* Amy Brunsting. There are just two
16 issues that haven't been addressed yet. The first one is
17 regarding the recordings on the phone. The plaintiff has not
18 shown any evidence or provided any facts that show that I had
19 any knowledge or handling or anything to do with those
20 recordings. Yet I'm accused of doing wiretapping and
21 possessing these things, and I have never seen them. So,
22 there's no basis in fact on that.

23 And the other one is that they refer to a heinous
24 extortion instrument, which in reality is a qualified
25 beneficiary trust that was prepared for my mother by her and

1 her attorneys. I had no authority -- I had no business doing
2 any of the preparation of that document at all. That was done
3 while my mother was alive. And that was her private affairs.

4 On my mother's death, my sister Anita and I
5 became trustees of the Brunsting Family Trust, and that is the
6 only reason that I'm being involved in all of this. But prior
7 to that time, I had no fiduciary responsibility towards the
8 plaintiff. One of the plaintiffs, I've never met before,
9 Mr. Munson. Until this case happened, I had never met him, had
10 any kind of dealings with him. I have no fiduciary
11 responsibility to him that I know of. I've never had any kind
12 of business dealings with him at all. And they cannot -- or
13 have not explained how -- with any kind of facts, as to how I'm
14 connected to him.

15 *THE COURT:* And you represent yourself?

16 *MS. AMY BRUNSTING:* Yes, sir.

17 *THE COURT:* Very well. Ma'am?

18 *MS. ANITA BRUNSTING:* Anita Brunsting, representing
19 myself. And I adopt what's been said.

20 *THE COURT:* Very well.

21 Counselor?

22 *MR. OSTROM:* Yes, Your Honor. I've got two clients,
23 myself and Mr. Lester. I'm going to break them out separately.
24 With regard to myself, I'm a little different situated than the
25 other parties to this proceeding, because I, in fact, was the

1 attorney for Ms. Curtis in the underlying proceeding.

2 The other unique part about it, is that I was
3 terminated before most of the alleged predicate acts that she
4 complains of. So, my termination of role and role in the case
5 has ceased and her facts really don't go to me. To the extent
6 that the facts do go to me, it involves the movement of the
7 case and filing the pleading in Probate Court 4 that asserts
8 claims as to a trust and the defects in a trust. That's
9 important, because we're talking about damage under RICO and
10 her claims, as I understand, still exist. The same claims that
11 she believes she's been harmed or deprived of are still
12 currently pending. They're active claims. The same -- the
13 pleadings she complains that I didn't adequately represent her
14 in support of a conspiracy with the other counsel assert the
15 same claims, and it's still pending. So, I can't see how she
16 can indicate that I've harmed her in any way.

17 With regard to Mr. Lester, we adopt, and myself,
18 we adopt the arguments already presented. Thank you.


19 *THE COURT:* Very well.

20 *MR. MATHEWS:* Your Honor, Bernard Mathews, Your Honor.
21 I guess I am alleged to be -- oh, I'm sorry.

22 *THE COURT:* No, no. Microphone.

23 *MR. MATHEWS:* You can't hear.

24 I guess I'm alleged to be one of the card
25 carrying members of the probate mafia in Houston, which I would



1 have to say I would be proud to be a part of in this particular
2 case, because all I can see is hardworking attorneys and court
3 officials trying to bring some resolution to this very bitter
4 dispute between the siblings of this trust.

5 I personally had about two months of involvement
6 in this case back in 2012 when I represented Anita and Amy
7 Brunsting. I made an appearance in Judge Hoyt's court with
8 respect to a motion to lift a lis pendens so a fair market
9 value sale could occur, and then later communicated some
10 financial information to Ms. Bayless. I'm had no direct
11 representation of the defendants, and I had nothing whatsoever
12 to do with the probate proceedings in Court 4.

13 So, I would then, again, adopt the attorney
14 immunity doctrine on behalf of both Ms. Brunstings here and all
15 the other arguments which have been made.

16 *THE COURT:* Thank you, counselor.

17 *MS. FOLEY:* Zandra Foley for Candace Freed and Al
18 Vacek. They are the lawyers who drafted the trust agreements
19 in this case, and so they were not a part of any lawsuit in
20 Probate Court 4. They are not a party, and they never
21 represented any of the parties in Probate Court 4. So, I adopt
22 the arguments that have been made everyone else. However, with
23 respect to the immunity, that wouldn't apply to my clients.
24 But something kind of similar would, and that is the *Barcelo*
25 case, *Barcelo versus Elliot*, which is a Texas Supreme Court

1 case from 1996. And that case essentially held that
2 beneficiaries are not permitted to sue the estate planning
3 lawyer, simply because it relies on the age old rule of
4 privity. Meaning you have to have privity with the lawyer in
5 order to sue them. And so that argument is a little bit
6 different.

7 The only other thing I'll mention is that
8 specifically with respect to Mr. Munson, in response to our
9 motion to dismiss the plaintiff, in Paragraph 69, specifically
10 states, "One thing plaintiffs and defendants appear to agree on
11 is that Munson is not a party to any of the prior lawsuits nor
12 is he a beneficiary of the Brunsting family trust, and that" --
13 and he's quoting our motion -- "it is inconceivable that he
14 could be injured as a result of V & F's," that's Vacek and
15 Freed, "drafting of the estate planning documents." And based
16 on that admission and all the other arguments, we believe that
17 these claims should be dismissed.

18 *THE COURT:* Very well. And?

19 *MR. FEATHERSTON:* Your Honor, I'm Brad Featherston.

20 *THE COURT:* Very well. And?

21 *MR. MENDEL:* I'm represented by Mr. Greene, Your
22 Honor.

23 *THE COURT:* Very well.

24 All right. You heard the motions to dismiss, the
25 presentation, Ms. Curtis; is that correct?

1 *MS. CURTIS:* Yes.

2 *THE COURT:* That gives you the opportunity to respond
3 to any of the arguments that you've heard regarding why your
4 case -- why your cause of action should be dismissed. If you
5 want to stand at the table, that's fine, but just pull the mike
6 up, so that we can hear you.

7 And, first of all, just to get this clear, so I
8 understand, are you a licensed attorney?

9 *MS. CURTIS:* No, sir.

10 *THE COURT:* Okay. So, you're just an individual
11 representing yourself and you filed this law enforcement on
12 behalf of yourself?

13 *MS. CURTIS:* Yes, I did.

14 *THE COURT:* Very well. You may proceed.

15 *MS. CURTIS:* I'd like for Mr. Munson to respond to
16 these, if it's okay.

17 *THE COURT:* Okay. Now, Mr. Munson, are you an
18 attorney?

19 *MR. MUNSON:* No, sir.

20 *THE COURT:* Okay. Mr. Munson cannot represent you.
21 He's not an attorney. And so to the extent that there is a
22 response by you, it has to come from you. And Mr. Munson, to
23 the extent that he has causes of action, he can assert those or
24 respond to those on his own behalf, but he's not allowed to
25 speak for you. Do you understand?

1 *MS. CURTIS:* Yes.

2 *THE COURT:* All right. So with that being said, do
3 you have anything you wish to say to me?

4 *MS. CURTIS:* Okay. May I wait until he's done?

5 *THE COURT:* Yes.

6 *MS. CURTIS:* Okay.

7 *THE COURT:* And you're Mr. Munson?

8 *MR. MUNSON:* Yes, sir, I am.

9 *THE COURT:* And, Mr. Munson, you're going to come up
10 to the podium. Very well. And you told me you're not an
11 attorney, correct?

12 *MR. MUNSON:* No, sir.

13 *THE COURT:* And you're representing yourself in this
14 matter?

15 *MR. MUNSON:* Yes, sir.

16 *THE COURT:* Very well.

17 *MR. MUNSON:* I'm representing myself, and I'm a
18 private attorney general representing the public interests as
19 well.

20 *THE COURT:* What does that mean, a private attorney
21 general?

22 *MR. MUNSON:* Well, the RICO statutes under 1964(c)
23 provide a private cause of action for private plaintiffs. 1963
24 is the cause of action for public prosecutors. The Congress
25 when they drafted the RICO statutes mentioned in the

1 legislative committee reports, that they didn't believe that --
2 and it's in all kinds of case law, that they didn't believe
3 that the public prosecutor resources were adequate to address
4 organized crime. They didn't say why they didn't think they
5 were adequate, and I'm not going to address those issues.

6 *THE COURT:* But that's what your explanation as to
7 what private attorney general is for --

8 *MR. MUNSON:* A private attorney general is someone who
9 advances a matter in the public interest.

10 *THE COURT:* All right. So, now in regards to the
11 arguments articulated on behalf of the defendants who are
12 seeking motions to dismiss, what is your response on behalf of
13 yourself, not on behalf of Ms. Curtis, because you cannot
14 represent --

15 *MR. MUNSON:* I'm aware of that. Okay.

16 *THE COURT:* Okay.

17 *MR. MUNSON:* But they are the same issues, technically
18 speaking.

19 *THE COURT:* Very well.

20 *MR. MUNSON:* All of these defendants have entered
21 plenary admissions in this matter, and you've heard them all
22 repeat them today. They insist a probate matter, that this
23 arises from a probate matter. *Curtis v. Brunsting* in the Fifth
24 Circuit, that's -- I'm been in Texas for five years. And when
25 I see the Brunsting Trust, there is no probate. If we read the

1 wills, which none of these defendants who claim probate even
2 bother to do, you'll find out that everything that the will
3 authorized to be done was completed five days before the
4 so-called probate matter was filed. The inventory was
5 submitted on April 4th. It was approved and filed with a drop
6 order on April 5th. Five days later, the same day Judge Hoyt
7 issued an injunction to Mrs. Curtis in the probate -- in the
8 trust related case in the federal court, Bobbie Bayless filed
9 her probate matter.

10 Now, nothing in the so-called probate matter
11 addresses anything but the trust, and none of the claims
12 contained in the so-called probate matter are contained in the
13 list of inventory and assets. There is no probate matter.
14 *Curtis v. Brunsting* is related to the Brunsting Trust. It is
15 not property belonging to the estate of Nelva Brunsting or
16 Elmer Brunsting. That was settled by the Fifth Circuit Court
17 of Appeals. And I don't think we're going against the Fifth
18 Circuit in regard to that judgment in this case.

19 I'm not here to try the case, but there is no
20 probate matter, because there's no jurisdiction in the probate
21 court. We have two problems with 12(b)(6) and 12(b)(1). The
22 first one is 12(b)(6) relies upon --

23 *THE COURT REPORTER:* Can you slow down?

24 *MR. MUNSON:* Okay. Have to rely upon the statement of
25 facts made in the complaint. All of the defendants offer a

1 contrary view of the facts. They're not allowed to do that
2 under 12(b)(6). They can do that under a factual challenge
3 under 12(b)(1), but they have to support it with affidavits and
4 documents outside the record. They do none of those things.

5 So, the whole idea of immunity is based upon
6 subject matter jurisdiction. Nothing in the probate court
7 involved anything but the Brunsting Trust. If you were to ask
8 these defendants to identify a probate claim pending in the
9 probate matter, the only thing that comes out of their mouth is
10 trust. The trust is not an asset belonging to the estate. I
11 have no have interest in the probate. There was no probate.
12 It was completed before the probate matter was filed. I have
13 no interest in the trust. However, I have an interest in my
14 household.

15 Plaintiff Curtis and I are domestic partners.
16 And this case is robbing assets from my home and redirecting
17 them to courts in Texas in order for her to defend her property
18 interest. It is not an expectancy. It is a property right.
19 The expectancies come from the estate. Now, I heard one of the
20 lawyers mention Foster (phonetic). There was a will challenge
21 in Foster. There's no will challenge in the Brunsting case.
22 If you read the wills, none of the five Brunstings are heirs to
23 the estate. Only the trust is an heir to the estate. The
24 Fifth Circuit did read the will. But none of these defendants
25 in their 200 some pages of motions to dismiss, they all say

1 probate matter, probate matter, probate matter. Not one of
2 them mentions the will. The reason for that is to give the lie
3 to the claim that it's a probate matter.

4 They also claim they have no idea what *Curtis v.*
5 *Brunsting* is. *Curtis v. Brunsting* is the case that was in
6 possession of the Brunsting Trust, beginning on 2-12-20 --
7 2-27-2012 and continuing until this remand to the so-called
8 probate matter. You cannot remand a plaintiff for
9 consolidation with a case where she is a defendant. Dicey's
10 rules of parties to action number five says that a plaintiff
11 cannot be a defendant in the same action.

12 Bobbie Bayless named plaintiff Curtis a
13 defendant in the probate matter. The whole notion that she
14 could be remanded to probate to consolidate with Carl Brunsting
15 in non-litigation, where she was a defendant, is a false
16 thesis.

17 Under 12(b)(6) the Court is compelled to accept
18 the facts in the complaint. Under 12(b)(1), they can't
19 challenge those facts without support. They've done neither
20 one of those. And yet they come in here insisting a completely
21 different set of facts. Their immunity claims are based upon
22 the notion of subject matter jurisdiction. There is no subject
23 matter jurisdiction over the Brunsting Trust in the probate
24 court. The Fifth Circuit is controlling. They address that.
25 It's only seven pages. But I don't think any of these people

1 ever read it. I'm not sure they've ever read anything, because
2 they keep repeating themselves like they're broken records.
3 And yet, there is no probate matter.

4 There was never about a probate matter after the
5 inventory and listed claims were submitted and the matter
6 dropped. In fact, it was a year later that the Brunsting case
7 was remanded to probate and suddenly became the estate of Nelva
8 Brunsting, which the Fifth Circuit said it's not. It was six
9 months later that Carl Brunsting applied for letters
10 testamentary the second time. That's October 17th, 2014. So
11 when it was filed, he filed it individually, but he has no
12 standing as an heir of the estate and as executor for the
13 estate, which was closed, and he had no letters testamentary
14 for.

15 This is all just one big scam from chumming to
16 bring in people who want to protect their assets, to promising
17 them peace of mind, and then deciding which ones would be
18 subject to redirection to the probate for now to be looted.
19 And the defendants all object to the record of proceedings.
20 But the record of proceedings is conclusive. We believe that
21 on the record this case is subject to -- you know, is ripe for
22 summary judgment on the pleadings, but we also know there is
23 more that we can obtain by discovery.

24 There's lots of obfuscation in terms of the
25 accounting for the Brunsting Trust. All of these lawyers have

1 gotten in the way. And if we look at the transcript of the
2 March 9th, I was personally present and witnessed that little
3 charade, I was so offended by the conduct. These grinning
4 jackals, like we're going to rip you off and what are you going
5 to do about it. That's what your misplaced notions of immunity
6 have generated, a bunch of people who have no concern for the
7 administration of justice or the rule of law, and that's what
8 this case is about. It's about public corruption, and that's
9 why I'm here as a private attorney general.

10 *THE COURT:* I only have one question. You stated that
11 you were a domestic partner to Ms. Curtis?

12 *MR. MUNSON:* Yes.

13 *THE COURT:* As to a domestic partner, what legal
14 rights under Texas law does that give you a connection with the
15 issues in this case? I just want to -- because I assume when
16 you say "domestic partner," you didn't use the word "husband"
17 or --

18 *MR. MUNSON:* No, or spouse.

19 *THE COURT:* Or spouse.

20 *MR. MUNSON:* No.

21 *THE COURT:* You just said "domestic." So, what legal
22 rights does that give you?

23 *MR. MUNSON:* I believe I addressed that in the Docket
24 89, where I mentioned Judiciary Rule 1927. It's codified at 28
25 U.S.C. 1927. And it gives you three instances in which

1 Mrs. Curtis is entitled to compensation for her expenses.

2 Okay? And I have been asked by Mrs. Curtis to step in as act
3 as the trust protector and to assist her in trying to figure
4 out this very, very intentionally convoluted case. I mean,
5 they made a mess of the finances, claimed to have them
6 straightened out and then dumped everything in a big box for --

7 *THE COURT:* Hold on. Because I want to make sure
8 we're --

9 *MR. MUNSON:* Okay.

10 *THE COURT:* -- we're on the same page.

11 *MR. MUNSON:* Okay.

12 *THE COURT:* You acknowledged early on before you began
13 your remarks, that you cannot represent -- legally represent
14 Ms. Curtis, only an attorney can do that or only Ms. Curtis can
15 do that.

16 *MR. MUNSON:* Yes -- well --

17 *THE COURT:* Let me finish. In connection with your
18 interest in -- if I heard you correctly, and correct me if
19 I'm wrong, you stated that you were a domestic partner to
20 Ms. Curtis. And I'm trying to get an understanding as to what
21 you are asserting by --

22 *MR. MUNSON:* We have shared finances.

23 *THE COURT:* Don't interrupt me --

24 *MR. MUNSON:* Sorry.

25 *THE COURT:* -- by asserting that you are a domestic

1 partner to Ms. Curtis. So, what --

2 *MR. MUNSON:* We have a joint household. We have
3 joined financial considerations. I don't handle any of the
4 finances. I have renters, but I don't collect any of the
5 rents. I have Mrs. Curtis do all of that. Okay? She's my
6 partner. She handles that part of it. I'm a saxophone player.

7 *THE COURT:* When you say "partner" --

8 *MR. MUNSON:* Yes, domestic partner. We sleep in the
9 same bed. We live together.

10 *THE COURT:* Well, I'm not trying to get that familiar.
11 But partner also has a commercial context to it. So, you're
12 not business partners?

13 *MR. MUNSON:* No, no, no, not specifically. We do have
14 some plans that are being interfered with, but we're not able
15 to pursue those at the moment.

16 *THE COURT:* Okay. Now I understand. Thank you, sir.

17 *MR. MUNSON:* And as far as these attorneys claiming
18 that no one can assist without -- I think it was Docket Entry
19 90, the one -- the document filed untimely, just before this
20 hearing, where they bring up the mention of this unlicensed
21 practice of law. I would love to hear a definition of that, as
22 well as a definition of probate from these defendants. Because
23 my understanding is that I do have standing. And I'm relying
24 on Supreme Court precedent. I did draft all of the drafts for
25 all of the motions in this case, because Mrs. Curtis works in

1 the daytime. So, I've been involved in this for five years.
2 I've had my time redirected to this matter, and it is all one
3 big public corruption fraud.

4 *THE COURT:* Thank you, sir.

5 Ms. Curtis?

6 *MS. CURTIS:* I just know that I'm here today because
7 all of these people are standing between me and my property.
8 And I've been trying to get it and get information about it
9 since right after my mother passed away on November 11th, 2011.
10 As far as I'm concerned, all five of the Brunsting siblings are
11 victims here, because there's attorneys here that have extended
12 them credit to continue to avoid their responsibility.

13 I was directed to hire an attorney, because my
14 domestic partner was in a coma and I could not prepare for a
15 hearing in October of 2013 properly. So, I failed miserably,
16 and Judge Hoyt directed me to hire an attorney so the discovery
17 process could go forward. And after he got out of the
18 hospital, it was a couple of months before he could even think
19 straight. When you have open heart surgery, it's a serious
20 matter. And we looked high and low to find an attorney to
21 represent me, and couldn't until finally we contacted
22 Mr. Ostrom, who convinced us that he would be the person to
23 take this over and immediately proceeded to do things against
24 my instructions, not keep me informed of what was going on and
25 then somehow managed to get me out of the federal court into

1 the probate court where there is no jurisdiction and there
2 wasn't.

3 So, I was stuck in a nightmare for two and a half
4 years and I couldn't get out. I tried to file summary judgment
5 and declaratory judgment motions, which I filed, but I couldn't
6 get a hearing for those. But they could hear whether they were
7 going to have another mediation, so that they could unentrench
8 me from my belief that this property belonged to me and they
9 were holding it. So, that's why I'm here today.

10 Mr. Munson has been helping me since the very
11 beginning. I've known him for almost ten years now, and that
12 was my only choice.

13 *THE COURT:* The defendants in this case have made some
14 very specific legal arguments as to why your case should be
15 dismissed as to their various clients, from judicial immunity
16 to failure to state a claim and a host of issue legal issues
17 that you heard in between. So, in regards to a response to
18 those specific legal assertions by these defendants, judicial
19 immunity, failure to state a claim, do you have any specific
20 response other than what you've put on paper already?

21 *MS. CURTIS:* Well, I believe that if there's no
22 jurisdiction, there are no judges, there are no lawyers, and
23 there is no litigation. And if there is no litigation, then
24 there is no immunity. And I don't believe that there is
25 litigation relating to the trust in Probate Court No. 4.

1 Although, the report from Greg Lester, which was supposed to
2 evaluate the merits of the claims in state court, said nothing
3 about the estate of Nelva Brunsting. All they talked about is
4 the trust and how Ms. Curtis and her brother Carl are going to
5 be disinherited by the no contest clause in this mysterious
6 qualified beneficiary designation, that they can't even produce
7 the original signed document of and for which there are three
8 different signature pages.

9 So, I'm here because I was at wit's end. I was
10 stuck in probate court and being pushed towards a mediation
11 where they were going to unentrench me from going after what
12 belongs to me, what my parents gave to me that is mine now and
13 they're holding it.

14 *THE COURT:* Thank you. And just by way of
15 housekeeping, just I'm trying to get a better sense of the
16 players on the chess board, are you related to these two ladies
17 over here?

18 *MS. CURTIS:* These are my two youngest sisters.

19 *THE COURT:* Okay. And so --

20 *MS. CURTIS:* Carl is my brother, who was represented
21 by Bobbie Bayless.

22 *THE COURT:* Is he here?

23 *MS. CURTIS:* No.

24 *THE COURT:* Okay. So, you have -- all right. Very
25 well. Thank you.

1 What I would like to do -- what I'm going to do,
2 I'm going to wade into the specific motions to dismiss, to get
3 an understanding as to who is going to remain in this case,
4 maybe none of you, maybe all of you, I don't know. I'm going
5 to -- I wanted to hear your oral arguments. And you cited some
6 additional considerations for me to look at, and so I'm going
7 to do that. Once I made a determination as to what motions to
8 dismiss -- how to dispose of them, being granted, being denied,
9 then we can, if necessary, make a plan going forward as far as
10 some type of managed discovery. Right now I think that would
11 be unwieldy given the number of players on this chess board
12 and also given the fact that some of you may not be here --
13 some of the defendants may not be here. Some of the -- you
14 know, one of the ones that I was troubled by, and I'm going to
15 get a better explanation for it -- and obviously this is oral
16 argument and everything is short-circuited to that, but the
17 court reporter. And to the extent that someone is sitting
18 there just taking down a record, I'm not sure of the legal
19 causes of action to which that person may have subjected
20 himself. And as to some of the attorneys, I'll look at that,
21 as well as the judges, that's separate and apart. But, for
22 instance, the court reporter, who was a substitute court
23 reporter, as described, just sticks out, and I just wanted to
24 see exactly what his involvement was in the case. No need to
25 comment.

1 And so I just need to dive -- lawyers,
2 representatives say something in court and my review may reveal
3 a different determination, and so that's what I need to do.
4 But because of that alert going off, that maybe there's someone
5 who doesn't belong here, we're going to keep -- we're going to
6 hold off on discovery. Because I don't want people to
7 participate in discovery if they're not going to be here for
8 the long-haul. I think that manages the cost for everyone and
9 conserves resources for the individual clients. So, I think
10 that's the best way to proceed.

11 Now, having said that, that puts on me a burden
12 of being timely and making sure that these motions to dismiss
13 are disposed of such that the plaintiffs, if this case goes
14 forward, are entitled to some type of discovery for the
15 remaining defendants on the causes of actions that remain.
16 And, so, we cannot delay that process forever, if it's going to
17 go forward. So, I will endeavor to be efficient as I can in
18 getting these motions to dismiss disposed of, so we'll know
19 who's left on the board, and then we can move forward with some
20 type of managed discovery plan that makes sense. That's what
21 I'm going to do.

22 I assume, before I walked out here, that that
23 covered all of the motions to dismiss. Were there any other
24 motions to dismiss that were not addressed today? All right.

25 Are there any other motions that were not

1 addressed today that needed to be addressed?

2 Mr. Munson, Ms. Curtis, any other motions,
3 pending motions on my docket? All right.

4 So let me again address the motions that have
5 been presented. Anything else that we need to address before
6 we adjourn today, starting on my right?

7 *MR. ABRAMS:* No, Your Honor.

8 *THE COURT:* No?

9 *MS. BAYLESS:* Well, I do have this question. My name
10 came up a lot more than I expected it to in this hearing, and
11 some things were said which I did not realize were allegations,
12 this allegation that there's no probate proceeding when there
13 is. I don't know if the Court wants to entertain some brief --

14 *THE COURT:* No.

15 *MS. BAYLESS:* Okay.

16 *THE COURT:* I don't want any additional briefing.

17 *MS. BAYLESS:* All right. Well, thank you, Your Honor.

18 *THE COURT:* To the extent that I dig into this and I
19 determine that additional briefing is necessary on a specific
20 point, my clerk will contact you and ask for it. But as a
21 general rule, I don't want you to submit additional briefing on
22 what you've already briefed. There may be something that I'll
23 dig into that I will ask for additional briefing on, but as of
24 right now, there's no need to submit additional briefing.

25 Anything else from this side?

1 *MR. HARRELL:* No, Your Honor.

2 *THE COURT:* Very well.

3 *MS. BECKMAN HEDGE:* Nothing, Your Honor.

4 *THE COURT:* Ms. Curtis, anything else?

5 *MS. CURTIS:* No, Your Honor.

6 *THE COURT:* Mr. Munson?

7 *MR. MUNSON:* I would like leave, sir -- I'm sorry. I
8 would like leave to file a brief on the public attorney
9 general.

10 *THE COURT:* Not necessary. During your presentation
11 you made some specific cites. We have a record. So, I will
12 check that. If it's turns out that I have additional
13 questions, I will have my clerk contact you for additional
14 information. Anything else, Mr. Munson?

15 *MR. MUNSON:* Yeah, we do have a private attorney
16 general statute in California. It's government code -- it's
17 California Business and Professions Code 17204 and 17535, which
18 also address the issues.

19 *THE COURT:* So, in regard -- and since you cited that
20 to me, I'm just going to ask the question, we're sitting in a
21 Federal District Court in Texas. How does the California
22 statute work in this case?

23 *MR. MUNSON:* It mimics the Supreme Court on the
24 subject.

25 *THE COURT:* Okay. Very well.

1 Anything else, issues from this side of the room
2 that the Court needs to be aware of before we adjourn? Yes,
3 ma'am.

4 *MS. AMY BRUNSTING:* Amy Brunsting. I just wanted to
5 clarify how many siblings were involved. Candy is the oldest.
6 There's another one --

7 *THE COURT REPORTER:* Can she use the microphone?

8 *THE COURT:* Hold on. Use the microphone.

9 *MS. AMY BRUNSTING:* Sorry. There's five siblings in
10 our family. Candy is the oldest. Carole Brunsting is next.
11 Carl Brunsting is the third. I'm the fourth, Amy Brunsting,
12 and Anita Brunsting. So, we're the five siblings. I think
13 only four of them were mentioned. Just clarity.

14 *THE COURT:* You said Candace Brunsting?

15 *MS. AMY BRUNSTING:* Candace -- Candy Curtis, I'm
16 sorry.

17 *THE COURT:* Okay. All right. Very well. Thank you.

18 Any other clarifications, any other additional
19 information that I need? Over there?

20 *MR. MUNSON:* Standing of a private attorney general
21 under civil rights is different than under RICO. RICO is the
22 only situation where a private attorney general does not also
23 have to be an attorney.

24 *THE COURT:* Thank you, sir.

25 All right. We are adjourned. You are excused.

1 Happy holidays to you.

2 *(Concluded at 1:00 p.m.)*

3 * * *

4 I certify that the foregoing is a correct transcript from the
5 record of proceedings in the above-entitled cause, to the best
6 of my ability.

7

8 /s/ *Kathy L. Metzger*
Kathy L. Metzger
9 Official Court Reporter

6-27-2017
Date

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