

Cause No. 412249-401

IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	

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**NOTICE OF INTENT TO PARTICIPATE IN DEPOSITION WITH  
MEMORANDUM ON TEXAS RULE OF EVIDENCE §503(d)**

1. At hearing February 7, 2019 the Court asked the parties for briefing on Texas Rule of Evidence §503(d)(4). Plaintiff Curtis is informed and has a reasonable belief that exceptions (1), (3), and (4) under Texas Rules of Evidence §503(d) all apply. However, Plaintiff has no problem with waiving claims against Defendant or her attorneys related to privilege issues as they relate to the intended deposition of Candace Kunz-Freed.

**Memorandum on the Applicability of Texas Rule of Evidence 503(d)**

2. Under Texas Rule of Evidence §503 the attorney-client privilege (d) does not apply (1) If the lawyer's services were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud (3) If the communication is relevant to an issue of breach of duty by a lawyer to the client or by a client to the lawyer (4) If the communication is relevant to an issue concerning an attested document to which the lawyer is an attesting witness.

**Breach of Fiduciary §503(d)(3)**

3. Prior to the death of Nelva Brunsting, Candace Kunz-Freed betrayed the fiduciary duties of loyalty and fidelity owed to Elmer and Nelva Brunsting when she entered into an express confidential relationship with Anita and Amy Brunsting. In so doing, Kunz-Freed also entered into an implied confidential relationship with the other three members of the Brunsting Trust beneficiary class to whom Kunz-Freed then also owed fiduciary obligations.

**Fraud §503(d)(1)**

4. While Nelva Brunsting was her client, Candace Kunz-Freed abandoned privity with Nelva and entered into an express confidential relationship with Anita and Amy Brunsting thereafter generating instruments disrupting Elmer and Nelva's estate plans to the apparent benefit of Anita and Amy and to the injury of the other three members of the Brunsting Trust Successor Beneficiary Class. These acts were not merely professionally careless, but acts that violated the fiduciary duties of fidelity and confidence. Plaintiff does not think the attorney client privilege applies under the facts of this case.

**Notary §503(d)(4)**

5. There appears to be no argument that Candace Freed made entry in her notary log evidencing the signature of Nelva Brunsting on numerous instruments

and is thus an attesting witness as to those instruments. It is Plaintiff Curtis view that the client-lawyer privilege is not an issue in a deposition of Candace Kunz-Freed for numerous reasons among which are:

6. Kunz-Freed formed an express confidential relationship with two of the five members of the Brunsting Trust successor beneficiary class and in so doing she abandoned privity and entered into an implied fiduciary relationship with the other three members of the class to whom she then also owed fiduciary obligations,

7. Kunz-Freed committed Fraud §503(d)(1) upon the remainder of the successor beneficiary class in concert with Anita and Amy Brunsting, facilitated by virtue of the fiduciary nature of the relationship Vacek & Freed had with Elmer and Nelva Brunsting.

8. Kunz-Freed breached the fiduciary duties of loyalty and fidelity owed to Elmer and Nelva Brunsting, §503(d)(3) abandoned privity and began cultivating conflicting interests when she entered into an express confidential relationship with trust successor beneficiates Anita and Amy Brunsting.

9. Kunz-Freed negligently drafted numerous instruments after the incapacity and subsequent death of Elmer Brunsting resulting in pecuniary injury to the beneficial interests of Carl, Candace, and Carole to whom Freed now impliedly owed the fiduciary duties of loyalty, care, and confidentiality.

10. Kunz-Freed notarized Defendants' nefarious 8/25/2010 QBD/TPA instrument and is an attesting witness §503(d)(4) on this and other instruments at issue.

**Notice of Intent to Participate In the Oral &/or Video Deposition of Candace Kunz-Freed**

11. All parties are hereby notified pursuant to Texas Rule of Civil Procedure §199.2(a) that Plaintiff Candace Louise Curtis will attend and participate in the deposition of Candace Kunz-Freed on March 20, 2019 in the Jury Room of Harris County Probate Court Number 4, or as otherwise designated by the Court.

Respectfully Submitted,

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Candace Louise Curtis

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties, except Estate of Nelva Brunsting, in the manner required by the Rules on this 22<sup>nd</sup> day of February 2019.

//s//

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Estate of Nelva Brunsting is served through the  
Court