

|                             |   |                      |
|-----------------------------|---|----------------------|
| ESTATE OF                   | § | IN PROBATE COURT     |
| NELVA E. BRUNSTING,         | § | NUMBER FOUR (4) OF   |
| DECEASED                    | § | HARRIS COUNTY, TEXAS |
| _____                       | § |                      |
| CARL HENRY BRUNSTING, et al | § |                      |
| v.                          | § |                      |
| ANITA KAY BRUNSTING, et al  | § |                      |

**CO-TRUSTEES’ RESPONSE TO MOTION TO APPOINT PERSONAL REPRESENTATIVE OR ADMINISTRATOR**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING (“Amy”) and ANITA BRUNSTING (“Anita”) (collectively “Co-Trustees”) file this Response to Candace Kunz-Freed’s Motion to Appoint Personal Representative or Administrator.

**I. INTRODUCTION**

As this Court is aware, Amy and Anita are the Co-Trustees of The Restatement of The Brunsting Family Living Trust (the “Brunsting Family Living Trust”). The Brunsting Family Living Trust was formed by Elmer H. Brunsting and Nelva E. Brunsting, who are identified therein as its Founders and Initial Trustees.

Elmer H. Brunsting died on or about April 1, 2009. The Last Will of Elmer H. Brunsting (“Elmer’s Will”), was probated in this very Court (See Cause No. 412,248; *Estate of Elmer H. Brunsting, Deceased*; In the Probate Court Number Four of Harris County, Texas).

Nelva E. Brunsting died on November 11, 2011. The Last Will of Nelva E. Brunsting (“Nelva’s Will”) was also probated and/or is being probated in this Court. (See Cause No.

412,249; *Estate of Nelva E. Brunsting, Deceased*; In the Probate Court Number Four of Harris County, Texas).

Both Elmer's Will and Nelva's Will give, devise and bequeath all property and estate, real, personal or mixed to the Brunsting Family Living Trust.<sup>1</sup> Pursuant to the terms of the respective Wills, Carl Henry Brunsting was appointed as the "Personal Representative" of each Estate.

On March 26, 2013, Carl Henry Brunsting filed an Inventory, Appraisal and List of Claims for Elmer's Estate. That same day, Carl Henry Brunsting filed an Inventory, Appraisal and List of Claims for Nelva's Estate. The two filings are mirror-images of each other. Within each Inventory's "List of Claims" reference is made to the lawsuit filed against Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm ("Kunz-Freed"). Each Inventory describes the lawsuit as involving "*actions taken and omissions made in the course of their representation of [decedent and her husband]/[decedent and his wife] which may result in additional estate assets.*"<sup>2</sup>

In or around March 2015, Carl Henry Brunsting resigned as the Personal Representative of both Estates. Kunz-Freed seeks to have a "successor executor" appointed.

Because both Wills gift, devise and bequeath all property and estate to the Brunsting Family Living Trust, there is no need for such an appointment. As a result, Kunz-Freed's Motion to Appoint Personal Representative of Administrator should be denied.

## II. ARGUMENT AND REQUESTED RELIEF

### A. A "Successor Executor" is not required.

The claims against Kunz-Freed are assets of the Brunsting Family Living Trust, and therefore are subject to the control of the Co-Trustees. As noted, both Elmer's Will and Nelva's

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<sup>1</sup> See Exhibits A and B at Article II.

<sup>2</sup> See Exhibits C and D at List of Claims, Paragraph 2 [Emphasis Added].

Will give, devise and bequeath all assets to the Brunsting Family Living Trust. The claims against Kunz-Freed are specifically identified as estate assets. Therefore, the proceeds of such claims belong to the Brunsting Family Living Trust, and the claims are subject to the control of the Co-Trustees. A successor executor is not required.

**B. If a successor executor is required, it must be Amy Brunsting.**

Because all estate assets “pour-over” into the Brunsting Family Living Trust, there is no need for a successor executor. However, in the event a successor executor is deemed necessary, it should be Amy Brunsting. Both Elmer’s Will and Nelva’s Will name Amy Brunsting (f/k/a Amy Ruth Tschirhart) as the alternate to Carl Brunsting. Amy Brunsting has previously filed applications to be named as the successor executor for both Estates. Her applications have not been ruled upon.

Candace Louise Curtis has also sought to be named successor executor. In the event a successor executor is deemed necessary, it should not be Candace Louise Curtis. Candace Louise Curtis has proven, through her conduct, to be unqualified and unfit to serve. Time and again she has shown an intentional disregard for and disrespect of the judicial process. Most recently, she was sanctioned for her behavior, and also found to be in contempt of court. (See Order Regarding Amy Brunsting’s Motion for Sanctions and/or Contempt).

Candace Louise Curtis remains in contempt of court pursuant to the Court’s Order. Moreover, she is subject to being found in contempt of that Order as well. She has failed to comply with the Order. She has, on information and belief, not paid the monetary fine assessed against her (\$500.00 to Harris County District Clerk by September 1, 2019). Additionally, she has definitely not paid the monetary sanction assessed against her (\$1,975.00 to Amy Brunsting in care of Griffin & Matthews by September 1, 2019).

**C. If a successor executor is required and it is not Amy Brunsting, then it should be an outside third party, paid for by Kunz-Freed.**

The relief sought by Kunz-Freed, if granted, will unnecessarily increase the costs of litigation, and further delay these proceedings. When the issue of a successor executor was initially considered by the Court, the result was the Court's appointment of a Temporary Administrator Pending Contest. (See Court's Order of July 23, 2015).

The Brunsting Family Living Trust was burdened with paying the costs and expenses of the appointment. The Temporary Administrator was charged with evaluating the merits of various claims, including the claims asserted against Kunz-Freed. The Temporary Administrator prepared a Report for the Court, as instructed. However, since that Report was submitted, there has been no further indication from the Court as to its ultimate use or purpose.

Without a clearer understanding as to its ultimate use or purpose, it would appear that the expenditure of the associated funds was nothing more than a "waste" of Trust funds. Regardless of how many beneficiaries remain, and who they may be, The Brunsting Family Living Trust should not be further burdened by the costs of an appointed, third-party successor executor.

If Kunz-Freed insists (and the Court believes) that a successor executor is needed and it is not Amy Brunsting, then the Court should look to an independent third-party, to be appointed at Kunz-Freed's expense. Any such successor executor should be given a clear, exacting mandate by the Court, so as to prevent further unnecessary costs or delays for any of the parties.

### III. PRAYER

Co-Trustees, Amy Brunsting and Anita Brunsting, pray that the Court:

1. Deny Kunz-Freed's Motion to Appoint Personal Representative or Administrator;
2. Alternatively, appoint Amy Brunsting as the Personal Representative of the Estate of Nelva Brunsting;
3. Alternatively, if a Personal Representative of the Estate of Nelva Brunsting is to be appointed, and it is not Amy Brunsting, then an independent, third-party should be appointed to serve, at Kunz-Freed's expense;
4. Grant the Co-Trustees such other and further relief, general and special, legal and equitable, to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 4<sup>th</sup> day of November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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