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Harris County - County Probate Court No. 4
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NO. 412,249-401

CARL HENRY BRUNSTING, INDIVIDUALLY AND AS INDEPENDENT EXECUTOR OF THE ESTATES OF ELMER H. BRUNSTING AND NELVA E. BRUNSTING	§	IN PROBATE COURT
	§	
	§	
	§	
	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individuallyand as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS	§	HARRIS COUNTY, TEXAS

CANDACE CURTIS MAY NOT BE SANCTIONED FOR SEEKING A REMEDY & DUE PROCESS

COMES NOW, CANDACE CURTIS, and files this Response to the frivolous, harassing motion for sanctions set for hearing this 12th Day of December at 2019. The court must deny this motion because sanctions may not be used for the purposes of harassment or to increase the costs of litigation as a bad faith tool against her. DEFENDANTS, not CURTIS who have demonstrated

proclivity to harass and obstruct justice in bad faith as a means of coercing CURTIS to submit willingly to the deprivation of her inheritance or face punitive actions, such as misplaced threats like this one.

Notwithstanding this court's lack of jurisdiction over the trust due to the estate's closure in 2013, for the reasons stated in CURTIS' PLEA TO THE JURISDICTION AND PLEA IN ABATEMENT, DEFENDANTS' SECOND MOTION must be denied because there is no evidence that CURTIS acted in bad faith with the intent to harass or increase the cost of litigation with any frivolous claim being asserted. She is not vexatious[1] as that term is understood under Federal law, which seems to be the only authority for DEFENDANTS' seeking to deprive her of a remedy by having this Court declare her a "vexatious litigant." In support, CURTIS alleges the following:

RULE 13 SANCTIONS

Rule 13 provides "**The *signatures* of *attorneys or parties* constitute a certificate by them that they *have read* the pleading, motion, or other paper[8]; that to the best of their *knowledge, information, and belief* formed *after reasonable inquiry* the instrument is not *groundless and***

[1] *Shook v. Gilmore Tatge Mfg. Co.*, 851 S.W.2d 887, 891 (Tex. App. 1993)

("Until recently, no case has determined whether Texas courts also have an inherent, common law power to sanction similar in scope to the federal power. *See Chambers v. NASCO, Inc.,* ___ U.S. ___, 111 S.Ct. 2123, 115 L.Ed.2d 27 (1991). In *Kutch v. Del Mar College,* 831 S.W.2d 506, 509(Tex.App. — Corpus Christi 1992, no writ), the Court of Appeals held that Texas courts have inherent power to sanction **bad faith conduct during litigation**. In *Kutch,* the court recognized the trial court's inherent power to sanction **to the extent necessary to deter, alleviate, and counteract bad faith abuse of the judicial process, such as any significant interference with the traditional core functions of Texas courts**. *Id.* at 510. According to the Corpus Christi Court, however, certain limitations on the trial court's inherent power exist. *Id.* **For inherent power to apply, the conduct complained of must have significantly interfered with the court's administration of its core functions — hearing evidence, deciding issues of fact raised by the pleadings, deciding questions of law, entering final judgment, and enforcing that judgment.** *Id.* **More importantly, the rights of litigants may not be infringed by the abusive exercise of this power**. *Id.* at 511. Therefore, a sanction imposed pursuant to the court's inherent power must be "just" and "appropriate." *Id.* (citing *Koslow's,* 796 S.W.2d at 703-4 n. 1). Furthermore, due process considerations limit a court's inherent power to sanction. *Id.*

brought in bad faith **or** ***groundless and brought for the purpose of harassment***. Attorneys or parties who shall bring a *fictitious suit* as an experiment to get an opinion of the court, or who shall file any fictitious pleading in a cause for such a purpose or shall make statements in pleading which they *know to be groundless and false*, for the purpose of *securing a delay of the trial* of the cause, shall be held guilty of a *contempt*. If a pleading, motion or other paper is *signed* in violation of this rule, the court, upon motion or upon its own initiative, after notice and hearing, may impose an appropriate sanction available under Rule 215-2b, upon the person who signed it, a represented party, or both.

PRESUMPTION OF GOOD FAITH

In Texas, sanctions may not issue unless the **MOVANT overcomes the presumption** of **good faith** that the Plaintiffs enjoy. The presumption of good faith creates a rebuttable presumption that is subjective and objective, with both components required to be proven before it's overcome and it requires PROOF, NOT MERE SUPPOSITION that the party/attorney filed the objectionable **pleading or motion (not letter outside the entire jurisdiction of this court), in** bad faith with improper purpose, bad faith and malicious intent, to needlessly increase the costs of litigation, with "bad faith." *Falk & Mayfield L.L.P. v. Molzan*, 974 S.W.2d 821, 824 (Tex. App.--Hous. [14th Dist.] 1998, pet. denied).

This **presumption of good faith** mandates actual evidence--**proof of subjective** and **objective bad faith**, aside from the requirement that the sanction not be arbitrary or unreasonable. Id. **Notably, negligence or even bad judgment, which is not admitted, is insufficient to sanction an attorney under either Rule 10 or 13**. **Both require proof of malicious intent, which is absent. Courts shall *presume* that pleadings, motions, and other papers are filed in *good faith*. No sanctions under this rule may be imposed except for *good cause*, the particulars of which must be *stated in the sanction order*.** *"Groundless"* for purposes

of this rule means *no basis in law or fact* and not warranted by good faith argument for the extension, modification, or reversal of existing law. Key concepts to note about TRCP 13 are:

- attorneys and parties who sign
- pleading, motion, or other paper
- must read the instrument before signing
- to the best of their knowledge, information, and belief
- formed after reasonable inquiry
- not groundless and brought in bad faith
- not groundless and brought for the purpose of harassment
- fictitious suit as an experiment to get an opinion of the court
- make statements in pleading which they know to be groundless and false
- for the purpose of securing a delay of the trial of the cause
- shall be held guilty of a contempt
- upon motion or upon its own initiative
- after notice and hearing
- shall impose an appropriate sanction
- available under Rule 215-2b
- upon the person who signed it, a represented party, or both
- presume good faith
- good cause
- the particulars must be stated in the sanction order
- "Groundless" means no basis in law or fact
- Does not apply to the amount of requested damages, as the letter did outside of this case

- **Failure to Read.** Rule 13 requires the signing attorney or signing party to read the instrument before they sign it. *See Keever v. Finlan*, 988 S.W.2d 300, 313 (Tex. App.--Dallas 1999, pet. denied) (failure to read affidavit before signing it was sanctionable).

- **Pleadings, Motions, Papers.** Rule 13 applies only to pleadings, documents and other papers. *See Tarrant Restoration v. TX Arlington Oaks Apts., Ltd.*, 225 S.W.3d 721, 733 (Tex. App.–Dallas 2007, pet. dism'd w.o.j.). *Accord*, *Skelley v. Hayden*, 2001 WL 856610, *2 (Tex. App.--Dallas 2001, no pet.) (unpublished) (Rule 13 and Tex. Civ. Prac. & Rem. Code ch. 10 apply only to documents filed with a court).

- **Knowledge vs. Information vs. Belief.** The first sentence of Rule 13 involves the

signer's "knowledge, information, and belief." There is a difference between *knowing* something, and *having information* about something, and *believing* something. A requirement of knowledge also appears in the second sentence of Rule 13, regarding making a statement in a pleading that the signer *knows* to be groundless and false. *This calls for a subjective assessment of what the signer knows at the time of signing. For the second sentence of Rule 13 to be triggered, it is necessary to show: (1) that a statement in a pleading is groundless or false, (ii) that the signer knew that the statement was groundless and false; that the signer knowingly made the groundless and false assertion for the purpose of securing a delay of the trial.*

- **Reasonable Inquiry.** "Reasonable inquiry means the amount of examination that is reasonable under the circumstances of the case." *Monroe v. Grider*, 884 S.W.2d 811, 817 (Tex. App.—Dallas 1994, writ denied); *accord*, *Mattly v. Spiegel, Inc.*, 19 S.W.3d 890, 896 (Tex. App.-- Houston [14th Dist.] 2002, no pet.). Note that the inquiry is into both the *legal* and *factual* basis for the claim. *See Lake Travis Independent School Dist. v. Lovelace*, 243 S.W.3d 244, 254 (Tex. App.–Austin 2007, no pet.).

- **What Constitutes Groundless.** "Groundless" is defined in Rule 13 as having "no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law." Courts are divided on whether the ruling on the merits of a claim is the measure for groundless. The Austin Court of Appeals has said: "***A trial court may not base rule 13 sanctions on the legal merit of a pleading or motion. Merely filing a motion or pleading that the trial court denies does not entitle the opposing party to rule 13 sanctions."*** *Lake Travis Independent School Dist. v. Lovelace*, 243 S.W.3d 244, 254 (Tex. App.–Austin 2007, no pet.); *accord*, *D Design Holdings, L.P. v. MMP Corp.*, 339 S.W.3d 195, 204 (Tex. App.--Dallas 2011, no pet.) ("**Filing a motion or pleading that the trial court**

denies does not entitle the opposing party to rule 13 sanctions"). In *Mattly v. Spiegel, Inc.*, 19 S.W.3d 890, 900 (Tex. App.--Houston [14th Dist.] 2002, no pet.), the court said: "judges should consider the complexity of the claim and underlying statute."

- **Reasonable Inquiry vs. Groundless.** "To determine if a pleading was groundless, the trial court uses an objective standard: did the party and counsel make a reasonable inquiry into the legal and factual basis of the claim?" *In re United Servs. Auto. Ass 'n*, 76 S.W.3d 112, 116 (Tex. App.--San Antonio 2002, orig. proceeding); *accord*, *Lake Travis Independent School Dist. v. Lovelace*, 243 S.W.3d 244, 254 (Tex. App.–Austin 2007, no pet.), *Great Western Drilling, Ltd. v. Alexander*, 305 S.W.3d 688, 698 (Tex. App.--Eastland 2009, no pet.). Whether an instrument was groundless involves a determination of whether an instrument had no basis in law or fact, which is a different question from reasonable inquiry. However **a sanction cannot be imposed Unless a pleading is both groundless and there was no reasonable inquiry**.

- **Brought in Bad Faith.** "A party cannot obtain rule 13 sanctions unless the party proves that the claims are groundless and that the opposing party brought the claim in bad faith or to harass the party." *Mattly v. Spiegel, Inc.*, 19 S.W.3d 890, 896 (Tex. App.–Houston [14 Dist.] 2000, no pet.). "Because Peltier failed to establish bad faith or harassment as a motive for filing the petition, **Rule 13 sanctions would not be warranted even if Dike's petition was groundless.**" *Dike v. Peltier Chevrolet, Inc.*, 343 S.W.3d 179, 191 (Tex. App.--Texarkana 2011, no pet.). "'Bad faith' is not simply bad judgment or negligence but means the conscious doing of a wrong for dishonest, discriminatory, or malicious purpose." *Campos v. Ysleta Gen. Hosp., Inc.*, 879 S.W.2d 67, 71 (Tex. App.—El Paso 1994, writ denied).

- **Subjective Test for Bad Faith.** Courts have discussed the subjective component of the grounds for Rule 13 sanctions. Several cases say that sanctions for frivolous pleadings require **proof of the offender's state of mind**. *R.M. Dudley Const. Co., Inc. v. Dawson*, 258 S.W.3d

694, 710 (Tex. App.--Waco 2008, pet. denied) ("The party moving for sanctions must prove the pleading party's subjective state of mind"); *Estate of Davis v. Cook*, 9 S.W.3d 288, 298 (Tex. App.--San Antonio 1999, no pet.) ("a party must demonstrate that the claim was motivated by a malicious or discriminatory purpose").

RULE 10 SANCTIONS

Sec. 10.001. SIGNING OF PLEADINGS AND MOTIONS. The signing of **a pleading or motion** as required by the Texas Rules of Civil Procedure constitutes a certificate by the signatory that to the signatory's best knowledge, information, and belief, formed after reasonable inquiry:

i. the pleading or motion is not being presented for any improper purpose, including to harass or to

ii. cause unnecessary delay or needless increase in the cost of litigation;

iii. each claim, defense, or other legal contention in the pleading or motion is warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

iv. each allegation or other factual contention in the pleading or motion has evidentiary support or, for a specifically identified allegation or factual contention, is likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

v. each denial in the pleading or motion of a factual contention is warranted on the evidence or, for a specifically identified denial, is reasonably based on a lack of information or belief.

Within the context of sanctions, the following terms are defined:

- **Improper Purpose.** TCP&RC § 10.001 allows a sanction where a pleading is presented for any improper purpose. The Texarkana Court of Appeals has said: "We construe the phrase 'improper purpose' as the equivalent of 'bad faith' under Rule 13." *Dike v. Peltier Chevrolet, Inc.*, 343 S.W.3d 179, 183-84 (Tex. App.--Texarkana 2011, no pet.).
- **Subjective State of Mind.** Some courts have said that "[t]he party moving for sanctions must

prove the pleading party's subjective state of mind." *Dawson*, 258 S.W.3d at 710 (involving Chapter 10 sanctions); compare *with Thielemann v. Kethan*, 2012 WL 159949, *6 (Tex. App.--Houston [1st Dist.] 2012, no pet.) (Rule 13). This idea needs to be explored. In *Low v. Henry*, 221 S.W.3d 609, 617 (Tex. 2007), the Supreme Court said, in a Chapter 10 sanction case, that the parties seeking sanctions against the plaintiff's lawyer were "not required to specifically show bad faith or malicious intent, just that Henry certified that he made a reasonable inquiry into all of the allegations when he did not and that he certified that all the allegations in the petition had evidentiary support or were likely to have evidentiary support."

- **Lack of Reasonable Basis in Law.** TCP&RC
- § 10.001 allows a court to sanction for filing pleadings that lack a reasonable basis in law. *Unifund CCR Partners v. Villa*, 299 S.W. 3d 92, 97 (Tex. 2009). Section 10.001 provides that "each claim, defense, or other legal contention in the pleading or motion" must be "warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Each claim asserted in the alternative must have a reasonable basis in fact and law. *Low v. Henry* 221 S.W.3d 609, 614 (Tex. 2007). The fact that a claim was reversed on appeal does not of itself indicate that the claim was not warranted.
- **Lack of Reasonable Basis in Fact.** TCP&RC§ 10.001 allows a court to sanction for filing pleadings that lack a reasonable basis in fact. *Unifund CCR Partners v. Villa*, 299 S.W. 3d 92, 97 (Tex. 2009). The party seeking sanctions must show that a reasonable inquiry into the allegations in the pleading would have disclosed "that not all the allegations in its pleadings had or would likely have evidentiary support" and that the plaintiff "did not make a reasonable inquiry before filing suit." *Unifund*, 299 S.W. 3d at 97. A party is not required to have evidence to support each factual allegation at the time the lawsuit is filed. *Low v. Henry*, 221 S.W.3d. 609, 622 (Tex. 2007).

CURTIS is likewise not implicated in any violation of Rule 10 for the reasons stated in

response to Rule 13 sanctions. She is presumed to have acted in good faith and there is no clear and convincing evidence to the contrary. There is no factual basis upon which to assert that CURTIS has done anything for purposes of harassment or to increase the cost of litigation, the conduct of DEFENDANTS.

THE REQUIRED NEXUS IS MISSING

Notwithstanding the lack of jurisdiction or proof of any Rule violation justifying sanctions, there is no nexus between the alleged sanctionable conduct and the alleged harm suffered by the movant. Whether under Rule 10, 13, or the inherent power to sanction (which is almost never to be used, "sparingly"), there must be the required nexus to impose sanctions against an attorney or litigant.

The court said that "a court's 'implicit' power to sanction was governed by the justness or appropriateness standard which was later developed in *Transamerican*," referring to *Transamerican Natural Gas v. Powell*, 811 S.W.2d 913 (Tex. 1991). *Kutch*, 831 S.W.2d at 511. This *Transamerican* standard requires that "a direct relationship must exist between the offensive conduct and the sanction imposed," meaning that "the sanction must be directed against the abuse and toward remedying the prejudice caused the innocent party" and "that the sanction should be visited upon the offender." *Transamerican*, 811 S.W.2d at 917. TRCP 13 provides that "[c]ourts shall presume that pleadings, motions, and other papers are filed in good faith."The party seeking sanctions bears the burden of overcoming the presumption that pleadings and other papers are filed in good faith. *Low*, 221 S.W.3d at 614 (Chapter 10 sanctions).

THERE IS NO EVIDENCE THAT SUPPORTS

THE MOTION FOR SANCTIONS

"**Evidence must be admitted under the rules of evidence at the evidentiary hearing for**

a trial court to consider it in a sanctions context." *Dawson*, 258 S.W.3d at 710. In *Banda v. Garcia*, 955 S.W.2d 270, 272 (Tex. 1997), the court held that unsworn statements by attorney were not evidence. However, the case of *In re Butler*, 987 S.W.2d 221, 225 (Tex. App.–Houston [14th Dist.] 1999, orig. proceeding),the appellate court gave evidentiary weight to unsworn statements of counsel when the opposing party failed to object to the lack of an oath and it was evident that the lawyer was testifying without having taken the oath.

In *Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007) (involving Chapter 10 sanctions), the Supreme Court said: "To determine if the sanctions were appropriate or just, the appellate court must ensure there is a direct nexus between the improper conduct and the sanction imposed." *Accord*, *Spohn Hosp.* vi. *Mayer*, 104S.W.3d 878, 882 (Tex. 2003). The line of authority dates back to the discovery sanction case of *TransAmerican Natural Gas Corporation v Powell*, 811 S.W.2d 913, 917 (Tex. 1991), where the Court said: direct relationship must exist between the offensive conduct and the sanction imposed. This means that a just sanction must be directed against the abuse and toward remedying the prejudice caused the innocent party. The point is, the sanctions imposed must relate directly to the abuse found. *See Braden v. South Main Bank*, 837 S.W.2d 733, 738 (Tex. App.–Houston [14th Dist.] 1992, writ denied). The *TransAmerican* requirement of "justness" provides that the punishment imposed must not be excessive, and that the punishment must fit the crime. *TransAmerican Natural Gas Corp. v. Powell*, 811 S.W.2d 913, 917 (Tex. 1991).The trial court abuses its discretion if "the sanction it imposes exceeds the purposes that sanctions are intended to further." *TransAmerican*, 811 S.W.2d at 918. The Court based its ruling on both the Texas Rules of Civil Procedure and constitutional limitations on the power of courts, and the constitutional right of parties to a hearing on the merits of his cause. *Id*. at 918. The Supreme Court noted in *Chrysler Corp. v. Blackmon*, 841 S.W.2d 844, 849 (Tex. 1992): *Accord*, *GTE Communications Systems Corp. v. Tanner*, 856 S.W.2d 725, 730 (Tex. 1993)("[c]ase determinative sanctions may be imposed

in the first instance only in exceptional cases . . .).

Whether sanctions are just is measured by two standards: (1) a direct relationship must exist between the offensive conduct and the sanction imposed; and (2) just sanctions must not be excessive." *Id*. at 741. *Compare with* TCP&RC § 10.004 (any attorney's fee sanction awarded for frivolous pleadings and motions must be in the amount of reasonable expenses, including reasonable attorney's fees, incurred because of the filing of the pleading or motion), and TRCP 215.1(d) ("to pay . . . the reasonable expenses incurred in obtaining the order, including attorney's fees . . ."; "the trial court shall award expenses which are reasonable in relation to the amount of work reasonably expended in obtaining an order compelling compliance . . ."). *Braden v. South Main Bank*, 837 S.W.2d at 741. In *Stromberger v. Turley Law Firm*, 251 S.W.3d 225, 227 (Tex. App.–Dallas 2008, no pet.

In *Low v. Henry* the Supreme Court dropped a footnote in which it mentioned the American Bar Association's list of factors to consider in Fed. R. Civ. P. 11 sanctions, which were previously listed in Justice Raul Gonzalez's Concurring Opinion in *TransAmerican Natural Gas Corp. v. Powell,* 811 S.W.2d 913, 920 (Tex. 1991) (Gonzalez, J., concurring):

a. the good faith or bad faith of the offender;

b. the degree of willfulness, vindictiveness, negligence, or frivolousness involved in the offense;

c. the knowledge, experience, and expertise of the offender;

d. any prior history of sanctionable conduct on the part of the offender;

e. the reasonableness and necessity of the out-of-pocket expenses incurred by the offended person as a result of the misconduct;

f. the nature and extent of prejudice, apart from out-of-pocket expenses, suffered by the offended person as a result of the misconduct;

g. the relative culpability of client and counsel, and the impact on their privileged relationship of an inquiry into that area;

h. the risk of chilling the specific type of litigation involved;

i. the impact of the sanction on the offender, including the offender's ability to pay a monetary sanction;

j. the impact of the sanction on the offended party, including the offended person's need for compensation;

k. the relative magnitude of sanction necessary to achieve the goal or goals of the sanction;

l. burdens on the court system attributable to the misconduct, including consumption of judicial time and incurrence of juror fees and other court costs;

n. the degree to which the offended person's own behavior caused the expenses for which recovery is sought ... *Low v. Henry*, 221 S.W.3d at 620 n. 5.

INHERENT POWER ALMOST NEVER TO BE USED TO SANCTION

The Texas court of appeals initially developed the principle that Texas courts have the inherent power of a court to impose sanctions without the authority of either a Rule or a statute. *See* e.g., *In the Interest of K.A.R.*, 171 S.W.3d 705 (Tex. App.–Houston [14th Dist.] 2005, no pet.); *McWhorter v. Sheller*, 993 S.W.2d 781, 788-89 (Tex. App.–Houston [14th Dist.] 1999, pet. denied); *Metzger v. Sebek*, 892 S.W.2d 20, 51 (Tex. App.–Houston [1st Dist.] 1994, writ denied); *Greiner v. Jameson* 865 S.W.2d 493, 499 (Tex. App.–Dallas 1993, writ denied); *Kutch. v. Del Mar College*, 831 S.W.2d 506, 509 (Tex. App.-- Corpus Christi 1992, no writ).

The line of Texas cases involving inherent power to impose sanctions started with *Kutch*, where the trial court dismissed a case because the plaintiff failed to replead after the court granted special exceptions. In *Kutch*, the court of appeals looked to the U.S. Supreme Court case of *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991), which had held that federal courts have the inherent power to sanction for bad faith conduct during litigation. The *Kutch* court found the U.S. Supreme Court case to be "persuasive authority for the proposition" that "Texas courts have inherent power to sanction for bad faith conduct during litigation." *Kutch*, 831 S.W.2d. at 509. The *Kutch* court noted that the U.S. Supreme Court cautioned that this power "should be used only with great

restraint and discretion." *Id*. The *Kutch* court also recognized "certain limitations" to the inherent Power to sanction. *Id*. at 510. The *Kutch* court said, at p. 510:

> **Accordingly, for inherent power to apply, there must be some evidence and factual findings that the conduct complained of significantly interfered with the court's legitimate exercise of one of these powers.**

Accord, *McWhorter*, 993 S.W.3d at 789. The *Kutch* court recognized other limitations on the exercise of inherent power to impose sanctions. The court said: "**The amorphous nature of this power, and its potency, demands sparing use**." *Id*. The *Kutch* court recognized "that the legislature's law-making powers may operate to limit certain exercises of inherent power." *Id*. The court also noted that: "**Due process limits a court's power to sanction.**" *Id*. at 511.

UNCLEAN HANDS DOCTRINE PRECLUDES RELIEF

The unclean hands doctrine is an equitable defense in which the defendant argues that the plaintiff is not entitled to obtain an equitable remedy because the plaintiff is acting unethically or has acted in bad faith with respect to the subject of the complaint. Even if the foregoing relief were proven, which is denied, DEFENDANTS' "unclean hands" would block any form of equitable relief she could imagine. DEFENDANTS have violated a litany of disciplinary rules including: candor to the tribunal, respect for the rights of third parties, engaged in acts constituting breach of fiduciary duty and breach of trust as they have colluded with one another to deprive CANDACE CURTIS of a legal remedy in bad faith, for the purpose of harassment, intimidation and coercion to surrender her legal right to her portion of the trust funds (a vested property right) in favor of DEFENDANTS' attorney incessant complaints about and demand for attorney's fees.

CONCLUSION & PRAYER TO DENY SANCTIONS/CONTEMPT

For the foregoing reasons stated, Respondents / Plaintiffs ask this court to dismiss DEFENDANTS SECOND MOTION FOR SANCTIONS AND CONTEMPT.

Respectfully Submitted,

Candice Schwager

Candice Leonard Schwager
SCHWAGER LAW FIRM
SBN 24005603
2210 Village Dale Ave
Houston, Texas 77059
Tel: 832.857.7173
candiceschwager@icloud.com
http://schwagerfirm.com
ATTORNEY FOR
CANDACE CURTIS

CERTIFICATE OF SERVICE

I CANDICE SCHWAGER, hereby certify that I have served all counsel of record in these proceedings via fax, email and e-file as mandated for Texas Attorneys this 12th day of December, 2019.

Candice Schwager
CANDICD SCHWAGER