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March 28, 2022

Re: State Bar Complaint No. 2022-00438.
Candace Louise Curtis (Complainant) v. Stephen A. Mendel (Respondent).

State Bar of Texas
Office of the Chief Disciplinary Counsel
Attn: James Spencer, Investigator
4801 Woodway Drive, Ste. 315-W
Houston, TX 77056

Dear Mr. Spencer:

There is a perception among trial attorneys of the State Bar that if a vexatious, career litigant, like Candace L. Curtis ("Curtis"), cannot win on the merits against a Respondent's client,[1] then sue the Respondent, and if that fails, then file a grievance. Such is the case here.

To Respondent's knowledge, Curtis' vexatious journey into the world of civil litigation started in February 2012. With her mother having died just ninety (90) days earlier,[2] Curtis filed

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[1] Respondent's client is Anita K. Brunsting, in all capacities, including, but not limited to, her capacity as Attorney-in-Fact for Nelva E. Brunsting, as Successor Trustee of the Brunsting Family Living Trust, dated January 12, 2005, the Elmer H. Brunsting Decedent's Trust, dated April 1, 2009, the Nelva E. Brunsting Survivor's Trust, dated November 11, 2011, the Qualified Beneficiary Designation & Exercise of Testamentary Powers of Appointment Under Living Trust Agreement, dated June 15, 2010 (the "June 2010 QBD"); and/or the Qualified Beneficiary Designation & Exercise of Testamentary Powers of Appointment Under Living Trust Agreement dated, August 25, 2010 (the "August 2010 QBD").

Anita K. Brunsting is hereinafter referred to as Defendant/Co-Trustee. Any reference to Defendant/Co-Trustees (plural) includes Anita K. Brunsting and her sister and Co-Defendant/Co-Trustee, Amy R. Brunsting.

[2] Nelva E. Brunsting died November 11, 2011.

a federal court action[3] that sought to compel an immediate distribution of her share of an approximately $3.1M Estate that could reasonably be expected to take at least fifteen (15) months or longer to administer,[4] but because of Curtis' litigious nature, would cause the administration to come to a "grinding halt."[5]

Respondent was not involved in the initial part of the 2012 case. Rather, Respondent was retained in October 2014 to represent Anita K. Brunsting, a Defendant/Co-Trustee, after Anita

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[3] *See* Exhibit A, Copy of C.A. No 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting & Amy Ruth Brunsting & Does 1-100*; In the U.S. District Court, S. Dist. of Texas, Houston Division.

[4] *See* Exhibit B, Deposition of Candace Kunz-Freed, pg. 53, line 11, through pg. 54, line 9. Ms. Kunz-Freed and her law firm Vacek & Freed, P.L.L.C., prepared the legal instruments that are the subject of the Brunsting Litigation (as defined below). At her deposition, Ms. Kunz-Freed testified:

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Q. Okay. From your perspective, what would be a reasonable time frame that you would expect to go by, at least at a minimum, to determine the assets, value the assets, look at liabilities, reach out to this lawyer in Iowa, get these opinions, deal with this out-of-state real estate?
MS. BAYLESS: Objection, form.
A. At the very least, 15 months.
Q. (By Mr. Mendel) 15 months?
MS. BAYLESS: I'm sorry. I didn't hear your answer.
MR. MENDEL: She said 15 months.
THE WITNESS: 15 months.
Q. (By Mr. Mendel) And if during that process someone files a lawsuit, what impact -- like in this

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particular case, Candy Curtis filed a lawsuit. What impact would a lawsuit like that have on a potential delay of the administration process?
MS. BAYLESS: Objection, form.
A. It would be exponential.
Q. (By Mr. Mendel) When you say "exponential," what do you mean by that?
A. Well, everything comes to a grinding halt when a lawsuit is filed.

[5] *Id.*

K. Brunsting's prior counsel withdrew because of a potential or suggested conflict of interest between Anita K. Brunsting, and her sister, Amy R. Brunsting, the other Defendant/Co-Trustee.

In July 2016, Curtis filed a second lawsuit in federal court, but this time Curtis sued two state court probate judges, eleven (11) attorneys, a part-time court reporter, and two (2) of her four (4) siblings.[6] Respondent was one of the eleven (11) attorneys sued.

In dismissing Curtis' July 2016 federal court case,[7] the Hon. Alfred H. Bennett said that Curtis' purported "claims" "consist of ***fantastical allegations*** that some or all of the Defendants are members of a secret society and 'cabal' known as the 'Harris County Tomb Raiders,' or 'The Probate Mafia.'"[8] (Emphasis added). Judge Bennett further found the allegations to be ***delusional***, ***clearly frivolous***, and ***borderline malicious***.[9] (Emphasis added). The U.S. Court of Appeals for the 5TH Circuit affirmed Judge Bennett's dismissal, and agreed that the "***allegations were frivolous***."[10] (Emphasis added).

As of January 2022, when Curtis filed her grievance, she had been unsuccessful on many fronts in terms of trying to defeat the Defendant/Co-Trustees in probate proceedings that have been pending since August 2012. As an example of her unsuccessful efforts, both at the federal court and probate court level, Curtis lost her 2012 federal court case,[11] and which dismissal was affirmed by the Fifth Circuit,[12] lost her second federal court case filed in 2016 against the secret Harris County Tomb Raiders,[13] and which dismissal was affirmed by the Fifth Circuit,[14] and has

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[6] *See* Exhibit C, Copy of C.A. No 4:16-CV-01969; *Candace Louise Curtis & Rik Wayne Munson v. Candace Kunz-freed, Albert Vacek, Jr., Bernard Lyle Matthews, III, Neal Spielman, Bradley Featherston, Stephen A. Mendel, Darlene Payne Smith, Jason Ostrom, Gregory Lester, Jill Willard Young, Christine Riddle Butts, Clarinda Comstock, Toni Biamonte, Bobbie Bayless, Anita Brunsting, Amy Brunsting, & Does 1-99*; In the U.S. District Court, S. Dist. of Texas, Houston Division.

[7] *See* Exhibit D, Judge Alfred H. Bennett's Order of Dismissal (May 16, 2017), at pg. 7.

[8] *Id.* at pg. 2.

[9] *Id.* at pgs. 4 (delusional) and 6 (clearly frivolous and borderline malicious).

[10] *See* Exhibit E, Court of Appeals for the Fifth Circuit Opinion Affirming Judge Bennett (June 6, 2018), at pg. 2.

[11] *See* Exhibit F, Judge Kenneth M. Hoyt's Order Dismissing Rule 60 Motion to Reopen the 2012 Federal Court Action (September 23, 2020), at pg. 2.

[12] *See* Exhibit G, Court of Appeals for the Fifth Circuit Opinion Affirming Judge Hoyt (June 21, 2021), at pg. 2.

[13] *See* Exhibit D, Judge Alfred H. Bennett's Order of Dismissal (May 16, 2017), at pg. 7.

[14] *See* Exhibit G, Court of Appeals for the Fifth Circuit Opinion Affirming Judge Hoyt (June 21, 2021), at pg. 2.

been sanctioned twice by the Probate Court,[15] and as of this writing, has yet to pay those sanctions.

Curtis' string of losses got even worse on February 25, 2022, when the Probate Court dismissed the entirety of Curtis' claims against Respondent's client, Defendant/Co-Trustee Anita K. Brunsting, as well as the claims against Defendant/Co-Trustee Amy R. Brunsting. Against that backup of a partial history of Curtis' harassing and unsupported litigious conduct, the State Bar can now understand why Curtis turned to the grievance process to seek an outcome that she cannot obtain on the merits of a civil litigant's burden of proof.

I. Summary of the Argument

Curtis contends she is a beneficiary of certain trusts and, therefore, owed fiduciary duties by Respondent. The allegations are patently false. Respondent is not and never has been an attorney for Curtis, nor a trustee of any trust in which Curtis contends she has a beneficial interest. As such, Respondent does not owe and, therefore, cannot breach any alleged fiduciary duty to Curtis.

Furthermore, Curtis repeatedly violated the *in terrorem* (no-contest) provisions of the trust instruments and, therefore, terminated her standing to bring the Complaint. This fact was confirmed on February 25, 2022, when the Probate Court granted a summary judgment that Curtis "forfeited her interest as a beneficiary of the Trust."[16] Thus, Curtis lacks standing to challenge how the Defendant/Co-Trustees (rather than Respondent) managed the Trust Assets[17] and the administration of the probate and non-probate estates.

Yet, even if Curtis did have or has standing to bring a Complaint, which is denied, Respondent's summary of the argument to Curtis' unfounded allegations are as follows:

A. The Defendant/Co-Trustees' $8,500.00 transfer ($1,700.00 per party x 5 parties) for the mediator's fee for the June 2020 mediation came from two (2) Bank of America accounts over which Respondent had no signature authority. Furthermore, Respondent did not benefit from the $8,500.00 transfer because those funds were never applied to legal fees due and owing Respondent's law firm, and because the funds were returned back to the very Bank of America accounts from which the funds were received.[18] In other words, no harm means no

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[15] *See* Exhibit H, Probate Court No. 4 First Sanction Order Against Curtis (July 23, 2019); *see also*, Exhibit I, Probate Court No. 4 Second Sanction Order Against Curtis (December 12, 2019).

[16] *See* Exhibit J, Probate Court No. 4 Order Granting Defendant/Co-Trustees Motion for Summary Judgment Against Curtis (February 25, 2022), at pg. 3.

[17] The term "Trust Assets" includes, but may not be limited to, the Bank of America, Edward Jones, and Computershare accounts, and the 145 acres of farm land in the State of Iowa. *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 9.

[18] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 3, ¶ 17; *see also* Exhibit L, September 17, 2020 Correspondence regarding the July 2020 Accounting, and which confirms $4,250.00 came out of and back into the Bank of America Account for the Decedent's Trust, and

foul.

B. Despite the production of more than 8,106 pages of documents, the vast majority of which are financial records of bank accounts and brokerage accounts, Curtis cannot point to a single document that confirms Respondent received Trust Assets for the payment of the legal fees due and owing Respondent's law firm, the majority of which fees involve that one certain legal proceeding known as C.A. No. 412249-401; *Estate of Nelva E. Brunsting; and Carl Brunsting, Et Al v. Anita Brunsting, Et Al;* Harris County Probate Court No. Four (4).

C. It is impossible for Respondent to misappropriate assets, hold those same assets hostage, and/or distribute the Trust Assets at this time. The reasons are:

1) Respondent does not possess, has no control over, and/or has no right of control over the Trust Assets. By way of example, and not as a limitation, Respondent has no signature authority over the Trust Assets at Bank of America, Edward Jones, and/or Computershare.[19]

2) The Probate Court has a temporary injunction in place that limits what the Defendant/Co-Trustees (note the absence of ***Respondent's*** name) can do with the Trust Assets.[20]

D. There is no Rule of Professional Conduct, statute, or case law that prohibits Respondent's attorneys' fees from accruing as a trust liability. In fact, accrual is mandatory given the temporary injunction in place at this time.[21] Furthermore, if Curtis is unhappy with the accountings produced through and including December 31, 2021, then she must address those concerns with the Probate Court and not this Tribunal.

E. There is nothing to audit regarding Respondent's Iolta Trust Account. Despite the production of more than 8,106 pages of documents, the vast majority of which are financial records of bank accounts and brokerage accounts, Curtis cannot point to a single document that confirms Respondent received Trust Assets towards the legal fees due and owing his law firm. This fact is further confirmed by Defendant/Co-Trustee Anita K. Brunsting's unsworn declaration in which she says that Trust Assets have not been used to pay Respondent's attorneys' fees.[22]

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and $4,250.00 came out of and back into the Bank of America Account for the Survivor's Trust.

[19] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 10.

[20] *See* Exhibit M, Probate Court No. 4 Order dated September 4, 2014, which modified the federal court temporary injunction dated April 19, 2013, and which federal court injunction was acknowledged and accepted by Probate Court 4 on June 3, 2014.

[21] *See* Exhibit M, Probate Court No. 4 Order dated September 4, 2014, which modified the federal court temporary injunction dated April 19, 2013, and which federal court injunction was acknowledged and accepted by Probate Court 4 on June 3, 2014.

[22] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 12.

II. The Primary Litigation & Parties

The Litigation: The current, primary litigation among the parties is C.A. No. 412249-401; *Estate of Nelva E. Brunsting; and Carl Brunsting, Et Al v. Anita Brunsting, Et Al;* Harris County Probate Court No. Four (4) (hereinafter the "Brunsting Litigation").

Complainant: Candace Louise Curtis is or was a plaintiff in the Brunsting Litigation, and such other proceedings as referenced in this response. Curtis was originally represented by Jason Ostrom, who subsequently withdrew. Thereafter Curtis was Pro Se for an extended period of time. At this time, Curtis is represented by Candace Schwager, an attorney who recently completed two (2) concurrent probationary periods imposed by the State Bar of Texas.[23]

Respondent: Stephen A. Mendel, who owns The Mendel Law Firm, L.P. ("MLF"), and is counsel for Anita K. Brunsting, a Defendant/Co-Trustee in Brunsting Litigation.

Definitions: The term "Probate Court" means Harris County Probate Court No. 4.

The term "Brunsting Siblings" means the following:

Complainant, Candace Louise Curtis ("Curtis)".
Carl Henry Brunsting ("Carl").
Carole Ann Brunsting ("Carole").
Amy Ruth Brunsting.
Anita Kay Brunsting.

The term "V&F" means Vacek & Freed, P.L.L.C. and Candace L. Kunz-Freed, a principal in the firm of Vacek & Freed, P.L.L.C. V&F is accused of legal malpractice.

The term "Party" means any one of the Brunsting Siblings and/or V&F, as determined by the context of the paragraph in which a Party is mentioned. The term "Parties" collectively means the Brunsting Siblings and V&F.

III. The Undisputed Facts

In order to put the Complainant's allegations in context, the following represents the undisputed facts:

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[23] *See* Exhibit N, Copies of October 2020 Agreed Judgments of Probated Suspensions Regarding Curtis' Counsel in the 189TH & 190TH State District Courts of Harris County, Texas.

A. Respondent:

1) Is not now and never has been an attorney for Curtis.

2) Is not now and never has been a trustee, whether jointly or severally, of *The Restatement of the Brunsting Family* Trust, dated January 12, 2005; the Elmer H. Brunsting Decedent's Trust, dated April 1, 2009; the Nelva E. Brunsting Survivor's Trust, dated November 11, 2011; the *Qualified Beneficiary Designation & Exercise of Testamentary Powers of Appointment Under Living Trust Agreement* dated June 15, 2010 (the "June 2010 QBD"); and/or the *Qualified Beneficiary Designation & Exercise of Testamentary Powers of Appointment Under Living Trust Agreement* dated August 25, 2010 (the "August 2010 QBD").

3) Does not now and has never owed Curtis a fiduciary duty.

4) Was retained by Defendant/Co-Trustee Anita K. Brunsting to represent her interests in all matters, whether litigated or not litigated, and including but not limited to all matters related in whole or in part to the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, and the Brunsting Litigation.[24]

5) Has no signature authority over the Trust Assets at Bank of America, Edward Jones, and/or Computershare.[25]

6) Is not an owner of nor has any control over the Iowa Farm.[26]

7) Has never received, at this time, any Trust Assets to pay the legal fees due and owing Respondent's law firm.

8) Denies any knowledge that there is a secret society and "cabal" known as the "Harris County Tomb Raiders," or "The Probate Mafia," and if such entities or societies exist, Respondent denies being a member of same.

B. The only trustees as this time are Anita K. Brunsting and Amy R. Brunsting, each a co-trustee.

IV. Respondent's Argument & Authorities

A. Mediator's $8,500.00 Fee:

On or about June 25, 2020, the Brunsting Siblings attended their third mediation of the case. The mediator was Judge Mark Davidson, former presiding judge of the 11TH District Court, Harris County, Texas. Judge Davidson's fee was $1,700 per party, times five (5) parties,

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[24] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 6.

[25] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 10.

[26] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 11.

which meant the mediator's fee would be $8,500.00.

The mediator's fee in the first mediation was paid from Trust Assets. The second mediator withdrew and never sought a fee for the time he expended. For the third mediation, the Brunsting Siblings were each supposed to pay their respective $1,700.00 fee. However, in the event the mediator had not been paid by Curtis, Carl, and/or Carole, the Defendant/Co-Trustees agreed that if it became absolutely necessary to keep the mediation as scheduled, the Trust would pay Judge Davidson's fee for the benefit of all, and if not all, then for none.

Since Respondent did not believe there was sufficient time to obtain Probate Court approval for the Trusts to pay the mediator's fee, the Defendant/Co-Trustees approved of an $8,500.00 transfer to Respondent's Iolta Trust Account to cover the mediator's fee, if it became necessary to do so, so that the mediation date was not lost. Furthermore, if the mediator's fee was going to be paid from Trust Assets, then every Brunsting Sibling would be required to approve, in writing, that Trust Assets could be used for the mediator fee.

As it turned out, Defendant/Co-Trustees each paid their fee,[27] Respondent was told that Carl had paid his fee, and Carole promised to pay her $1,700.00 fee, but then during the course of the mediation, Carole refused to pay the mediator. Respondent understands that Curtis did not pay her fee and never offered to do so.

Once it was determined that at least four (4) of the five (5) Brunsting Siblings had paid or initially agreed to pay the mediator's fee, the Defendant/Co-Trustees declined to use Trust Assets to pay Judge Davidson, and Defendant/Co-Trustee Anita Brunsting instructed Respondent to return the funds earmarked for the mediator, which he did.[28]

As a general rule, the Defendant/Co-Trustees provide a semi-annual accounting to the Brunsting Siblings. The bank statements that reflected the deposit to Respondent's Iolta Trust Account were produced on or about September 18, 2020.[29] The very next day, Candace Schwager, counsel for Curtis, asked for an explanation,[30] as did Bobbie Bayless, counsel for Carl.[31] Neal Spielman, counsel for Defendant/Co-Trustee Amy R. Brunsting provided the

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[27] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 3, ¶ 16.

[28] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 3, ¶ 17.

[29] *See* Exhibit L, September 17, 2020 Correspondence regarding the July 2020 Accounting, and which confirms $4,250.00 came out of and back into the Bank of America Account for the Decedent's Trust, and and $4,250.00 came out of and back into the Bank of America Account for the Survivor's Trust.

[30] *See* Exhibit O, September 19, 2020 email correspondence of Candace Schwager asking the meaning of the $4,250.00 transfers out of and back into the accounts for the Decedent's Trust and the Survivor's Trust.

[31] *See* Exhibit P, September 19, 2020 email correspondence of Bobbie Bayless, counsel for Carl H. Brunsting, asking the meaning of the $4,250.00 transfers out of and back into the accounts for the Decedent's Trust and the Survivor's Trust.

following explanation:[32]

> Ms Schwager –
>
> I received the e-mail below with this attachment directly from your client this morning [regarding an explanation of the $8,500.00 transfer](Context added). Neither you nor Carole were included, so I am forwarding this so that everyone has the same information.
>
> * * *
>
> As to the question itself, . . . I believe there was a concern that the Trust was going to have to pay for all of the mediation fees, and I believe this money was to be used for that purpose. When it wasn't, it was returned to the Trust Account. . . .

To Respondent's knowledge, after Mr. Spielman explained the withdrawal and return of the $8,500.00, neither Curtis nor her attorney asked another question or commented further about the transaction, nor sought out the Court regarding the transaction. In other words, it was clear that none of the Brunsting Siblings benefitted from the $8,500.00 transaction, that none of the funds had been used to pay any of the legal fees due and owing Respondent's law firm, and the totality of the $8,500.00 had been returned to the respective Bank of America accounts from which the funds were received.

The law, the foregoing facts, and the documents attached hereto, confirm the following:

1. Defendant/Co-Trustee Anita K. Brunsting transferred the funds to Respondent's Iolta Trust Account. Respondent did not and could not make the transfer because he had no signature authority over the Bank of America accounts for the decedent's and survivor's trust accounts.[33]

2. Funds held in an Iolta Trust Account do ***not*** belong to the attorney, but belong to the client.[34]

3. None of the $8,500.00 was used to pay any Brunsting Sibling's mediation fee, which is

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[32] *See* Exhibit Q, September 19, 2020 email correspondence of Neal Spielman, Counsel for Defendant/Co-Trustee Amy R. Brunsting, explaining the $4,250.00 transfers out of and back into the accounts for the Decedent's Trust and the Survivor's Trust.

[33] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 10.

[34] TEX. R. PROF. CONDUCT 1.14 provides that a "lawyer shall hold funds and other property belonging in whole or in part to ***clients*** . . . that are in a lawyer's possession in connection with a representation separate from the lawyer's own property." (Emphasis added). As written, the rule can only be read that Iolta funds are ***client*** property and not property of the attorney.

proved by the very records that Curtis relies upon to make her false allegation.[35] This fact is further confirmed by Exhibit R, which is a copy of the $1,700.00 in funds Respondent received from Defendant/Co-Trustee Anita K. Brunsting to pay Judge Davidson.[36]

4. The return of the $8,500.00 to the respective trust accounts,[37] plus proof Defendant/Co-Trustee Anita K. Brunsting paid Judge Davidson's fee with her own personal funds, is incontrovertible evidence that none of the $8,500.00 was used to reduce the legal fees due and owing Respondent.

5. Curtis never really cared about the $8,500.00 transfer, as evidenced by the fact that she waited ***approximately 495 days*** to complain for the first time in her grievance about something she was told about on September 19, 2020. If the transfer was truly something that bothered Curtis, she would have initiated further judicial proceedings against Defendant/Co-Trustee Anita K. Brunsting. The absence of such further judicial proceedings is evidence nothing improper occurred.

B. Alleged Misappropriation, Hostage-Taking, & Withholding Distributions:

Curtis alleges that Respondent and Defendant/Co-Trustee Anita K. Brunsting have been misappropriating Trust Assets held in a fiduciary capacity, taking those same assets hostage, and not distributing the Trust Assets to the beneficiaries, which allegedly included Curtis, but would also include Respondent's client. The allegations are without merit because it is hornbook law that the only parties with control or a right of control over the Trust Assets is a court of competent jurisdiction[38] or a trustee. It is also nonsensical that Defendant/Co-Trustee Anita K. Brunsting would refuse to distribute Trust Assets to herself, if she could do so.

A "trustee" is a person holding the property in trust, including an original, additional, or successor, whether or not the person is appointed or confirmed by a court.[39] In other words, the trustee is a fiduciary. The powers of the trustee/fiduciary are broad, and include the powers proscribed by the trust instrument itself, as well as the powers enumerated in TEX. PROP. CODE

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[35] *See* Exhibit O, Attachment to Candace Schwager's September 19, 2020 email, which are Bank of America statements that confirm that whatever funds were transferred out the Decedent's Trust and Survivor's Trusts were transferred back into those very same trusts.

[36] *See* Exhibit R, Redacted copy of Respondent's June 2020 Iolta Trust Account statement that confirms Respondent's law firm received a direct deposit, noted a counter credit, in the amount of $1,700.00 from Defendant/Co-Trustee Anita K. Brunsting. *See also*, Exhibit S, Redacted check issued on Respondent's June 2020 Iolta Trust Account in the amount of $1,700.00 to the Hon. Mark Davidson, and noted as the "Brunsting / Mediation Fee - Anita Brunsting."

[37] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 3, ¶ 17.

[38] *See* TEX. PROP. CODE, CH. 115, SUBCH. A.

[39] *See* TEX. PROP. CODE § 111.004(18).

§§113.001 - 113.057.[40]

It is undisputed that Respondent is neither a judge nor a trustee of the Trusts in question, and that the only named trustees are Anita K. Brunsting and Amy R. Brunsting, each serving as a Co-Trustee.[41]

Furthermore, in order to misappropriate an asset by failing to distribute the asset, one must possess the asset or have a right to control the distribution of the asset. Neither situation applies here because it is undisputed that Respondent has no access to and no signature authority over the Trust Assets at Bank of America, Edward Jones, and/or Computershare.[42]

Nor does Respondent possess or control the Iowa Farm. The Iowa Farm is owned by the Elmer H. Brunsting Decedent's Trust,[43] a trust in which Respondent is not a trustee nor a beneficiary.

Yet, even if Respondent was a trustee, which he is not, Respondent would still have no control or right of control over the Trust Assets. Curtis knows this and misleads this Tribunal when she fails to disclose:

1. The existence of the temporary injunction first issued by the federal court, and which federal court injunction was approved, accepted, and modified by the Probate Court.[44] At this time, absent court approval, the injunction prohibits beneficiary distributions, as well as funds for legal fees due and owing Respondent's law firm.

2. She attempted to obtain a distribution and the Probate Court denied her.

Given the totality of the foregoing, it is literally impossible for Respondent to misappropriate or take hostage (*i.e.*, kidnap) something he does not possess, has no control, has no right of control, and, as indicated above, is subject to the control of a trustee and/or a court of competent jurisdiction, neither of which include Respondent. If Curtis wants a distribution or the release of Trust Assets, then Curtis needs to petition the Probate Court for a distribution.

Yet, given the Probate Court's prior denial of a distribution to Curtis, Curtis seems to be making an end-run around the Probate Court. More specifically, Curtis seems to want this Tribunal to compel Respondent to release or distribute her alleged share of Trust Assets, which

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[40] *See* TEX. PROP. CODE §§ 113.001-113.002.

[41] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 1, ¶ 5.

[42] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 10.

[43] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶ 11.

[44] *See* Exhibit M, Probate Court No. 4 Order dated September 4, 2014, which modified the federal court temporary injunction dated April 19, 2013, and which federal court injunction was acknowledged and accepted by Probate Court 4 on June 3, 2014.

is impossible to do. First, this Tribunal has no jurisdiction over the Trust Assets.[45] Second, Respondent cannot distribute Trust Assets that he does not possess, has no control, and/or has no right of control.[46] Third, even if Respondent could make such a distribution, which he cannot, the distribution would violate the Probate Court's February 25, 2022, summary judgment order that Curtis "forfeited her interest as a beneficiary of the Trust."[47] Thus, Curtis lacks standing to even assert a right of distribution of her alleged share of the Trust Assets.

C. Accrual of Fees:

Curtis complains about the accrual of Respondent's attorneys' fees, and that the fees are allegedly not listed as a trust liability. The very fact that Curtis raises this issue demonstrates she is aware that the attorneys' fees is a trust liability, which, at this time will probably be determined by the Probate Court.

There is nothing impermissible with the accrual of attorneys' fees during the pendency of a case. The reasons are three-fold:

1. Curtis fails to cite a single Rule of Professional Conduct, statute, or case that prohibits an attorney, like the Respondent and/or his law firm, from permitting fees to accrue.

2. Curtis misleads this Tribunal by failing to point out the existence of the temporary injunction first issued by the federal court, and which federal court injunction was approved, accepted, and modified by the Probate Court. At this time, absent court approval, the injunction prohibits beneficiary distributions, as well as funds for legal fees due and owing Respondent's law firm.

3. It is undisputed that neither the federal courts nor the probate court have signed an order permitting the Defendant/Co-Trustees to pay the legal fees due and owing the Respondent and/or his law firm. Thus, until such time as the temporary injunction is lifted or modified, accrual of Respondent's attorneys' fees is mandatory.

As for Curtis' argument that the fees should be listed as a trust liability, the argument is nonsensical. Curtis has always known attorneys' fees were accruing and that, per the Trust instruments, she bore responsibility for same, a fact confirmed by the Probate Court when it granted Defendant/Co-Trustees motion for summary judgment, and left the issue of the amount of Respondent's fees to be "subsequently determined."[48]

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[45] Control of the Trust Assets rests with the trustee and a court of competent jurisdiction. *See* TEX. PROP. CODE, CH. SUBCH. A. (control by the court), and §§ 113.001-113.002 (control by trustee).

[46] *See* Exhibit K, Unsworn Declaration of Anita K. Brunsting, pg. 2, ¶¶ 9-10.

[47] *See* Exhibit J, Probate Court No. 4 Order Granting Defendant/Co-Trustees Motion for Summary Judgment Against Curtis (February 25, 2022), at pg. 3.

[48] *See Id.*

Furthermore, the manner in which the fees might be listed or should be listed is an accounting issue for a CPA or accountant and not Respondent, as Respondent was retained to render legal services and not accounting services.

D. Audit of the Iolta Account:

An audit of the Respondent's Iolta Trust Account is unnecessary, and the reasons are as follows:

1. It is undisputed that Respondent was not retained until approximately October 30, 2014. Thus, the Defendant/Co-Trustees would not have distributed Trust funds for the payment of a retainer or legal fees to an attorney who had yet to agree to be retained.

2. There was and continues to be a temporary injunction issued by the federal court that was approved by the probate court that prohibits the Defendant/Co-Trustees from making any distributions without judicial approval.[49] It is undisputed that neither the federal courts nor the probate court have signed an order permitting the Defendant/Co-Trustees to pay the legal fees due and owing the Respondent and/or his law firm.

3. As of December 31, 2021, the Defendant/Co-Trustees have produced to each party, including Curtis, over 8,106 pages of Bates-Labeled documents, a large majority being financial records. The actual production exceeds 8,106 pages because there were prior productions of documents that were not Bates-Labeled.[50] Nevertheless, and despite this massive production, Curtis cannot point to a single a dollar that was paid to the Respondent and/or his law firm for legal fees.

4. Funds received by the Respondent into his Iolta Trust Account are not the Respondent's funds, but are client funds and, therefore, cannot be considered a payment of legal fees currently due and owing Respondent and/or his law firm.[51]

5. Receipt of funds into an Iolta Trust Account earmarked to cover the mediator's fee as to every party in the case are not funds of the Respondent and/or his law firm and, therefore, cannot be considered a payment of legal fees currently due and owing Respondent and/or his law firm, especially since the funds earmarked for the mediator's fee were returned to the Bank of America accounts from which they came.

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[49] *See* Exhibit M, Probate Court No. 4 Order dated September 4, 2014, which modified the federal court temporary injunction dated April 19, 2013, and which federal court injunction was acknowledged and accepted by Probate Court 4 on June 3, 2014.

[50] Respondent did not include the entirety of the document production made to date. However, Respondent will produce same to the Tribunal, should the Tribunal so desire.

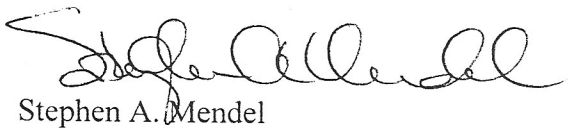
[51] TEX. R. PROF. CONDUCT 1.14 provides that a "lawyer shall hold funds and other property belonging in whole or in part to ***clients*** . . . that are in a lawyer's possession in connection with a representation separate from the lawyer's own property." (Emphasis added). As written, the rule can only be read that Iolta funds are ***client*** property and not property of the attorney.

Conclusion

For the reasons discussed herein, the Complaint is baseless, and should be dismissed for failure to state Just Cause for further proceeding.

Thank you for your attention to the foregoing. If you have any questions or require any additional information, please do not hesitate to contact me at the above direct dial telephone number or email address.

Very truly yours,



Stephen A. Mendel

cc: Candace Louise Curtis
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