

07152015:1402:PO295

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PROBATE COURT 4

FILED  
7/14/2015 12:41:20 PM  
Stan Stanart  
County Clerk  
Harris County

NO. 412.249-401

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

CARL HENRY BRUNSTING, § IN PROBATE COURT  
individually and as independent §  
executor of the estates of Elmer H. §  
Brunsting and Nelva E. Brunsting §

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 § NUMBER FOUR (4) OF  
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, individually §  
and as Trustee of the Carole Ann §  
Brunsting Personal Asset Trust; and §  
as a nominal defendant only, §  
CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

MOTION TO TRANSFER RELATED DISTRICT COURT CASE  
TO PROBATE COURT 4

07:52:05:402:40295

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Drina Brunsting, **as attorney-in-fact for Carl Henry Brunsting, individually,** filing this Motion to Transfer Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas, to Harris County Probate Court Number 4 and in support thereof would show as follows:

1. Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC* (the "District Court Case") was filed in district court on January 29, 2013. Carl Henry Brunsting filed the District Court Case in his capacity as executor of his parents' estates.
2. On February 19, 2015, Carl filed his Application to Resign as Independent Executor, and Carl's resignation as executor has been approved by this Court, creating a vacancy of party in the District Court Case. As of this filing, that vacancy has not been filled, but another hearing on the issue is scheduled for July 21, 2015 before this court.
3. The District Court Case is related to the probate proceedings and indeed to this cause of action. The issues in the District Court Case and this case are related and the damages sought in each action are potentially impacted by the other. Many of the same witnesses and some of the same evidence will also be used in both cases.

4. Notwithstanding the party vacancy, and perhaps because of it, the defendants in the District Court Case have filed a motion for summary judgment which is scheduled to be heard on July 31, 2015. Even if a successor personal representative is appointed on July 21, 2015, there would only be three days for that successor to evaluate the case and the motion before the response to the motion is due on July 24, 2015. Defendants have refused to postpone the hearing on their Motion for Summary Judgment until a successor has been appointed and had a reasonable opportunity to evaluate the case and respond appropriately to the motion.

5. **Tex. Estates Code §34.001 provides that a judge of a statutory probate court may transfer a proceeding from a district court to the probate court if it involves a cause of action related to a probate proceeding pending in that probate court or in which the personal representative of an estate pending in the probate court is a party. The District Court Case meets that criteria.**



WHEREFORE, PREMISES CONSIDERED, Movant asks that the District Court Case be transferred to Harris County Probate Court 4, and for such other and further relief to which Movant may be entitled.

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

*Bobbie G. Bayless*  
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*Attorneys for Drina Brunsting, attorney-in-fact for Carl Henry Brunsting*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 14<sup>th</sup> day of July, 2015, as follows:

Bradley Featherston  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
*via Telecopier*

Darlene Payne Smith  
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American Canyon, California 94503  
*via Email*

/s/ Bobbie G. Bayless  
BOBBIE G. BAYLESS

07:52:01:1402:PO299

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as a nominal defendant only, §  
CANDACE LOUISE CURTIS § HARRIS COUNTY, TEXAS

ORDER TRANSFERRING DISTRICT COURT CASE

07152015:1402:P0300

The Motion to Transfer Related District Court Case to Probate Court Four was considered, and the Court is of the opinion that the motion should be GRANTED. It is therefore

ORDERED that Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas, is transferred to the docket of Probate Court Four and assigned Cause No.

\_\_\_\_\_.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING