

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

No. 8:05-CV-530-T-27TBM

MURIEL MINTZ, proposed ward ex rel)
<i>Durable and Medical Power of Attorney and Next</i>)
<i>Friends</i> , BARBARA LATHAM)
AND ESTELLE NELSON)
)
Plaintiffs,)
)
vs.)
)
MICHELLE GOLDBERG, <i>appointed</i> temporary)
guardian of the person and estate of MURIEL)
MINTZJUDGE JAMES MIKE WOODS,)
in His Official Capacity as Harris County)
Statutory Probate Judge, Houston Hospice,)
Donald Mintz, joint and severally.)
)
Defendants.)
_____)

**COMPLAINT FOR EMERGENCY TEMPORARY RESTRAINING ORDER,
DECLARATORY JUDGMENT, AND PRELIMINARY AND PERMANENT
INJUNCTIVE RELIEF TO SAVE MURIEL’S LIFE**

BARBARA LATHAM, R.N. (inactive), Individually and as Medical/Durable Power of Attorney for MURIEL MINTZ¹ (designated guardian in the event of need) and ESTELLE NELSON, Individually and as next friend / daughter of MURIEL MINTZ, respectfully file this COMPLAINT FOR deprivations of privileges and immunities guaranteed to MURIEL MINTZ by the United States Constitution, in violation of 42 U.S.C. 1983, the Americans with Disabilities

¹ See Durable and Medical Powers of Attorney Granted to Latham by Mintz in 2006 and 2016 to correct fraudulent powers of attorney Donald Mintz unduly influenced his mother to sign against her wishes, Advanced Directives, DNI, Designation of Guardian in the event of Need, and Designation of Latham to handle remains;

Act of 1990 (“ADA”) and ADAAA (2008 and 2016 Regulations Amendments), 42 U.S.C. 12101 et seq., and Section 504 of the Rehabilitation Act of 1990 (“Section 504”), with pendent state law claims, seeking **EMERGENCY TEMPORARY RESTRAINING ORDER, DECLARATORY JUDGMENT, SEEKING IMMEDIATE PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF TO SAVE MURIEL’S LIFE** by enjoining DEFENDANTS from denying MURIEL MINTZ (“MURIEL”) **food and water or administering drugs to MURIEL which are known to hasten death** via Houston Hospice or palliative care **until a trial can be had** in which due process and equal protection of the law is provided to MURIEL MINTZ prior to being deprived of LIFE, LIBERTY AND PROPERTY.²

LATHAM AND NELSON appear pursuant to BARBARA LATHAM’S appointment by MINTZ as DURABLE AND MEDICAL POWER OF ATTORNEY, GUARDIAN IN THE EVENT OF NEED, and AGENT IN FACT for purposes of advanced directives naming BARBARA LATHAM. NELSON appears as an interested person, next friend, and daughter of MURIEL MINTZ to plead for this Court to GRANT EMERGENCY TEMPORARY RESTRAINING ORDER, DECLARATORY JUDGMENT, PRELIMINARY AND PERMANENT INJUNCTION AGAINST DEFENDANTS, temporary guardian MICHELLE GOLDBERG, HARRIS COUNTY PROBATE JUDGE MIKE WOODS, in his official capacity of Court No. 2, Houston Hospice, and DONALD MINTZ to stop the intentional withholding of

² LATHAM sought relief from Harris County Probate Judge Mike Woods via temporary restraining order which was denied December 12, 2017 after which MURIEL was hospitalized and abruptly moved to Houston Hospice with the purported temporary guardian refusing to share any medical information with MURIEL’S two RN daughters and with notice that the temporary guardian lacks sufficient information concerning MURIEL’S medical history or health issues to be capable of providing informed consent, such that this constitutes criminal medical battery, committed by Goldberg (felony) which is intended to result in death, violating 18 USC 241, 242.

food, water and medically curative treatment from MURIEL MINTZ immediately before she dies, while further ORDERING that all drugs intended to hasten her death be stopped immediately pending an evidentiary hearing by this Court. The affidavits of Estelle Nelson and Barbara Latham as well as Richard Schwager with exhibits attached hereto demonstrate that GOLDBERG is lying and covering up something which should never be the case when a woman is dying three weeks after GOLDBERG took control of her care. GOLDBERG has been asked and firmly reminded by the Court to not deny access to medical information to MURIEL'S daughters, who have decades of specialized experience in NURSING, specifically in mental health (LATHAM) and elder care (NELSON).

The affidavits of MURIEL'S highly educated medical professional daughters based upon their observations and the many inconsistent statements told by GOLDBERG and medical personnel who are extremely hostile to LATHAM AND NELSON without cause, but seem to cater to DONALD, SHOULD ALARM THIS HONORABLE JUDGE AND WARRANT THE GRANTING OF IMMEDIATE INJUNCTIVE RELIEF AGAINST ALL DEFENDANTS until an evidentiary hearing can be had where MURIEL MINTZ is afforded due process before being deprived of life itself. **THIS IS A TRUE EMERGENCY AND DEATH IS IMMINENT IF PLAINTIFFS' TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION ARE DENIED BECAUSE JUDGE MIKE WOODS REFUSED TO GRANT EMERGENCY INJUNCTIVE RELIEF AGAINST THESE ATTORNEYS, WHO ARE ROUTINELY APPOINTED IN ALL 4 COURTS OF HARRIS COUNTY, TEXAS.**

PLAINTIFFS plead that if the court must appoint them due to the obvious conflict of interest their temporary guardian has, trying to suppress and hide the truth at all costs, that the

Court will appoint BARBARA LATHAM AND/OR ESTELLE NELSON as guardian ad litem for purposes of this federal case and CANDICE SCHWAGER as MURIEL'S counsel, as she is the only attorney standing up for MIRIAL'S right to life. Respectfully, PLAINTIFFS fear that the result of this tragic nightmare will be like the wrongful death case of Willie Jo Mills unless this Court steps in with emergency injunctive relief immediately. Cause No. 4:16-cv-03215; *Sherry Lynn Johnston vs. David Dexel, Judge Christine Butts, et al; In the Southern District of Texas, Houston Division, before Judge Lee Rosenthal*³.

Like WILLIE JO MILLS, MURIEL MINTZ continues to be denied any semblance of due process as she is sequestered like a prisoner WITHOUT VISITORS OTHER THAN WHOM A STRANGER, GOLDBERG, CHOSE, as she watches her back and continues this cover up. While GOLDBERG stalks SCHWAGER and LATHAM on Facebook to illegally intimidate them from exercising their right to free speech on a matter of public concern to elderly, disabled and families of the same who actually BELIEVE guardianship protects, rather than exploits. Even in death, GOLDBERG denies MURIEL'S rights and dignity. GOLDBERG is experienced enough to know the dishonesty of her actions but is unapologetic and appears intent on forcing death upon MURIEL MINTZ. MURIEL has been treated by GOLDBERG as little more than chattel as she colluded with DONALD MINTZ and his lawyers to deprive MURIEL of liberty and property without any due process of law, meaningful access to participate in her own death sentence—denying MURIEL'S chosen representative to make life and death decisions on her behalf, who happens to be a 30+ year nurse with advanced training to be a Physician's assistant, while denying access and information to Muriel's other geriatric RN daughter, Estelle Nelson,

³ See Attached Order of Judge Lee Rosenthal, holding that Johnston's wrongful death claims against Judge Christine Butts may proceed against her bond and the guardian, denying immunity, also pled under the ADA and 42 U.S.C. 1983.

for no identifiable reason—but to conceal the truth.

MURIEL MINTZ'S person and estate was fraudulently, illegally searched and seized after which she was discarded within a matter of three weeks by MICHELLE GOLDBERG, who claims she fell in the assisted living (landing her in St. Luke's and now Houston Hospice) on the edge of death for conditions MICHELLE claims exist, but MURIEL'S RN daughters did not observe any signs. Instead, BARBARA AND ESTELLE observed their mother is being starved to death and denied water and medical care. Houston Hospice entities get paid 90% of their costs from Medicare, creating a nationwide incentive for abuse, well documented by Bloomberg and Forbes. The Affidavits of Estelle Nelson and Barbara Latham demonstrate a conspiracy of fraud, lies, and a cover up suggesting foul play is at work rather than natural death processes. *See Affidavits of medical professionals, Barbara Latham and Estelle Nelson.*

After being subject to an illegal search and seizure that was never justified by any medical emergency (temporary guardianship), but instead DONALD MINTZ'S desire to seize his mother's estate and the family trust by making fraudulent accusations against TRUSTEE, BARBARA LATHAM, whom he was informed was protecting trust assets as well as MURIEL'S from his malfeasance, DONALD recruited GOLDBERG to collude with his attorneys and illegally freeze BARBARA LATHAM'S IRA ACCOUNTS and FDIC insured checking account, from which GOLDBERG took \$6000+ with no court order. The purpose of doing this, while knowing it is illegal and Judge Woods requested that the IRA funds be unfrozen, stating that to do that was a pre-hearing deprivation, they continue. Judge Woods refused to sign LATHAM'S TRO to force STACY KELLY to remove her illegal holds on LATHAM'S ACCOUNTS, but he make it quite clear it was not legal and should not be done. Stacy has done nothing and Judge Woods refused to sign the TRO despite the impropriety.

LATHAM sought a TRO to stop GOLDBERG from sequestering her mother, denying BARBARA AND ESTELLE access to her and critical medical information to save her life, which was likewise not signed by JUDGE WOODS, though he instructed MICHELLE GOLDBERG to facilitate access to information and their mother as much as feasible. GOLDBERG has barely complied with this directive and Judge Woods indicated he would not be signing any such ORDER, likely given that he appointed GOLDBERG, who is widely appointed by Harris County Judges in large trust cases, with an estimated 300 appointments/cases. See Affidavit of Barbara Latham.

On the 12th of December of 2017, the Court permitted KELLY to introduce evidence proving nothing in terms of a trust violation, wholly failing to approach the burden of proof for an injunction. When LATHAM'S COUNSEL SCHWAGER merely tried to cross examine witnesses, every attempt was denied or thwarted, with open rebuke. LATHAM was denied due process as MURIEL MINTZ, who has not been permitted to attend hearings at all, despite the county's expert stating she can attend without issue and she has a right to meaningful participation under federal law, the ADA and 42 U.S.C. 1983. The Estates Code purports to grant MURIEL many rights, none of which were honored as will be set forth herein. The Estates Code is unconstitutional as written in part, but overwhelmingly so as applied. The elderly and disabled are discriminated against because of their disabilities as attorneys draft Rule 11 Contracts, making deals over human beings—like nothing more than chattel to buy and sell. *See Affidavit of Candice Schwager.*

Despite the broad sweep of the Americans with Disabilities Act of 1990's protections, and it being hailed as the emancipation proclamation for the disabled, the reality is that the ADA is not even known by Harris County Judges, who failed to respond at all to a 2015 inquiry

regarding ADA compliance for the county. Judge Woods proclaimed his lack of familiarity with the landmark statute December 12, 2017, ultimately disregarding it completely and ignoring counsel's ADA accommodation request, violating her rights. 42 U.S.C. 12101. Harris County Probate Judges have been repeatedly notified of ADA compliance problems in guardianship and have done nothing in response. No training of court appointees has occurred in over two years since SCHWAGER provided notice as a certified ADA advocate by the attached correspondence, emphasizing that attorney training is desperately needed. See email to Judges of three of four probate courts in Harris County, Texas, 2015. The result is systemic victimization of the vulnerable through disability discrimination, associational discrimination, retaliation for advocating for the disabled, and unwanted institutionalization and segregation deemed illegal in nursing homes, by virtue of the Olmstead Act and Title II of the ADA.

As a result of the county's complete failure to implement any ADA accommodation or even mandate competence, the disabled are stripped of their rights and treated like chattel. See affidavit of Schwager. Harris County routinely denies competent medical treatment to wards of the state in favor of Houston Hospice and decisions made by strangers appointed as guardian for profit who lack sufficient information to provide informed consent, rendering all medical care "criminal or tortious medical battery"—far beyond gross negligence or conscious indifference required to ameliorate qualified immunity. With less rights than convicted felons, the elderly and disabled are subjected to cruel and unusual punishment (death), deprivations of equal protection of the law, the guarantee of safety while in the custody of the county, Constitutional rights under the 1st, 4th, 5th, and 14th Amendments to the United States Constitution, and discrimination prohibited by 42 U.S.C. 1983 (The Civil Rights Act) and 42 U.S.C. 12101 et seq., the Americans with Disabilities Act of 1990 and Amendments thereto, ADA 2008 and 2016, and Section

504 of the Rehabilitation Act of 1973 (“Section 504”). MURIEL MINTZ is in a dire medical situation that will end in her untimely and unnecessary death without court intervention and thus, PLAINTIFFS plead with the Court to grant injunctive and declaratory relief against DEFENDANTS, currently engaged in denying food, water and medical care in violation of her advanced directives by acts that are criminal for the inability to provide informed consent by MICHELLE GOLDBERG, a trust lawyer who knows nothing about MURIEL MINTZ, but made the decision to terminate her life on Houston Hospice. See Affidavit of Barbara Latham.

DUE PROCESS VIOLATIONS ARE THE RULE, NOT EXCEPTION

A governmental entity deprives a citizen of due process by not following its own procedures—prior to deprivations of privileges and immunities guaranteed by the Constitution or federal law. MURIEL MINTZ’S rights have been grossly violated and consciously disregarded to the point of near death without ever having a hearing or the opportunity to appear before the Court and OBJECT! The ADA requires Harris County provide a MEANINGFUL OPPORTUNITY to participate and HARRIS COUNTY provided NO OPPORTUNITY WHATSOEVER TO MURIEL MINTZ, despite HARRIS COUNTY’S expert witness stating she can and should attend her hearing—that did not occur, because few wards are ever given a hearing in guardianship.

For this reason, it was not possible for Judge Woods to determine in the temporary guardianship order by CLEAR AND CONVINCING EVIDENCE that MURIEL is totally incapacitated because there was essentially no evidence, no hearing, no opportunity to attend and fight this deprivation of rights. Despite the impropriety and illegality for the Court to do anything but find probable cause at the HEARING that was mandated for temporary guardianship, the Court violated the law and found by “clear and convincing evidence” that simply does not exist

in the record—that MURIEL was incapacitated. Rubber stamping rather than truth. Probable cause is the limit of what Judge Woods can find in a temporary guardianship, but as is the pattern and practice in Harris County and Texas statutory probate courts, the law is ignored as if a mere suggestion.

Permanent guardianship involves an actual evidentiary hearing with an expert witness who qualifies and testifies under T.R.E. 702 and other strict limitations on expert testimony. MURIEL was deemed by the Judge to be totally incapacitated by “clear and convincing evidence” which is not in the record because she was never provided the statutory and constitutionally mandated hearing prior to complete deprivation of liberty and property, now, her life, if this injunction is DENIED. *The Chief Probate Judge Guy Herman says temporary guardianships are almost NEVER appropriate and this is one such abuse of them. See Article by Guy Herman presented at CLE, attached hereto.*

A survey of guardianship cases reviews egregious, shocking deprivations of rights of the disabled and elderly via disability discrimination, unlawful segregation violating the Olmstead Act and Title II of the ADA, unlawful retaliation for advocating for ADA rights, and associational discrimination, exemplified in MICHELLE GOLDBERG’S sequestration of MURIEL MINTZ as a veritable prisoner, denied visitors even as MICHELLE hastens her death with Houston Hospice to cover up neglect and malfeasance. GOLDBERG doesn’t respect the Constitution so the argument that the right to privacy is important to “MURIEL” is a shield to hide torts and crimes for GOLDBERG and anyone involved in this abuse of authority.

A short list of deprivations of MURIAL MINTZ’S rights under State and Federal law includes but is not limited to the following:

1. No guardian ad litem has been appointed to give an opinion on the best interests of

the Muriel Mintz even as she teeters back and forth from death to life in Houston Hospice against her will after being hospitalized for an unknown undisclosed number of days to cover up malfeasance;

2. There was no finding of least restrictive alternatives was made because no hearing was held and the attorneys have no idea what this means;
3. No emergency to justify the extraordinary ORDER for temporary guardianship exists
4. The guardianship was procured by a perjured affidavit of MURIEL MINTZ'S son, whose agenda is clear—her estate and the family trust.
5. Supports and services mandated by the ADA to be provided to MURIEL as a “qualified individual with a disability” were not even proposed much less considered nor was there any clear identification of the emergency justifying this guardianship.⁴

⁴ **Sec. 1101.152. Order Appointing Guardian with Limited Authority. [TPC §693(b)]**

(a) If it is found that the proposed ward lacks the capacity to do some, but not all, of the tasks necessary to care for himself or herself or to manage his or her property, the court may appoint a guardian with limited powers and permit the proposed ward to care for himself or herself or to manage his or her property commensurate with the proposed ward's ability.

(b) An order appointing a guardian under this section must contain findings of fact and specify:

(1) the information required by Section 1101.153(a);

(2) the specific powers, limitations, or duties of the guardian with respect to the person's care or the management of the person's property by the guardian;

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156; and

(4) whether the person is incapacitated because of a mental condition and, if so, whether the person retains the right to vote in a public election or maintains eligibility to hold or obtain a license to operate a motor vehicle under Chapter 521, Transportation Code.

Sec. 1101.151. Order Appointing Guardian with Full Authority. [TPC §693(a)]

(a) If it is found that the proposed ward is totally without capacity to care for himself or herself, manage his or her property, operate a motor vehicle, and vote in a public election, the court may appoint a guardian of the proposed ward's person or estate, or both, with full authority over the incapacitated person except as provided by law.

(b) An

(1) the information required by Section 1101.153(a);

(2) that the guardian has full authority over the incapacitated person;

6. MICHELLE GOLDBERG was asked to get a second opinion on Houston Hospice and refused, with no authority to make the decision to end her life,
7. Muriel's wishes were not honored as the Code deems mandatory nor were they considered;⁵
8. Criminal medical battery dismissed by the Court and permitted to continue: The Court was advised by SCHWAGER December 12, 2017 that GOLDBERG lacked sufficient information about MURIEL'S health to provide informed consent, making every medical decision she made criminal medical battery but would not enjoin her in writing from blocking MURIEL'S nurse daughters access to medical information to save her life or to their mother, constituting associational discrimination in violation of the ward's bill of rights (Jim Crow law) and First Amendment familial association rights. Instead, GOLDBERG provided a list on the last couple of days once MURIEL was in Houston Hospice of individuals she would allow to visit and vetoed MURIEL'S wishes like a prisoner.
9. The Court refused to permit her RN daughters to access HIPAA protected medical

(3) if necessary, the amount of funds from the corpus of the person's estate the court will allow the guardian to spend for the education and maintenance of the person under Subchapter A, Chapter 1156;

(4) whether the person is totally incapacitated because of a mental condition;

(5) that the person does not have the capacity to operate a motor vehicle and to vote in a public election; and

(6) if it is a guardianship of the person of the ward or of both the person and the estate of the ward, the rights of the guardian with respect to the person as specified in Section 1151.051(c)(1).

(c)An respect to the person as specified in Section 1151.051(c)(1) must also contain the following prominently displayed statement in boldfaced type, in capital letters, or underlined: order appointing a guardian under this section that includes the rights of the guardian with

⁵ <http://www.lifenews.com/2017/08/17/new-texas-law-stops-doctors-from-issuing-dnr-without-a-patients-consent/>

records knowing both were advanced medical professionals and knew their mother while MICHELLE GOLDBERG knew nothing and could not even provide consent but decided to be reckless and consent to Houston Hospice and death when no court order granted her this right;

10. MURIEL MINTZ'S decade long estate planning documents, choosing BARBARA LATHAM to serve as Durable/Medical powers of attorney, Designation of Guardian in the event of need, were ignored in violation of the law as MICHELLE GOLDBERG, steamrolled the family and acted hostile and abusive to her daughters;
11. After seizing MURIEL and her property, GOLDBERG AND STACY KELLY, DONALD MINTZ'S ATTORNEY went after BARBARA LATHAM'S personal checking account and Individual Retirement Accounts (IRA's), ***FEDERALLY INSURED FINANCIAL ACCOUNTS by the FDIC WITH NO COURT ORDER AUTHORIZING THIS ILLEGAL SEARCH, SEIZURE AND TAKING WITHOUT DUE PROCESS OF LAW.***
12. The Court had a mandatory duty to consider MURIEL'S wishes in the appointment of a guardian and ignored this duty:⁶
13. The focus of the guardianship has rarely been about MURIEL MINTZ, BUT

1.⁶ Sec. 1104.002. PREFERENCE OF INCAPACITATED PERSON. Before appointing a guardian, the court shall make a reasonable effort to consider the incapacitated person's preference of the person to be appointed guardian and, to the extent consistent with other provisions of this title, shall give due consideration to the preference indicated by the incapacitated person, regardless of whether the person has designated by declaration a guardian before the need arises under Subchapter E.

ALMOST EXCLUSIVELY about her money and trust funds of the family that experienced trust lawyer GOLDBERG billed \$18,000 to hunt down, harass, demand private and trust documents she had no legal right to see, and even get a show cause order threatening to arrest LATHAM, when she never had standing for any of this and knew better.

14. DONALD MINTZ and his attorneys revealed they understood that the family trust was not relevant to the jurisdiction or MURIEL and admitted this by filing a separate trust lawsuit 11/28/17. 7 months pursuing documents to which GOLDBERG was never entitled and knew it before DEFENDANTS stop the scam and file an actual lawsuit—albeit with fraudulent intent, as revealed on Ostrom Morris website. Stacy Kelly’s firm identifies the primary way to bust an irrevocable trust as removing the trustee, so now it’s clear what they are doing in their terror campaign.
15. LATHAM was denied due process entirely, with DONALD MINTZ’S ATTORNEY STACY KELLY, permitted to question witnesses before LATHAM’S counsel CANDICE SCHWAGER was immediately denied the right to cross examine the witnesses presented. SCHWAGER lodged objections to the hearing going forward at all given the lack of venue, jurisdiction, mandatory arbitration, lack of evidence, overbroad order, and denial of due process in prohibiting SCHWAGER from cross examination of witnesses who testified. *The transcript of the December 12, 2017 proceeding has been requested but delayed by the holidays and will be supplemented imminently; see also affidavit of Candice Schwager.*
16. SCHWAGER pointed out that the ORDER for INJUNCTION is precisely the type of “Unconstitutional” trick or trap discussed in the article co-authored by this judge as a

means to disarm opponents, cripple their ability to defend themselves or fight back (allowing the perpetrator to force a settlement and win favor with the judge

17. STACY KELLY has refused to remove her illegal freeze of BARBARA LATHAM'S IRA for which declaratory judgment is requested; This is despite JUDGE MIKE WOODS' acknowledgement during a hearing on December 12, 2017, that the freeze is not legally authorized but akin to taking before evidence is produced of doing anything wrong; BARBARA AND ESTELLE'S rights are violated by this.
18. JUDGE WOODS refused to grant the TEMPORARY RESTRAINING ORDER to remove the freeze, return funds taken from LATHAM, stop blocking access to MURIEL while she is hospitalized in dire need of medical help, stop blocking access to nurses and staff which GOLDBERG never stopped, even though she was told to facilitate access to information and MURIEL as much as possible. The judge agreed they should not engage in this but refused to sign my ORDER;
19. JUDGE WOODS granted INJUNCTIVE RELIEF **which he had no jurisdiction** to grant anything and knew the case was subject to mandatory venue in Brazoria County and/or subject to mandatory arbitration under the terms of the trust prepared by DONALD MINTZ and Rachal vs. Retiz, 2013 Texas Supreme Court.
20. MOTION TO TRANSFER VENUE (MANDATORY) AND MOTION TO COMPEL ARBITRATION, which the JUDGE had no discretion to ignore and proceed in the absence of jurisdiction, something he is infamous for doing. *See THIRD AMENDED COMPLAINT; Carolyn James vs. Richard Stephen Calkins vs. Carolyn James; In the Southern District of Texas, Houston Division, Hon. Judge David Hittner presiding; Cause No. 4:16-cv-01910 (identifying repeated attempts by*

the Honorable James Mike Woods to usurp jurisdiction where no jurisdiction existed)⁷.

21. JUDGE WOODS enjoined the sole trustee, BARBARA LATHAM, from exercising authority over the MINTZ FAMILY TRUST, grossly violating the bounds of his authority to interfere with an inter vivos irrevocable trust.
22. Consistent with the article co-authored by the HON. JAMES WOODS and Stacy Kelly's firm, the JUDGE issued an overbroad injunction without jurisdiction over the objections of counsel, which purports to violate the trust and invade it without any proof that this is legal.
23. The entire trust dispute was the only thing DONALD MINTZ or his lawyers cared about and yet, used MURIEL MINTZ in a perjured guardianship which deprived her of liberty and property (maybe life) with no due process –to seize it.
24. Acknowledging there was no evidence of wrongdoing on the part of BARBARA LATHAM as TRUSTEE, the JUDGE STILL enjoined LATHAM from 'PROTECTING THE TRUST' signing a void injunction ORDER which lacked jurisdiction, venue or proof of irreparable harm, or substantial likelihood of success on the merits by DONALD MINTZ,
25. As it pertains to MURIEL MINTZ first, foremost and last, this constitutes an illegal search and seizure of her person and estate without any due process, without any hearing in which she had an opportunity (meaningful or otherwise) to participate (violating the ADA and Section 504) while ignoring every document she executed over a decade ago, thus nullifying her wishes when the Court has a mandatory duty

⁷ Third Amended Complaint in Calkins is attached hereto and incorporated by reference.

to enforce them if possible.

With respect to MURIEL MINTZ, the most important critical emergency of this case, JUDGE WOODS was informed that GOLDBERG'S lack of information meant her medical decisions constituted criminal medical battery. He was also advised of the duty to provide reasonable accommodation for disabled individuals and stated he was not familiar with this 1990 landmark statute.

A failure to train on the part of the County to ensure that the Judges know the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, and civil rights laws protecting the elderly and disabled is a sufficient basis upon which to impose liability under section 1983 against the county as a pattern and practice of such violations. It's also more than sufficient to demonstrate that MURIEL MINTZ'S ADA RIGHT TO REASONABLE ACOMODATION IS NON-EXISTENT BECAUSE THE JUDGES DO NOT KNOW THE LAW AND RIGHTS OF THE DISABLED UNDER THIS LANDMARK STATUTE. *See email provided to three of four probate judges in 2015 concerning their duties to disabled wards under the ADA and Affidavit of Candice Schwager, confirming no changes or training of attorneys or ad litem has been instituted in Harris County.*

MICHELLE GOLDBERG spent \$18,000 WHICH IS HALF OF MURIEL'S ANNUAL INCOME, chasing trust funds that she could see on the face of the document did not belong to Muriel, her estate and were in an irrevocable trust benefitting the children of MURIAL MINTZ. She filed a 73 page show cause motion and order that she never had standing to assert causing LATHAM to be threatened with incarceration wrongfully as the court invaded her personal accounts and a trust over which it had no jurisdiction to threaten jail for not producing the documents. All of the financial waste was a taking of MURIEL'S estate by a trust lawyer

assigned to about 300 cases. GOLDBERG knew she never had standing under the Trust Code to even ask much less demand the documents sought and threaten arrest but abused her authority.

DONALD MINTZ had standing but didn't ask for the documents. To cover up his perjury Stacy Kelly said on the record to the Judge on December 12, 2017 that she was the person responsible for the "scrivener's error" of the "ir" missing from the word revocable in his affidavit, forgetting that she did not represent DONALD MINTZ when he filed the perjured affidavit so the "error" as she called it could never have been hers.

The guardianship was initiated by DONALD MINTZ, with a perjured affidavit, with false accusations that BARBARA LATHAM had moved large sums of money belonging to MURIEL MINTZ'S estate in a revocable trust, knowing both statements were fraudulent given his service as prior TRUSTEE. This caused MURIEL MINTZ'S person and estate to be seized as well as BARBARA LATHAM'S assets and retirement account to be frozen and/or seized illegally. The Judge admitted as much in the December 12, 2017 hearing in stating that their actions were a pre-evidence deprivation of property and not appropriate, appearing concerned, though stopping short of ordering in writing for them to return the funds taken illegally and holds on LATHAM'S federally insured IRA RETIREMENT FUNDS.

This implicates a federal question—whether the Texas Probate Courts can seize financially insured accounts of the FDIC upon nothing more than mere suspicion admitting that they had no evidence to say Barbara did anything wrong. Stacy Kelly will not take her hold off LATHAM'S federally insured IRA's accounts and GOLDBERG emptied her checking account of over \$6000 for which LATHAM filed criminal charges and no funds were returned. Give Judge Woods refused to sign SCHWAGER'S written TRO mandating that the hold be removed and funds be returned and KELLY/GOLDBERG have not

complied with oral admonitions on the record, along with WOODS' deprivation of LATHAM'S right to due process by preventing her attorney from asking any questions to cross examine witnesses, this Court is not inclined to grant this emergency relief—a federal question sought for declaratory and injunctive relief.

PRELIMINARY STATEMENT

1. MURIEL MINTZ [hereinafter, "MURIEL"] is a 94 YEAR OLD woman with severe visual impairment who was in great physical health until three to four weeks ago when MICHELLE GOLDBERG, a stranger who knew nothing about her medical history, took custody of her and it went downhill to the point of Houston Hospice.

2. This is a civil action whereby Plaintiff prays for a temporary restraining order, declaratory judgment, damages, and injunctive relief enjoining Defendants, their agents, servants, employees and those acting in concert with actual notice thereof from any further withholding of MURIEL's nutrition and hydration or curative medical treatment;

3. BARBARA LATHAM seeks declaratory and injunctive relief that her IRA ACCOUNT AND FDIC insured accounts are protected and DEFENDANTS' actions constitute illegal search and seizure violating 42 USC 1983 under the 4th Amendment.

4. The Plaintiff is entitled to the requested relief because Defendant Judge woods has violated and continues to violate MURIEL's below-referenced rights under the Constitution and laws of the United States and, further, by continuing to withhold or withdraw food, fluids, and medical treatment necessary to sustain her life, DEFENDANTS are conspiring to harm her and violating her civil and constitutional rights under 42 USC 1983 and the ADA 42 USC 12101, as well as the rehabilitation act of 1973, Section 504.

5. Houston Hospice has violated and will further violate MURIEL's below

referenced rights under the Constitution and laws of the United States and specifically the First, Eighth, and Fourteenth Amendments to the United States Constitution, the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. §§ 2000cc et seq., the Americans with Disabilities Act (42 U.S.C. §12101 et seq.), the Rehabilitation Act of 1973 (29 U.S.C. §794), and Title 42 U.S.C. § 1983 for which monetary damages are sought.

6. Plaintiff seeks a temporary restraining order, and preliminary and permanent injunction requiring Defendant Judge woods to rescind his Order appointing MICHELLE GOLDBERG and remove her as temporary guardian so that her designated power of attorney, LATHAM, can make the decisions MURIEL asked BARBARA to make as expressed on her medical power of attorney, statutory durable power of attorney, disposition of remains, advanced directives, or other orders and requests of MURIEL TO BARBARA LATHAM.
7. Enjoin DEFENDANTS from depriving MURIAL OF food and water or medication to keep her comfortable and cure illness;
8. Enjoin DEFENDANTS from blocking BARBARA LATHAM'S ACCESS TO ALL MEDICAL RECORDS and mandating that GOLDBERG share all medical records and information and allow full access to medical personnel to make decisions for her mother
9. Plaintiff further seeks a temporary restraining order, and preliminary and permanent injunction requiring Defendants Houston Hospice GOLDBERG and MINTZ to refrain from further depriving MURIEL of nutrition and hydration in order to cause her death or administering medications known to cause death
10. Plaintiff seeks additional temporary injunctive, preliminary and permanent injunctive relief requiring DEFENDANTS Goldberg and Mintz/KELLY to remove their holds from BARBARA LATHAM or the MURIEL MINTZ FAMILY TRUST'S accounts or BARBARA

LATHAM'S IRA'S immediately and to refrain from such unlawful acts ever again

11. The Plaintiff also requests actual damages, costs, and attorneys' fees. 42 USC 1988.

JURISDICTION AND VENUE

12. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, and under federal law, specifically, Title 42 U.S.C. § 1983, and § 2000cc et seq. This court has jurisdiction:

- a. Over Plaintiffs' claims relating to the withdrawal of MURIEL's food, fluids, and medical treatment necessary to sustain her life pursuant to P.L. # 109-3, enacted by the Congress and signed into law by President George W. Bush;

- b. Plaintiffs' claims arising under the United States Constitution and federal law pursuant to 28 U.S.C. § 1331, 29 U.S.C. §794, 42 U.S.C. § 1983, and 42 U.S.C. §12101 *et seq.*;

- c. Over Plaintiffs' prayer for preliminary and permanent injunctive relief and damages under F.R.C.P. 65(a);

- d. Over Plaintiffs' prayer for declaratory relief under Title 28 U.S.C. § 2201; and,

- e. To award attorneys fees pursuant to Title 42 U.S.C. § 1988.

13. Venue is proper under 28 U.S.C. § 1391 in the SOUTHERN DISTRICT OF TEXAS because this claim arose therein.

Each and all of the acts alleged herein were done by the Defendants under the color and pretense of state law, statutes, ordinances, regulations, or customs.

for state authority to withdraw her assisted feeding.

21. Proxy WOODS also purported to act as the impartial trial judge in the same proceeding for state authority to withdraw MURIEL's assisted feeding and hydration.

22. Once Proxy WOODS became an advocate for MURIEL's death, it became impossible for Judge woods to maintain his role as an impartial judge in order to review his own decision that MURIEL would want to die.

23. Judge woods's dual and simultaneous roles as judge and health-care surrogate denied MURIEL a fair and impartial trial in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

COUNT TWO VIOLATION OF FOURTEENTH
AMENDMENT PROCEDURAL DUE PROCESS
RIGHTS

24. Plaintiffs incorporate by reference paragraphs 1 through 52 as if fully restated here and further state the following.

25. A proceeding for the purpose of obtaining state authority to terminate MURIEL's nutrition and hydration is a proceeding for state authorization to deprive MURIEL of her life, liberty, and property.

26. Judge woods failed to appoint a temporary guardian *ad litem* to represent MURIEL's own right to privacy in critical hearings and proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

27. Judge woods failed to appoint an independent attorney to represent MURIEL's legal rights in the proceedings for state authority to withdraw her assisted feeding in order to cause her death by starvation and dehydration.

28. Judge woods denied MURIEL access to court and, he failed to ever meet

MURIEL personally, and he did not require MINTZ to bring her to court in order for him to be able to personally assess MURIEL's level of cognition and her responsiveness before he authorized, and later mandated, the withdrawal of her assisted feeding and hydration in order to cause her death.

29. Judge woods's total failure to afford MURIEL a temporary guardian *ad litem*, her own independent counsel, and access to court, was a violation of MURIEL's right to procedural due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

COUNT THREE VIOLATION OF FOURTEENTH
AMENDMENT RIGHT TO EQUAL PROTECTION OF
THE LAW

30. Plaintiffs incorporate by reference paragraphs 1 through 58 as if fully restated here and further state the following.

31. Chapter 244 of TEXAS temporary guardianship law expressly forbids judges to serve as surrogate decision-makers for anyone other than a close family member.

32. TEXAS judges may serve as proxies only in "substituted judgment" cases where there are reasonable grounds to believe that those otherwise eligible to serve will not provide their ward with effective assistance.

33. The only TEXAS citizens who are not entitled under TEXAS law to an impartial judge are incapacitated persons like MURIEL whose rights must be determined in "substituted judgment" proceedings.

34. Denying MURIEL a fair and impartial judge merely because she is incapacitated and disabled violates her right to equal protection of the law under the Fourteenth

Amendment to the United States Constitution.

COUNT FOUR VIOLATION OF RELIGIOUS
LAND USE AND
INSTITUTIONALIZED PERSONS ACT (RLUIPA)

35. Plaintiffs incorporate by reference paragraphs 1 through 63 as if fully restated here and further state the following.

36. Defendant Judge woods is an official acting on behalf of the judicial branch of the government of the State of TEXAS.

37. Defendant Houston Hospice is an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

38. Defendant Houston Hospice is a program or activity that receives Federal financial assistance, and is thus a person acting under color of Federal law for purposes of 42 U.S.C. § 2000cc *et seq.*

39. MURIEL is a person residing in or confined to an institution, as defined in section 2 of the Civil Rights of Institutionalized Persons Act (42 U.S.C. 1997), as incorporated by reference in RLUIPA (42 U.S.C. 2000cc-1).

40. Defendant Judge woods's Order to cause MURIEL to die by removal of her feeding tube, in a manner disapproved by the highest ecclesiastical authority of her Catholic Church, imposes a substantial burden on MURIEL's free exercise of religion.

41. Defendants Houston Hospice's and MINTZ's execution of Defendant Judge woods's Order to remove her feeding tube imposes a substantial burden on MURIEL's religious free exercise.

42. The substantial burden that Defendant Judge woods's Order imposes and that Defendants Houston Hospice's and MINTZ's compliance therewith further imposes is not in furtherance of any compelling governmental interest.

43. The substantial burden that Defendant Judge woods's Order imposes and that Defendants Houston Hospice's and MINTZ's compliance therewith further imposes is not the least restrictive means of furthering any governmental interest, whether compelling or not.

COUNT FIVE
THE FREE EXERCISE OF RELIGION CLAUSE

44. Plaintiffs incorporate by reference paragraphs 1 through 72 as if fully restated here and further state the following.

45. MURIEL's religious beliefs are burdened by Defendant Judge woods's Order and by Defendants Houston Hospice's and MINTZ's execution of that Order in that MURIEL is being forced to engage in an activity contrary to the tenets of her Roman Catholic faith as established by Pope John Paul II in March 2004, namely that it is a moral obligation for persons of the Catholic faith who are in pvs to continue to receive nutrition and hydration, even though it is through a feeding tube.

46. Defendants have a constitutional duty to accommodate MURIEL's sincerely-held religious beliefs. Defendants' conduct, however, constitutes a failure to give reasonable accommodation to MURIEL's sincerely- held religious beliefs.

47. On its face, Defendants' Order forcing Plaintiff to engage in conduct proscribed by her Catholic faith specifically targets religion for special disabilities without a compelling reason for so doing. Accordingly, Defendants, acting under color of state law, have deprived and continue to deprive Plaintiff of her free exercise rights guaranteed by the First and Fourteenth Amendment to the United States Constitution, thus violating the Civil Rights Act

of 1866, 42 U.S.C. § 1983.

COUNT SIX THE
AMERICANS WITH DISABILITIES ACT

48. Plaintiffs incorporate by reference paragraphs 1 through 76 as if fully restated here and further state the following.

49. The Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 et seq., provides that necessary and appropriate rehabilitation services and physical/motor skill therapy may not be denied a substantially disabled patient in the United States.

50. Moreover, the pertinent federal regulations for implementation of the ADA specifically provide that “[n]othing in the Act or this part authorizes the representative or temporary guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.” (cf. 28 C.F.R. Ch. 1, Subpart B, § 35.130.)

51. The failure and refusal of defendant MICHELLE GOLDBERG, acting under the color of state law, to furnish Theresa Marie MINTZ with necessary and appropriate speech and motor skills therapy, rehabilitation service, and the basic essential medical services, and his demand that she be deprived of foods and water, violate her rights under the ADA and constitute unlawful discrimination against her because of her disability.

COUNT SEVEN
THE REHABILITATION ACT OF 1973

52. Plaintiffs incorporate by reference paragraphs 1 through 80 as if fully restated here and further state the following.

53. Section 504 of the Rehabilitation act of 1973, 29 U.S.C. § 794, prohibits discrimination against an “otherwise qualified” handicapped individual, solely by reason of his or her handicap, under any program or activity receiving federal financial assistance. Hospitals

and Houston Hospices that accept Medicare and Medicaid funding are subject to the Act.

54. Defendant The Houston Hospice of TEXAS Sun Coast, Inc. is subject to the Act because it receives federal funding.

55. The aforesaid acts and omissions of the defendants have violated MURIEL's right to rehabilitations under the Act.

COUNT EIGHT VIOLATION OF
FOURTEENTH AMENDMENT DUE PROCESS RIGHT TO SUBSTITUTED JUDGMENT
DECISION BASED ON CLEAR AND CONVINCING EVIDENCE STANDARD

56. Plaintiffs incorporate by reference paragraphs 1 through 84 as if fully restated here and further state the following.

57. The United States Supreme Court, in *Cruzan v. Missouri Department of Health*, 497 U.S. 261 (1990), determined that the Due Process Clause of the Fourteenth Amendment requires that decisions to remove hydration and nutrition from an incapacitated person must be supported by clear and convincing evidence that the incapacitated person would have made the same decision.

58. The February 11, 2000, Order (to discontinue the hydration and nutrition of MURIEL by feeding tube) was not supported by clear and convincing evidence that MURIEL would have made the same decision.

59. The State trial court relied on the testimony of five individuals (ESTELLE NELSON, Diane Christine Meyer, MICHELLE GOLDBERG, Scott MINTZ, and Joan MINTZ) regarding comments made by MURIEL about artificial life support for incapacitated persons.

60. ESTELLE NELSON, MURIEL's mother, testified that MURIEL, commenting about the Karen Ann Quinlan case (Woman in pvs on a respirator), stated that the father should

just leave her alone and not attempt to remove the life support.

61. Diane Christine Meyer, a friend of the family, testified about a similar “end-of-life” conversation with MURIEL in 1982 in which MURIEL stated that she did not approve of the parents’ attempts to remove life support from Quinlan.

62. Judge woods discounted the Quinlan reference testimony of Mrs. Schindler and Ms. Meyer based on his erroneous personal belief that Karen Ann Quinlan had died in 1976, rather than June 11, 1985 when Quinlan actually died, stating in his February 11, 2000 Order that Ms. Meyer “appeared believable at the offset” [sic] but then became “mystified” when Ms. Meyer insisted on the fact that Quinlan was still alive in 1982.

63. Judge woods’s personal error tainted the credibility of Mrs. Schindler’s and Ms. Meyer’s testimony even though it was his plain error and therefore, his lack of credibility (as surrogate) that was the “evidence” underlying his February 11, 2000, Order.

64. The testimony of MICHELLE GOLDBERG was considered even though MURIEL’s temporary guardian ad litem (until dismissed by the court), Richard Pearse, Jr., stated that Mr. MINTZ’s testimony was compromised by his conflict of interest.

65. The testimony of Scott MINTZ and Joan MINTZ, Mr. MINTZ’s brother and sister-in-law, respectively, only related to the artificial life support of a respirator. Their testimony said nothing about MURIEL’s views on the removal of a feeding tube.

66. Judge woods impermissibly “bootstrapped” the testimony of Scott and Joan MINTZ with the irrelevant testimony of Ms. Beverly Tyler who testified as to the public opinion (improper under *In re Browning*, 568 So.2d 4, 13 (1990)) concerning being “hooked to a machine” for life support.

67. By discounting the otherwise creditable testimony of Mrs. Schindler and Ms.

Meyer due to plainly erroneous personal information, and accepting the testimony of Scott and Joan MINTZ which did not relate directly to the issue and the irrelevant public opinion testimony of Ms. Beverly Tyler, the state trial court did not have the clear and convincing evidence necessary to remove MURIEL's feeding tube under the *Cruzan* Fourteenth Amendment standard.

COUNT NINE VIOLATION OF EIGHT
AMENDMENT PROHIBITION AGAINST CRUEL AND UNUSUAL
PUNISHMENT.

68. Plaintiffs incorporate by reference paragraphs 1 through 96 as if fully restated here and further state the following.

69. The Eighth Amendment to the United States Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Judge woods and MICHELLE GOLDBERG, as state actors, have vioated MURIEL MINTZ's Eithth Amendment rights by demonstrating a deliberate indifference to a know, substantial risk of serious harm in violation of clearly established Eighth Amendment rights of which a reasonable person would have known, given the Supreme Court's decisions proscribing the deprivation of food, water, and medical care as well as other basic human needs to those in custody by a judicial decree of the state.

WHEREFORE, Plaintiff respectfully prays that this Court grant the following relief.

1. An immediate hearing on Plaintiffs' Motion for Temporary Restraining Order, and, upon hearing, enter an Order restraining Defendants from further withholding MURIEL's nutrition and hydration;

2. Enter a declaration that the February 11, 2000, Order authorizing the

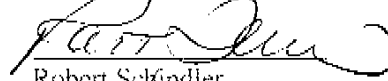
Washington, D.C. 20064
(202) 319-5202

ATTORNEYS FOR PLAINTIFFS

Verification


I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on: March 22, 2005


Robert Schindler

I declare under penalty of perjury under the laws of the United States of America
that the foregoing is true and correct.

Executed on: March 22, 2005


Mary Schindler