

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

BARBARA LATHAM, Individually	§
And as Durable / Medical Power of	§
Attorney and Health Care Surrogate for	§
MURIEL MINTZ, ESTELLE NELSON	§
Seeking appointment under F.R.C.P. 17c	§
Alternatively & MURIEL MINTZ	§
	§
VS.	§
	§ NO. 4-17-CV-03875
	§ HON. VANESSA GILMORE
JUDGE MIKE WOOD, Individually and	§
Official Capacity as Statutory Probate Judge	§
Harris County, Texas, MICHELE GOLDBERG	§
Individually & Officially, HARRIS COUNTY	§
TERESA PITRE, Individually & Officially,	§
DONALD MINTZ & HOUSTON HOSPICE	§
STACY KELLY	§

**SUPPLEMENT TO EMERGENCY MOTION
FOR TEMPORARY RESTRAINING ORDER WITH
NOTICE OF WRONGFUL DEATH**

1. With unbelievable sadness, BARBARA LATHAM AND ESTELLE NELSON hereby notify this Honorable Judge that despite their best efforts to save MURIEL MINTZ from certain death at the hands of the DEFENDANTS, PLAINTIFFS failed to beat the death cloth and have been advised that MURIEL MINTZ, deceased, died. BARBARA LATHAM, Individually and as Medical/Durable Power of Attorney for MURIEL L. MINTZ, guardian in the event of need, health care surrogate and attorney in fact for remains will supplement their ORIGINAL COMPLAINT with claims for Wrongful Death under Texas Civil Practice and Remedies Code Section 71.002, Intentional Infliction of Emotional Distress and Defamation. PLAINTIFFS anticipate adding a limited number of conspiring defendants.

2. ***PLAINTIFF further notifies the Court of an error in submitting two exactly the same affidavits in support of her TRO, noting that the first affidavit was not signed and seems to have been the reason the Court did not issue EMERGENCY TEMPORARY RESTRAINING ORDER. PLAINTIFF inadvertently included an unsigned and signed copy of the Affidavit prepared in support of the APPLICATION FOR TEMPORARY RESTRAINING ORDER, DECLARATORY RELIEF, PRELIMINARY AND PERMANENT INJUNCTION, and therefore, requests the court examine the affidavits once more to confirm that her “federal” affidavit was executed and attached; a true and correct copy is attached hereto;***

3. STACY KELLY continues to illegally hold and freeze two INDIVIDUAL RETIREMENT ACCOUNTS of BARBARA LATHAM at BANK OF AMERICA, when there has been not a shred of evidence that LATHAM did anything that would legally authorize such holds/freeze, PLAINTIFF seeks for the Court to providing a ruling on the TEMPORARY RESTRAINING ORDER while setting the matter for hearing by preliminary injunction as soon as possible. The Probate Court Injunction granted is not enforceable at this time because the bond was not paid, but does not permit this regardless. See Injunction attached hereto.

4. Injunctive relief is URGENT because GOLDBERG has no legal authority to have emptied BARBARA LATHAM’S bank account ending in 7007 of the vague void TRO granted based upon “no evidence” December 12, 2017, transcript and injunction provided for the Court’s review. LATHAM seeks for MICHELE to return the more than \$6000 taken without a valid court order and cease and desist from doing so in the future. *See Order, attached hereto and transcript.*

5. GOLDBERG is no longer the guardian despite her void appointment from the outset because of MURIEL’S death. Despite guardianship ending at death, GOLDBERG is holding a

death grip over the remains of MURIEL MINTZ and violating BARBARA LATHAM'S legal rights as her appointed representative. PLAINTIFFS fear greatly that her conduct is more evidence that she is concealing a murder from all eyes to hide the evidence. The Court should be alarmed that she is barring access to MURIEL'S remains to the only person authorized, BARBARA LATHAM. *See email demand to GOLDBERG to respect LATHAM'S authority with respect to remains and other issues to which no response was received, other than a threatening email prohibiting guns at a funeral.*

6. MICHELE was repeatedly notified that her mother does not want to be cremated and she refuses to respond, stating only that the service would include a closed casket. See attached emails; The overarching issue is LATHAM AND NELSON are still being abused by a system of fiduciaries that have no right to deny access and visitation to their mother as she died as a means of covering up murder. GOLDBERG has no right to have absconded with over \$116,000 of MURIEL'S money and she continues to have it, most recently seeking authorization and approval for her embezzlement. See MOTION FOR ALLOWANCE AND ORDER backdating authorizations for over \$3000 per month in rent that did not exist because MURIEL lived with Barbara Latham until 11.24.17.

7. Every service document (produced for the court) show that MURIEL was not personally served and service is not effective upon her attorney TERESA PITRE because it was mandated to be served personally, with PITRE'S appointment improper given MURIAL had never been served. Two documents are key in demonstrating that no notice or opportunity to participate (in a meaningful way) was ever provided. *See Designation for Remains.* The following service attempts were all unsuccessful:

- 3.27.17 Constable of Harris County tried but failed to serve Muriel at

Clarewood House, where she lived;

- 5.18.17 Return was unlawfully served on Teresa Pitre, attorney ad litem appointed by Judge Wood, for Muriel Mintz. Pitre had no legal right or authority to accept service on her behalf and the proper manner of dealing with this should have been a TRCP 106 Motion for Substituted Service, never filed
- **5.23.17 Service Return is FRAUDULENT** because MURIEL was never served and she was not in court May 23, 2017, as evidenced by the Court's granting IME exam of her without her present; her daughter having to take her to the hospital the night before; *See also IME ORDER; See Affidavit executed by Latham in support of TRO, which was attached to the filing and this document and missed.*
- 7.21.17 2nd Guardianship petition filed by Donald Mintz for third party returned unserved from Pearland where she resided with LATHAM. Muriel was never sequestered as GOLDBERG slanders and defames, calling herself neutral when that is a blatant lie because of the clear agenda she pursued;

8. PLAINTIFF seeks an injunction against GOLDBERG immediately to command GOLDBERG to cease and desist from usurping her superior right to control and determination of all aspects of her mother's remains.

9. PLAINTIFF seeks for the court to ENJOIN MICHELE GOLDBERG from attending the funeral service of MURIEL MINTZ, ENJOIN GOLDBERG from access to the death certificate which should be given to BARBARA LATHAM ONLY;

10. PLAINTIFF seeks for this court to ENJOIN cremation, burial or otherwise disposing of the body until an autopsy is performed because despite MURIEL'S age, DEFENDANTS' actions suggest guilt.

11. LATHAM respectfully files this Supplement to clarify the foregoing and give notice of

intent to amend with additional claims. PLAINTIFFS give notice of their intent to sue for wrongful death, intentional infliction of emotional distress, slander, libel, and clarifies that the declaratory judgment filed relates to the MURIAL MINTZ FAMILY TRUST and the Federal Arbitration Act and Texas Arbitration Act compelling arbitration of the trust issues such that further attempts to subject this trust to the jurisdiction of any court on a continuing basis-violates the trust. DONALD MINTZ helped create the trust and served as co-trustee before abandoning his position and breaching his fiduciary duty in not seeking a replacement successor or bothering to assist with management. MINTZ has forfeited his rights under the trust by the greed-driven legal nightmare he has created violating the trust.

12. COUNSEL notified the opposing party on the 24th day of December regarding the ORIGINAL COMPLAINT AND APPLICATION FOR INJUNCTIVE RELIEF VIA TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION, WHO FAILED TO RESPOND.

Rule 65. Injunctions and Restraining Orders

(a) Preliminary Injunction.

(1) *Notice.* The court may issue a preliminary injunction only on notice to the adverse party.

(2) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial. But the court must preserve any party's right to a jury trial.

(b) Temporary Restraining Order.

(1) *Issuing Without Notice.* The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

(A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and

(B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

(2) *Contents; Expiration.* Every temporary restraining order issued without notice must state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed 14 days— that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension must be entered in the record.

(3) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction must be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order must proceed with the motion; if the party does not, the court must dissolve the order.

II. TRO AND PRELIMINARY INJUNCTION

PLAINTIFFS SEEK A TEMPORARY RESTRAINING ORDER, PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION:

- 13. ENJOINING GOLDBERG from usurping BARBARA LATHAM'S superior right to control and determination of all aspects of her mother's remains, including all aspects of the funeral and death certificate, as well as autopsy;**
- 14. ENJOINING MICHELE GOLDBERG from attending the funeral service of MURIEL MINTZ,**
- 15. ENJOINING GOLDBERT or anyone acting pursuant to her instructions or authority from cremation, burial or otherwise disposing of the body until an autopsy is performed;**
- 16. ENJOINING MICHELE GOLDBERG from all further contact with BARBARA LATHAM OR ESTELLE NELSON, MANDATING GOLDBERG STAY 200 YARDS AWAY FROM BOTH.**

17. ENJOINING DEFENDANTS from harassment OF BARBARA LATHAM OR ESTELLE NELSON

18. ENJOINING any further deprivations of privileges and immunities guaranteed to ESTELLE NELSON AND/OR BARBARA LATHAM by Articles I and V of the Texas Constitution, ADA and ADAAMA, 42 U.S.C. 12101, Section 504 of the Rehabilitation Act of 1973, 29 USC 794, 42 USC 1983, the 1st, 4th, 5th, 6th, 7th, 8th, and/or 14th Amendments of the United States Constitution, or any State or Federal law

19. ENJOINING DEFENDANTS from restraining or attempting to interfere with plaintiffs' RIGHT in liberty or property, such as attempts to place bank holds or freezes on funds that belong to either;

20. MANDATING DEFENDANTS cease and desist from taking any property believed to belong to BARBARA LATHAM OR MURIEL MINTZ or the MURIEL L MINTZ FAMILY TRUST;

21. MANDATING that DEFENDANTS immediately remove all encumbrances placed on any financial account of BARBARA LATHAM, MURIEL MINTZ OR THE MINTZ FAMILY TRUST,

22. MANDATING DEFENDANTS RETURN ALL FUNDS taken without the consent of BARBARA LATHAM, regardless of whether such funds were seized from personal or trust accounts of BARBARA LATHAM OR MURIEL MINTZ to the banks from which they were confiscated

23. MANDATING DEFENDANTS CEASE AND DESIST from any and all efforts and/or attempts to contact or communicate with LATHAM OR NELSON by phone, email, text message, mail or any other means, other than through counsel CANDICE SCHWAGER;

24. ENJOINING DEFENDANTS from disturbing the peace of BARBARA LATHAM OR ESTELLE NELSON.

25. MANDATING that MICHELE GOLDBERG be disgorged and immediately return all funds taken or paid to her from any account whatsoever in the Muriel Mintz guardianship, as an unauthorized taking of property without due process of law;

26. MANDATING that DEFENDANTS RETURN ALL FUNDS SEIZED FROM LATHAM, the MJRIEL MINTZ FAMILY TRUST, OR MURIEL MINTZ IMMEDIATELY to the banks from which they were wrongfully taken and/or confiscated without due process of law or any evidence to justify the same;

27. ORDERING AN EMERGENCY HEARING BE SET ON PLAINTIFFS' PRELIMINARY INJUNCTION TO REVIEW ALL ISSUES IN THIS MATTER TO BE SET ON THE ____ DAY OF _____, 2017.

III. CONCLUSION AND PRAYER FOR RELIEF

28. PLAINTIFFS pray for this Honorable Judge to GRANT PLAINTIFFS' EMERGENCY TEMPORARY RESTRAINING ORDER, PRELIMINARY AND PERMANENT INJUNCTION. PLAINTIFFS pray the Court Grant such other and further relief as this Court shall seem just and equitable. PLAINTIFFS pray that this Court retain jurisdiction of this matter for the purpose of enforcing this Court's order.

IV. CERTIFICATES AND CLOSING

29. Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) is supported by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

Respectfully Submitted,

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ATTORNEY FOR BARBARA

LATHAM AND MURIEL MINTZ

ESTELLE NELSON

**CERTIFICATE OF ATTEMPTED
CONFERENCE AND SERVICE**

I hereby certify that I sent the application for temporary restraining order to Defendants on the 24th day of December, 2017 and I have not heard back from any of them until late Christmas day when my client contacted me to tell me that the guardian's idea of Christmas was to alert her that Muriel Mintz was dead. I verified by email that Michele Goldberg notified us by email of Muriel's passing after banning Estelle and Barbara from visitation with cruelty--to Muriel more than anyone who reportedly asked many times why her daughter(s) were not there, as well as begging to leave hospice.

Candice Schwager

CANDICE SCHWAGER