## Breach of the Fiduciary Duty to Account and Disclose

On February 27, 2012 Appellant filed a breach of fiduciary action in the SDTX seeking an accounting and fiduciary disclosures. In that petition Candace alleged that Anita had exercised all the powers of trustee while p[performing none of the obligations. That was true then and remains the case today. In that petition Candace also alleged that Anita had implemented a plan to steal the family trust in such a way that if Carl or Candace complained, she would get to keep their share.[[1]](#footnote-1)

The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and l complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN. I know she did not, because she said so to me on the phone. She took my concern to heart and subsequently sent me a handwritten note saying, again, that it was not true.(P-16, 2 pgs.)

Candace also mentioned that Anita had talked about stalking Nelva and her recording in person and private phone conversations.[[2]](#footnote-2)

“They alleged having taped, in person, conversations between Mother and others, taped telephone conversations between Mother and others, and video of the behavior and actions of others in Mother's house. I was told a private investigator had been hired to follow Drina around. Apparently, a GPS unit was affixed to her vehicle. They would not share this alleged "evidence" in its physical form, they only told me what was said and done.”

# Fast Forward to Harris County Probate Court No. 4

## Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

### Notice of Removal

After a series of non-suits and Defendants proposed Summary Judgment Order was signed, Appellant was left appearing to be the only alleged plaintiff remaining in Carl Brunstings’ probate court lawsuit. After having her alleged complaint dismissed and leaving the appearance of being subject to Defendant’s alleged counter claims, Candace filed a Notice of Removal to the SDTX where Defendants would have to argue that their demand for their attorney fees to be paid from the trust does not violate a court order or the preliminary injunction. In reply to that Notice, Defendant’s attorneys filed copies of their fee statements in the SDTX.

[Mr. Mendel’s April 8, 2022 statement](file:///C:\Users\Rik\Desktop\1st%20Dist%20Appeal\2022-04-08%2002-12%20Exhibit%20q%20Anita’s%20(Mendel)%20attorney%20Fee%20Disclosure.highlight.pdf) has a cover page that indicates Candace Curtis was the Plaintiff that filed the probate court lawsuit styled: *Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting* when in fact the case was filed on the same day Candace Curtis was attending a hearing on her application for preliminary injunction in the SDTX.[[3]](#footnote-3) [Mr. Mendel’s statement](2022-04-08%2002-12%20Exhibit%20q%20Anita’s%20(Mendel)%20attorney%20Fee%20Disclosure.highlight.pdf), on the bottom of page 10, also has the following entry containing an admission of knowledge that the federal case was not properly before the probate court!

* Mendel Law Firm [Case 4:22-cv-01129 Document 2-12](http://www.probatemafia.com/Brunsting/2022-04-08%2002-12%20Exhibit%20q%20Anita%E2%80%99s%20(Mendel)%20attorney%20Fee%20Disclosure.pdf) Filed on 04/08/22 in TXSD Page 10 of 56

“1/9/2015 BEF Reviewed correspondence re proposed deposition dates; reviewed file re injunction and problems with the federal court remand or case that was never removed, J. Ostrom nonsuit of injunctive relief, and trust barriers to such injunction.”

In [Mr. Spielmans fee statement](http://www.probatemafia.com/Brunsting/2022-04-08%2002-15%20Exhibit%20R%20Amy%E2%80%99s%20(Spielman)%20attorney%20fee%20disclosures.pdf) an agreement between Bayless, Mendel and Spielman to Avoid IME and Guardianship proceedings against Carl was apparently formed as can be gleaned from the following entry and verified by the subsequent probate court record.

* Spielman Case 4:22-cv-01129 Document 2-15 Filed on 04/08/22 in TXSD Page 17 of 52

5/19/2015 NES Follow-up telephone conference(s) with Anita's counsel regarding counsel's recent discussion with Anita, discussing plan to proceed with IME for Carl to assist in determination of whether guardian is needed for Carl, discuss pursuing summary judgment on "undue influence" issue, discuss status of proceedings for appointment of independent successor executor

5/29/2015 NES Review draft of proposed Motion for No Evidence Summary Judgment and prepare memorandum to Anita's counsel regarding possible edits to same; review memorandum from counsel regarding possible agreement from Carl's attorney regarding IME in lieu of Motion and hearing

## Honest Services Fraud

In July of 2016 Candace and her domestic partner Rik Munson accused all of the attorneys of honest services fraud under the authority of the racketeer influenced corrupt organization statutes. We did not have evidence of the facts at that juncture but could clearly see collusion among the attorneys that were supposed to be representing adverse clients and did not want to wait until they arrived at their desired destination without having forced them to assume a position they would then have to defend. One example is how they keep their extortion threats secret using mediation where the interactions are confidential. Their answer to the honest services fraud allegation was [probate case, probate matter, probate proceeding](http://www.probatemafia.com/Brunsting/Probate%20case%20matter%20proceeding.pdf) and various theories of immunity. They also said it was zanyism when in fact it was caused by the very conduct Judge Hoyt described at the injunction hearing when he suggested this didn’t become one of those cases.

## Second Motion for Extension

Appellee’s, in asking for a second extension of time to file their answer, raise a decade -long and complex litigation history generating thousands of pages of motions in federal district and appellate courts, and in state district, probate, and appellate courts and arguing that “*identifying and ensuring the necessary documents are included in the appellate record from the entire world of documents is a herculean task*.”

They further state that “*Appellees’ counsels have been working diligently to prepare their response briefs, which require a coordinated effort due to the aligned and complementary interest among Appellees.”*

While the request specifically names Co-Trustee Anita K. Brunsting, Co-Trustee Amy R. Brunsting, and Carl H. Brunsting, Individually it does not include a request from Anita Brunsting in her individual capacity as a trust beneficiary, Amy R. Brunsting in her individual capacity as a trust beneficiary or beneficiary Carl H. Brunsting in his former capacity as independent executor. Neither request includes trust beneficiary Carole Anne Brunsting who has apparently chosen to not participate. The question of Carl’s standing whether individually or as independent executor does not require resort to the “*entire world of documents”* for resolution.

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal.

The Rule 11 agreement between Carl, Anita and Amy renders their standing moot as to Carl’s original petition and reinforces the honest services fraud allegation !

## Tab 30 2015-06-26 Co-Trustees No-evidence Motion for Summary Judgment.pdf

This motion attempts to shift the burden of bringing forth evidence. The instrument to which the Co-Trustee/beneficiaries refer is titled *Qualified Beneficiary Designation and testamentary Power of Appointment under Living Trust Agreement*. This instrument is not in evidence and there is no declaratory judgment to suggest it exists and that it is part of “the trust”. All of defendant/Appellee’s motions relying on this instrument assume a fact not in evidence and Appellant continues to object. Defendant/Appelle’s have not produced this instrument in attempt to qualify it as evidence because they cannot.

THEY WILL NOT BECAUSE THEY CANNOT 2017-08-13 Appellants Opening Brief on Appeal in the Honest Services fraud case 5th Cir. No.17-20360 pg. 20

[TAB 53 2019-03-01 Order to transfer District court case to Probate\_Certified.pdf](http://www.probatemafia.com/Brunsting/TAB%2053%20%202019-03-01%20Order%20to%20transfer%20District%20court%20case%20to%20Probate_Certified.pdf)

This order is void as the transfer statute itself [Tex. Est. Code § 34.001(a)] requires a pending estate administration to be ancillary or incident to.

CHAPTER 34. MATTERS RELATING TO CERTAIN OTHER TYPES OF PROCEEDINGS

This section was amended by the 84th Legislature. Pending publication of the current statutes, see S.B. 1296, 84th Legislature, Regular Session, for amendments affecting this section.

## Sec. 34.001. TRANSFER TO STATUTORY PROBATE COURT OF PROCEEDING

RELATED TO PROBATE PROCEEDING. (a) A judge of a statutory probate court, on the motion of a party to the action or on the motion of a person interested in an estate, may transfer to the judge's court from a district, county, or statutory court a cause of action related to a probate proceeding pending in the statutory probate court or a cause of action in which a personal representative of an estate pending in the statutory probate court is a party and may consolidate the transferred cause of action with the other proceedings in the statutory probate court relating to that estate.

Tab 76 2021-11-05 Co-Trustees' Motion for Summary Judgment exceeds the authority granted to Trustees by the trust instrument Article XII Section B

*“Notwithstanding anything to the contrary in this agreement, the Trustee shall not exercise any power in a manner inconsistent with the beneficiaries' right to the beneficial enjoyment of the trust property in accordance with the general principles of the law of trusts.”*

[Brunsting trust Article XII Section B](http://www.probatemafia.com/Brunsting/2005%20Restatement%20Living%20Trust%202005_from%20AnitaOct%2023_2010.pdf) (copy of Restatement received from Anita Brunsting October 23, 2010) [Tab 62i Article VII Defendant Co-trustees Exhibit A to Nov. 5, 2021 Motion for Summary Judgment]

[Tab 40 2022-02-01 Application to Sever](http://www.probatemafia.com/Brunsting/TAB%2040%20Certified%2018292335-%20C%23%204%20Application%20to%20Sever.pdf)

[Tab 41 2022-02-11 Hearing Transcript Severance motion 412249-401.pdf](http://www.probatemafia.com/Brunsting/Tab%2041%202022-02-11%20Hearing%20Transcript%20Severance%20motion%20412249-401.pdf)

Tab 42 February 25, 2022 Order for Summary Judgment.pdf

[2022-03-18 Carl & Carole non-suit.pdf](http://www.probatemafia.com/Brunsting/2022-03-18%20Carl%20&%20carole%20non-suit.pdf)

[Tab 44 2022-03-18 Carl's Notice of non-suit of relator\_\_Certified.pdf](http://www.probatemafia.com/Brunsting/Tab%2044%20Carl's%20Notice%20of%20non-suit%20of%20relator__Certified.pdf)

What tangible Interest Do we Have in this controversy?

## Trust Beneficiary Carl Brunsting in his Individual capacity

Trust Beneficiary Carl Brunsting has a 1/5 interest in the trust corpus and has suffered the injury of not being able to enjoy his beneficial interest. Carl has also suffered the injury of paying an attorney more than $225,000.00 (as per his February 3, 2015 deposition testimony) in return for which he has received nothing. In fact, after paying all that money in fees Trust Beneficiary Carl Brunsting does not even have a lawsuit.

Disabled Trust Beneficiary Carl Brunsting has an interest is in receiving his full 1/5th of the trust corpus, undiminished by the Co-Trustees failure to administer the trust according to its terms. Trust Beneficiary Carl Brunsting also has an interest in being compensated for his attorney fees and any damages flowing from the series of events that followed his mother’s passing.

## Independent executor Carl Brunsting

Independent executor Carl Brunsting is a fiduciary. His only interest in the estates of Elmer and Nelva Brunsting is to see that the testator’s directives are carried out. His function in the probate court as independent executor ended with the filing of a verified inventory as all right title and interest to the “$3.00” in the estate and the negligence claims against 3rd parties, vested in “the trust” with the approval of the inventory, at which time the estate ceased to exist as a matter of law.

If Carl’s attorney [Bobbie G. Bayless] was seeking a remedy for her client, why did she divide the participants and file the same lawsuit in two separate courts with the estate planning Grifters in one court (State District) and their familial victims in another (state probate)? Why did she then file a motion to transfer the 1st filed lawsuit from the court of competent and dominant jurisdiction to a probate court that cannot compose a court of competent jurisdiction?

If Bayless intended to obtain the Declaratory Judgment she sued for… why has there been no hearing and no ruling on **the questions still at large?** What instruments are we referring to when we say “the trust”?

## What is Co-Trustee Defendant Anita Brunsting’s legally tangible interest in this controvery?

Anita is attempting to steal it all. She has performed no fiduciary duties and is thus challenging the trust by causing litigation to be brought for the purpose of advancing a theory that, if true, would enlarge her share. Anita has forfeited her interest in the trust corpus. Anita has also engaged in the misapplication of fiduciary assets held in trust for the benefit of elderly and disabled beneficiaries and that is a felony under Texas Penal Codes Sections § 32.45 & § 32.53.

## Trust Beneficiary Anita Brunsting in her individual capacity

## Co-Trustee Defendant Amy Brunsting

## Trust Beneficiary Amy Brunsting in her individual capacity

## Settlors Intentions

What is the purpose for an estate plan composed of a (1) pour-over will (2) directing independent administration of a (3) devise to living trust?

The Grift of the Brunstings is a story that begins with an estate planning bait and switch.

Having identified Anita Brunsting as the weak link in the family moral fabric estate planning attorney Candace Freed began grooming Anita on how to steal her family trust and followed each family crisis with illicit changes in long standing estate plan instruments. The first implementation of illicit changes followed the medical declaration of incapacity

## Testators Intentions

The purpose for a pour-over will (Devise to Living Trust) and “independent administration” is to free the Independent Executor from probate court supervision. In other words, the purpose for a Devise to Living Trust and “independent administration” is elimination of probate court jurisdiction.

The probate court did not acquire jurisdiction over the tort claims brought by the Independent Executor as those claims, filed “after” the Independent Executor had submitted his verified inventory, appraisement and list of claims, impermissibly ask the probate court to interfere in the independent administration. This is a direct challenge to the Settlors Intent.

At Carl’s February 3rd 2015 Deposition he testified that he had already paid his attorney $225,00.00 but was unable to state how much was spent on which of the two integrally related law suits filed by his attorney.

When the independent executor resigned due to want to capacity he left his counsel without a client.

## Nolo Prosequi

### Local Rules = 3 Years = Nolo Prosequi

This matter has been before the probate court for 10 years without going to trial. The first DCO was rendered nugatory by the dissemination of telephone wiretap recordings via certified mail, followed by an emergency motion for a protective order. We did not see another DCO for 6 ½ years (June 2021)

Property Code 115.001 (d) and Probate Code §

Dominant Jurisdiction

## Independent Administration

Verified Inventory = Pour-Over = No Pending Estate to Administer,

Resignation of independent executor = no representative & nothing to represent

Filed in probate for an improper purpose. There was no pending estate administration to be ancillary to and this converts the independent administration into a dependent administration.

## Dominant Jurisdiction

## Standing:

## Individual vs independent executor

## Beneficiary vs Co-Trustee

The probate court acquired jurisdiction over the claims against the Executors under § 5A(c) of the Probate Code which states "[a] statutory probate court has concurrent jurisdiction with the district court in all actions by or against a person in the person's capacity as a personal representative." Tex. Prob. Code Ann. § 5A(c)(1)

[a] Statutory probate court may exercise the pendent and ancillary jurisdiction necessary to promote judicial efficiency and economy [Probate Code § 5A(d)]

## Tex. Prop. Code § 115.001

**(a)** Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts, including proceedings to: **(1)** construe a trust instrument;**(2)** determine the law applicable to a trust instrument;**(3)** appoint or remove a trustee;**(4)** determine the powers, responsibilities, duties, and liability of a trustee;**(5)** ascertain beneficiaries;**(6)** make determinations of fact affecting the administration, distribution, or duration of a trust;**(7)** determine a question arising in the administration or distribution of a trust;**(8)** relieve a trustee from any or all of the duties, limitations, and restrictions otherwise existing under the terms of the trust instrument or of this subtitle;**(9)** require an accounting by a trustee, review trustee fees, and settle interim or final accounts; and**(10)** surcharge a trustee.**(a-1)** The list of proceedings described by Subsection (a) over which a district court has exclusive and original jurisdiction is not exhaustive. A district court has exclusive and original jurisdiction over a proceeding by or against a trustee or a proceeding concerning a trust under Subsection (a) whether or not the proceeding is listed in Subsection (a).**(b)** The district court may exercise the powers of a court of equity in matters pertaining to trusts.**(c)** The court may intervene in the administration of a trust to the extent that the court's jurisdiction is invoked by an interested person or as otherwise provided by law. A trust is not subject to continuing judicial supervision unless the court orders continuing judicial supervision.**(d)** The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on:**(1)** a statutory probate court;**(2)** a court that creates a trust under Subchapter B, Chapter 1301, Estates Code;**(3)** a court that creates a trust under Section 142.005;**(4)** a justice court under Chapter 27, Government Code; or**(5)** a county court at law.

Tex. Prop. Code § 115.001

With the legal and factual dispute over what instruments qualify as trust instruments pending and no declaratory judgment as to what instruments constitute “the trust” there can be no summary judgment

1. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 para 4 [↑](#footnote-ref-1)
2. [Mandamus Tab 1] Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28 Para 4 [↑](#footnote-ref-2)
3. [Mandamus Tab 3] [↑](#footnote-ref-3)