

TY CLEVENGER

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August 19, 2013

Mr. Chad Childers, Administrative Attorney  
Office of the Chief Disciplinary Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711-2487

*Via facsimile*  
(512) 427-4167

RE: 201302595 – Ty Odell Clevenger – Bryan Franklin Russ, III  
201302596 – Ty Odell Clevenger – Bryan Franklin Russ, Jr.  
James H. McCullough (SBOT #13503800)  
Molly Hedrick (SBOT #09370595)

Dear Mr. Childers:

I write in response to Bryan F. Russ, Jr.'s letter dated August 16, 2013. Mr. Russ claims city officials were aware of the fact that he was representing private clients against the municipalities in tax cases. I do not believe this is true. I have spoken with one current member and two former members of the Hearne City Council, and none of them knew that Mr. Russ was representing private clients against the city. Moreover, none of the four municipalities in Robertson County has any record that Mr. Russ notified them about his conflicts of interest.

Even if Mr. Russ notified the city councils verbally, that much should appear in the minutes of the city council meetings. Yet none of the cities can find such a record. If Mr. Russ was telling the truth in his August 16 letter, he should have been able to offer some evidence that he notified the respective city councils, or at least he should have been able to explain exactly when and how he notified the city councils (and how they granted him a waiver of the conflicts). Among four multi-person city councils, surely there would be some witnesses somewhere, and yet he identifies none.

Mr. Russ further argues that he has done nothing wrong because his representation of municipal clients does not include tax cases. But consider the charter for the City of Hearne, which reads in relevant part as follows: "The City Attorney, or such other attorneys selected by him with the approval of the City Council, shall represent the city in all litigations." Hearne City Charter §4.05. That means that even if other attorneys are appointed to appear as counsel of record in the tax cases, Mr. Russ gets to hire and fire his opposing counsel. Clearly, this creates a conflict, and the cities

should have been notified and advised to seek independent counsel about Mr. Russ's practice of representing private clients against the cities.

With respect to criminal cases, the Hearne City Charter also states that the city attorney "shall be the legal advisor of, and the attorney and counsel for, the City *and all officers and departments thereof.*" Hearne City Charter §4.05 (emphasis added). In my August 15, 2013 letter, I offered illustrations of the conflicts that inevitably arise when Mr. Russ is in a role adversarial to that of municipal employees who are acting in their capacity as municipal employees. Mr. Russ cannot reconcile his dual role with either prong of Rule 1.06(b), nor can any of his law firm colleagues.

As I have noted before, this is all part of a pattern of conflicts and unethical practices. The worst incident by far is *Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren*, Cause No. 05-11-17388-CV (mentioned in my July 16, 2013 letter), where Mr. Russ and Mr. McCullough perpetrated a series of sham transactions in order to steal property from their own clients. Mr. Russ has not even attempted to explain or defend his actions in that case, and that is because he knows his actions were indefensible. If Mr. Russ was willing to perpetrate such an enormous theft from those clients, it is little wonder that he double crosses his municipal clients.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ty Clevenger', with a long horizontal flourish extending to the right.

Ty Clevenger

cc: Mr. Bryan F. Russ, Jr.  
Mr. Bryan F. Russ, III