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Commission for Lawyer Discipline
c/o Dirrell S. Jones, Asst. Disciplinary Counsel

VIA FACSIMILE and E-MAIL ATTACHMENT
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RE: *Commission for Lawyer Discipline v. Ty Odell Clevenger*, 380th District
Court of Collin County, Texas, Cause No. 380-01407-2013

Members of the Commission:

I write this letter for settlement purposes, and specifically to urge you to dismiss the case listed above. I have previously provided Mr. Jones with evidence that Judge Walter S. Smith, Jr.'s and Judge Ellen S. Huvelle's accusations against me are objectively false, thus I do not believe the Commission can succeed in a jury trial. Judge Huvelle, for example, accused me of filing a bankruptcy case for an improper purpose, when in reality another attorney had filed the bankruptcy case *against* my client. When I brought this to her attention and asked her to correct the false statement, she refused. In fact, Judge Huvelle made false statements throughout the sanctions order, and if necessary I will show that she was retaliating against me because she had a gross conflict of interest. *See, e.g., A federal judge who thinks she's above the law*, <http://lawflog.com/?p=80>.

Similarly, in his sanctions order, Judge Smith accused my clients and me of bringing claims against parties with whom those clients had already settled, even though the complaint expressly said, “*notwithstanding any other provision of this complaint*, the members of the Erwin Heir Majority [*i.e.*, my clients] do not bring any claims of any kind against the Defendants with whom they have already settled, *i.e.*, Defendants Russ, McCullough, The Firm, Leamon, L K & P, Oaks & Diamonds, Deminimus, Velnon, Flare Royalties, L.P., and Flare Royalties, L.L.C., nor do they seek any damages from them.”

If you wish, I can go point-by-point illustrating the fatal flaws in the Commission's allegations, but there is another reason why I believe the Commission should dismiss the case outright: I can make a very compelling selective prosecution argument.¹ Consider, for example, the case that Judge Smith dismissed before

¹The courts that have considered the issue seem to agree, at least in dicta, that defendants may assert selective prosecution claims in state bar proceedings. *See, e.g., In re Conduct of Gatti*, 330 Or. 517, 8 P.3d 966 (2000), *In re Disciplinary Proceeding Against Marshall*, 160 Wash.2d 317, 157 P.3d 859 (2007), *State ex rel. Counsel for Discipline of Nebraska Supreme Court v. James*, 267 Neb. 186, 673 N.W.2d 214 (2004), and *Fieger v. Thomas*, 872 F.Supp. 377 (E.D.Mich.1994).

sanctioning me, *i.e.*, *Erwin v. Russ*. I provided a copy of the *Erwin* complaint to the FBI, and soon thereafter the FBI was serving grand jury subpoenas on the defendants and interviewing my clients.

Around the same time, I filed a grievance with the state bar against Bryan F. Russ, Jr., one of the lawyer defendants in *Erwin*, based on the same evidence that he had engaged in real estate fraud and racketeering. In particular, the *Erwin* complaint alleged that Mr. Russ and his law partner had stolen a mineral estate by fraud. The state bar dismissed the grievance outright. In other words, the U.S. Department of Justice thought the allegations were serious enough for federal grand jury subpoenas, but the state bar *would not even investigate*. I recently obtained (via subpoena duces tecum) a settlement agreement wherein Mr. Russ and his law partner relinquished their claim to the stolen mineral estate and repaid over \$900,000 in fraudulently obtained royalties. Some of the royalties were stolen *from one of Mr. Russ's own clients*, and that client had specifically consulted him about ownership of the royalties *before* the theft.

On one hand, the state bar turned a blind eye when Mr. Russ perpetrated a felony against his own client.² On the other hand, the state bar is prosecuting me because I was allegedly negligent or too zealous in my pursuit of Mr. Russ. As I noted in my amended complaint in *Erwin*, Mr. Russ was a member of a state bar grievance committee for sixteen years. I told a former grievance committee chairman about the state bar's dismissal of the grievance against Mr. Russ, and he told me that disciplinary matters are often infected by politics (I am planning to obtain his testimony).

The Commission previously filed a case against me on the preposterous grounds that I had violated the professional rules by advising a client to bring claims in federal court rather than state court. Worse, I had already provided the Commission with statements from two other attorneys as well as e-mails from the complainant – a disgruntled former client – unequivocally showing that the complainant was lying. To its credit, the Commission eventually dismissed the case, but the Office of Chief Disciplinary Counsel never should have filed it in the first place.

While selective prosecution is a question for the court, the foregoing facts will nonetheless be made known to the jury. If this case goes to trial, I intend to file counter-claims against the Commission seeking injunctive relief. Specifically, I intend to seek an order compelling the Office of Chief Disciplinary Counsel and the Commission to certify in any subsequent disciplinary investigation that they are not treating me differently than more politically-connected lawyers. The Court will decide whether to grant such relief, but the jury will decide the facts in support of my request for injunctive relief. *See Jeter v. Associated Rack Corp.*, 607 S.W.2d 272, 277-78 (Tex.Civ.App.-Texarkana 1980, *writ ref'd n.r.e.*), *cert. denied*, 454 U.S. 965, 102 S.Ct. 507, 70 L.Ed.2d 381 (1981) (“The law in Texas is that the right to a jury trial extends to disputed issues of fact in equitable as

² I also urge you to consider the grievance that I filed against Mr. Russ in 2013. That grievance set forth evidence of rampant misconduct and conflicts of interest, but it too was ultimately dismissed. If I must go to trial, I intend to bring this to the jury's attention as well.

well as legal proceedings”), citing Tex.Const. art. V, ss 8 and 10 and *Reynolds-Penland Co. v. Hexter & Lobello*, 567 S.W.2d 237 (Tex.Civ.App. Dallas 1978, *dism'd agr.*).

I do not want to go to trial, but I also do not want to be subjected to a double standard. I am trying to attend graduate school in another country, and frankly I would just like to be left alone. Accordingly, I urge you to dismiss the case pending in Collin County.

Respectfully,

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

Ty Clevenger