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July 16, 2013

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State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

Via facsimile and regular mail
(512) 427-4167

RE: 201302596 – Ty Odell Clevenger – Bryan Franklin Russ, Jr.

Dear Mr. Childers:

I write to respond to Mr. Russ's letter of May 31, 2013, and to make you aware of additional and more recent violations of the Texas Disciplinary Rules of Professional Conduct. Please consider this a supplement to my original grievance, or a new and separate grievance if you wish.

In the Matter of the Estate of Marium Jeanette Oscar

I have enclosed a string of e-mail correspondence between Mr. Russ and me regarding *In the Matter of the Estate of Marium Jeanette Oscar,* Cause No. 11-09-18,927-CV, 82nd District Court of Robertson County (Exhibit 1 on the enclosed CD-ROM).[1] Mr. Russ represents John C. Paschall, the executor of that estate, who is accused of misappropriating estate funds. *See* Steven Romo, KAGS-TV, May 24, 2012, "Robertson Co. D.A. Accused of Taking Elderly Calvert Woman's Money," http://www.youtube.com/watch?v=hOmPooYOzkI.

On May 27, 2012, I called Allen Weise, a resident of Calvert, Texas who manages the local Jewish Cemetery, about bringing claims against Mr. Paschall on behalf of the cemetery. (I offered to represent the cemetery free of charge as a matter of public interest). Two days later, I received an e-mail from Mr. Russ notifying me that he represented Mr. Weise. As you will see from our e-mail exchange (Exhibit 1), I expressly warned Mr. Russ that he could not advise Mr. Weise about bringing claims against Mr. Paschall in a pending matter where he already represented Mr. Paschall. I even cited the pertinent disciplinary rule about conflicts of interest, but Mr. Russ was

[1] The exhibits will be included only with the copy of this letter sent via regular mail.

undeterred. Ultimately, Mr. Russ successfully dissuaded Mr. Weise from bringing claims against Mr. Paschall on behalf of the cemetery.

During the same time period, I contacted the City of Calvert about its potential claims against Mr. Paschall. *See* Exhibits 2 and 3. Mr. Russ is the city attorney for Calvert, and I advised city officials that they needed to obtain legal advice from someone other than Mr. Russ since he already represented Mr. Paschall and had a conflict of interest. *Id*. Mr. Russ told me that he would be writing a letter to city officials in response to my letters. I was not provided a copy of Mr. Russ's letter, but I requested it via the Texas Public Information Act, and I will provide a copy to you once I receive it. In any event, I was recently informed that Mr. Russ is still advising the city about whether it should sue Mr. Paschall. In other words, Mr. Russ is again advising one of his clients about whether it should intervene in a case as a plaintiff where he already represents the defendant. Accordingly, Mr. Russ violated Disciplinary Rules 1.06 and 2.01 both with respect to Mr. Weise and the City of Calvert.

Mr. Russ and his firm routinely litigated claims against his own municipal clients

Mr. Russ's recent violations of Disciplinary Rule 1.06 are part of a pattern. Mr. Russ or someone from his firm serves as the city attorney for all four of the municipalities in Robertson County. A casual review of records in the Robertson County District Clerk's Office revealed numerous instances in which Mr. Russ or one of his colleagues represented a party against one of the municipalities that he or his firm also represented. In *City of Hearne, et al. v. Nolan Griffin*, Cause No. 03-07-06862-TX, for example, Mr. Russ represented Mr. Griffin against the City of Hearne, and a city council member told me that the council had not been informed that Mr. Russ was representing someone against the city.[2]

According to the Hearne city charter, the city attorney (*i.e.*, Mr. Russ) is responsible for *all* city litigation. Even if Mr. Russ's name did not appear as counsel of record for the municipalities in the tax cases, he at least had supervisory authority over his opposing counsel. Thus it appears that Mr. Russ was representing both sides in the same litigation, a plain violation of Rule 1.06. I suspect all of the municipalities in Robertson County retain Palmos, Russ, McCullough, & Russ, LLP for the same reason, *i.e.*, because the firm owns the lone district judge (as discussed below), and nobody can afford to get crossways with the judge or the firm.

Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren

One particularly blatant conflict of interest occurred in *Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren*, Case No. 05-11-17388-CV, 82nd District Court of Robertson County (2005). Ruthie Roberts (one of my clients) and her sister originally

[2] I found approximately seven or eight cases during my last visit to the courthouse. Unfortunately, I cannot find my list of those cases. I am presently in Tennessee, but I have asked someone to pull the case names and numbers again. I will forward that information as soon as I get it.

retained the services of Mr. Russ in 1998 regarding oil and gas interests on a 157-acre tract of land, and Mr. Russ represented them in negotiations with an oil and gas producer.

A few years later, after gas production skyrocketed in Robertson County, Mr. Russ and his partner, Mr. McCullough, executed a scheme to steal the same mineral estate via some shell companies that they owned. Mrs. Roberts, her sister, and her mother were heirs of Elizabeth Warren, and Mr. Russ knew this because he had already been retained to represent them concerning the 157-acre mineral estate. In order to hide his scheme from them, Mr. Russ and Mr. McCullough filed suit to obtain title to the mineral estate and claimed that the heirs of Elizabeth Warren were unknown (hence the title, *i.e.*, *Unknown Heirs of Elizabeth Warren*). In fact, they executed court documents falsely claiming that the heirs of Elizabeth Warren were unknown and could not be located.

Part of the scheme involved assistance from Judge Robert M. Stem of the 82nd District Court of Robertson County (more about him later). Normally, notice against unknown heirs requires publication in local newspapers, but Mrs. Roberts, her sister, and her mother (as well as many other heirs) lived in Robertson County or subscribed to the local newspapers by mail. In other words, most of the heirs would have learned about the lawsuit if notice had been served by publication. To get around that problem, Mr. Russ and Mr. McCullough asked Judge Stem to let them serve notice by posting at the courthouse and local city halls.

The trick worked, at least initially, as none of the heirs of Elizabeth Warren heirs appeared in court to defend their ownership of the mineral estate, and Judge Stem declared that the shell company owned the mineral estate. However, Mrs. Roberts and her relatives learned about the fraud and on May 5, 2007 filed a motion for new trial. I spoke with the attorneys who filed that motion, and I was told they obtained some rather damning evidence against Mr. Russ and Mr. McCullough. I was also informed that Judge Stem held all the hearings about the motion in his chambers rather than the public courtroom. I am further told that Mr. Russ testified at a deposition that he had never represented Mrs. Roberts or her relatives (testimony that was provably false).

A few months after the motion was filed, Mr. Russ and Mr. McCullough settled the case and agreed to pay a very significant sum of money to Mrs. Roberts and her relatives. I cannot disclose the amount because the settlement agreement prohibits disclosure. Nonetheless, the amount was large enough to demonstrate that Mr. Russ and Mr. McCullough knew they had been caught red-handed. Both Mr. Russ and Mr. McCullough violated Rules 1.06, 1.09, 8.04(a)(2)-(a)(4), and 8.04(a)(6). They further violated Rules 3.03 and 4.01 to the extent that they led the court to believe that the heirs were unknown and could not be located, or to the extent that they allowed others to mislead the court regarding the identity and location of the heirs.

The relationship between Mr. Russ, his firm, and Judge Stem

You might wonder how lawyers could so flagrantly and so routinely represent one client against another, whether it's the municipal clients or the heirs of Elizabeth Warren. Part of the answer lies in the corrupt relationship between Judge Robert M. Stem and the lawyers at Palmos, Russ, McCullough, and Russ, particularly Mr. Russ and Mr. McCullough.

I have enclosed a copy of the motion (Exhibit 4) to recuse Judge Stem from *Krumnow v. Krumnow,* Cause No. 34,538 (82nd District Court of Robertson County), as well as the exhibits to that motion (Exhibit 5). I have also enclosed a copy of the supplemental motion to recuse Judge Stem from *In the Interest of Richard Keith Moore*, Cause No. 07-04-17,827 (Exhibit 6). As you will see from those documents, Judge Stem was secretly represented by Mr. Russ in a real estate dispute, a fact that both of them concealed from opposing counsel. R.A. "Mickey" Deison, an attorney for the *Krumnow* plaintiffs, testified as follows:

> Neither Mr. Russ nor Judge Stem ever disclosed their attorney-client relationship. Had I known, I would have requested Judge Stem's recusal on the grounds of a conflict of interest.
>
> During the tenure of this case, Judge Stem repeatedly called counsel into chambers to engage in off-the-record conversations of factual and legal matters. I can only conclude that Judge Stem has done this to avoid public scrutiny. When I and my co-counsel objected to the practice of holding arguments in chambers and off the record, Judge Stem started ruling against all our motions. I have been practicing law for over forty (40) years, and it is my observation and my professional opinion that Judge Stem routinely rules in favor of Mr. Russ's clients without regard to the law or the facts.

October 15, 2009 Affidavit of R.A. "Mickey" Deison (internal Exhibit D within Exhibit 5).

Within Exhibit 6 is a copy of a motion for criminal referral that I filed against Judge Stem and Mr. Russ. As you will see from its attached affidavits, Judge Stem and Mr. Russ (among others) pressured one of my clients, Allen Eppers, to submit to an *ex parte* deposition in chambers. A transcript of that deposition is attached as Exhibt 7 (although it is internally labeled "Exhibit W"). I was informed that Mr. McCullough, Ms. Hedrick, and Mr. Russ's son were also present in chambers, and that the younger Mr. Russ whispered questions to his father. Judge Stem and Mr. Russ elicited testimony from Mr. Eppers stating that I had contacted him by telephone before he hired me to represent him in federal court. They did not allow Mr. Eppers to explain that his wife had first called me and asked that I get in contact with Mr. Eppers about the matter. Judge Stem and Mr. Russ then obtained a transcript from the *ex parte* deposition and Russ convinced the district attorney (*i.e.*, the previously mentioned John Paschall, who was another of their political cronies) to request the appointment of a special prosecutor to investigate

me for barratry. After nine months, two grand juries, and a lot of grief, I was completely exonerated.

During the same time period, Judge Stem sent a copy of the transcript to Jeff Duke, the attorney who had been representing Mr. Eppers in state court, and Judge Stem pressured Mr. Duke to file a bar grievance against me. *See* Exhibit 6. Assistant Disciplinary Counsel Dirrell S. Jones of Dallas has already spoken with Mr. Duke and can confirm this. It appears that Mr. Russ and his colleagues violated Rules 3.05 (via the undisclosed attorney-client relationship with Judge Stem), 4.02 (by communicating with my client about the federal lawsuit in my absence) and 8.04(a)(2)-(a)(4) and 8.04(a)(6). In the case of 8.04(a)(2), Mr. Russ violated federal criminal statues regarding retaliation, obstruction of justice, and civil rights violations (the latter in conjunction with Judge Stem by denying Constitutional rights of due process, equal protection, and the right to petition for redress of grievances).

The federal lawsuit against Mr. Russ

In his letter, Mr. Russ referred to a federal lawsuit that I filed, *i.e.*, *Erwin v. Russ*, but he only provided a copy of Judge Walter S. Smith, Jr.'s order dismissing the case. Exhibit 5 contains a copy of the First Amended Complaint in that case (mislabeled as the "Original Complaint"), and I urge you to review that in its entirety. Judge Smith had no evidence before him, only the pleadings, and he dismissed the case because it supposedly failed to state a claim. In other words, according to Judge Smith, even if everything in the complaint was true, none of it was grounds for a lawsuit. If you read the complaint, I think you'll see that Judge Smith's conclusions were absurd.

Consider, for example, the following facts that I pointed out in a letter to Dirrell S. Jones:

> On page 7 of his order, Judge Smith sanctioned the Erwin Heir Majority Plaintiffs $9,375.00 "for bringing suit against Defendants with whom they had previously settled." But the lawsuit plainly says on page 44 that "*notwithstanding any other provision of this complaint*, the members of the Erwin Heir Majority do not bring any claims of any kind against the Defendants with whom they have already settled…" (emphasis in original). That phrase was included in *every* version of the complaint (and I'll be glad to provide those versions if you wish). Thus you can see for yourself that Judge Smith sanctioned my clients $9,375.00 for doing something that they absolutely, positively did not do.
>
> Judge Smith was shamefully unfamiliar with the pleadings that he railed against and then dismissed. On page 5, he wrote that "[p]erhaps, had the claim been pled properly, there might have been a viable RICO claim against Defendants Russ and McCullough arising out of their actions in snatching up properties at tax sales." But the pleadings never said anything anywhere about "snatching up properties at tax sales," and that's because it never happened. On that same page, Judge Smith faulted me for mixing a "false arrest" claim with the other claims,

> but there is not a false arrest claim *anywhere* in the pleadings. Judge Smith just made up all this nonsense, then arbitrarily sanctioned me and my clients a total of $25,000.

October 5, 2011 Letter from Ty Clevenger to Office of Chief Disciplinary Counsel (Exhibit 7).

Why would Judge Smith do such a thing? After I filed *Erwin v. Russ*, I learned from Judge Stem's brother that Judge Smith was friends with Judge Stem (per Exhibit 5, I represented Judge Stem's mother and siblings against him after he refused to return items that belonged to his late father). I learned from other sources that Judge Smith had a long history of misconduct and impropriety, as set forth in my letter to the chairman of the Judiciary Committee of the U.S. House of Representatives. *See* Exhibit 7; *see also* "A federal judge who thinks she's above the law," http://lawflog.com/?p=80 (Exhibit 8). Here is a relevant excerpt from my letter:

> [During the course of *Erwin v. Russ*] I… served discovery requests on [Mr. Russ, Mr. McCullough, *et al*.] about their previously undisclosed attorney-client relationship with Judge Stem. The lawyer defendants refused to comply, so I filed a motion to compel the discovery responses. Shortly thereafter, Judge Smith suspended discovery, dismissed the lawsuit on the pleadings (even though he was aware that one of the defendants had already entered settlement negotiations), and *sua sponte* sanctioned me and my clients $25,000 without notice and without an opportunity to respond.
>
> Meanwhile, a courthouse employee was so troubled by the way Judge Smith treated me, she confided that she had heard rumors that Judge Smith and Judge Stem hunted together. Thus far, I have not been able to corroborate that report. However, the same employee also told me that Chief Judge Edith Jones of the Fifth Circuit had previously interviewed courthouse employees about Judge Smith's alcohol-related misconduct. (Another judge subsequently confirmed to me that Judge Smith has had longstanding and severe alcohol problems). According to the courthouse employee, Judge Jones had secretly demanded that Judge Smith enter rehab, and he agreed, but the whole matter was kept quiet.

September 5, 2012 letter from Ty Clevenger to Congressman Lamar Smith (Exhibit 9).

Mr. Russ points out, as I would expect, that the U.S. Court of Appeals affirmed what Judge Smith did. I will have plenty more to say about all that in *Liars and Horse Thieves*, my forthcoming book about judges and lawyers in Robertson County and elsewhere. Regardless, the federal court decision is only *res judicata* with respect to civil claims that my clients might bring against the defendants. It is important to remember that Judge Smith never even addressed the evidence (because no evidence was before him), but ruled only on the pleadings. Thus his decision has no bearing on the question of whether Mr. Russ and his colleagues violated the professional rules.

Judge Smith's actions, for example, do not change any of the facts from *Velnon, L.L.C. vs. Unknown Heirs of Elizabeth Warren.* Mr. Russ and Mr. McCullough were caught red-handed, and they paid through the nose to settle the case before the evidence became public. Similarly, Judge Smith's rant in *Erwin* does not change the facts from *Nancy Erickson and Janna Gossen v. Mark Milstead*, Case No. 10-11-18,704 (82nd District Court of Robertson County), described below.

Nancy Erickson and Janna Gossen v. Mark Milstead

Paragraphs 183-189 of the First Amended Complaint in *Erwin v. Russ* (internal Exhibit B within Exhibit 5) describe another fraudulent real estate scheme by Palmos, Russ, McCullough, and Russ, PLLC in Robertson County. Shortly after *Erwin v. Russ* was filed, defendant Mark Milstead (a client of that firm) apparently realized he had been caught red-handed, so he hired another attorney to represent him in federal court. That attorney immediately approached me about settling the claims against Mr. Milstead, and we tentatively reached a significant settlement amount.

Before we could complete the settlement agreement, however, Judge Smith announced (as described above) that he wanted all the *Erwin v. Russ* defendants to file motions to dismiss. That obviously put the settlement discussions on hold, and then the settlement completely unraveled when Judge Smith arbitrarily decided to dismiss *Erwin v. Russ* entirely.

Fortunately, I realized another avenue of attack. Since Judge Stem's order awarding title to Mr. Milstead was so flagrantly unlawful and fraudulent, I filed a bill of review in state court to set aside the judgment. *See Nancy Erickson and Janna Gossen v. Mark Milstead*, Case No. 10-11-18,704 (82nd District Court of Robertson County) (attached as Exhibit 10). Another judge (Judge H.D. Black) was assigned to hear the case, and Mr. Milstead quickly returned to the negotiating table and settled for $35,000.00.

I mention all of this for two reasons. First, *Erickson v. Milstead* illustrates the consistent pattern whereby Mr. Russ and Mr. McCullough conspire with Judge Stem to deprive opposing parties of notice. Second, *Erickson v. Milstead* shows that Mr. Russ cannot rely on Judge Smith's orders in *Erwin v. Russ* as a defense to charges of professional misconduct. Regardless of what the drunken and conflicted Judge Smith was doing in federal court, Judge Black, Mr. Milstead, and his attorney all recognized in state court that the claims had merit. Likewise, the Office of Chief Disciplinary Counsel should decide for itself whether the allegations against Mr. Russ have factual support, and whether they state violations of the professional rules, regardless of what Judge Smith did or did not do. This incident appears to be yet another violation of Rules Rule 3.03 and 4.01 to the extent the lawyers involved participated in or allowed material falsehoods to be represented to the court. It also appears to be a violation of Rules 3.05(a) and 8.04(a)(2)-(a)(4) and 8.04(a)(6).

Leland Schroeder / Clifton Muzyka

In September of 2011, I received a phone call from Leland Schroeder, a resident of Robertson County, concerning an allegedly fraudulent foreclosure sale. As it happens, the real estate subject to the foreclosure sale is the same property described in Paragraphs 190-195 of the First Amended Complaint in *Erwin v. Russ* (internal Exhibit B to Exhibit 5). The property belonged to my client, Clifton Muzyka. Mr. Russ and Mr. McCullough represented my client's brother, Mike Muzyka.

The foreclosure sale was conducted by Molly Hedrick, and Mr. Russ and Mr. McCullough were also present. According to Mr. Schroeder, his agent offered $293,000.00 for the 210-acre tract, and that was the winning bid. The agent was to return to the Robertson County Courthouse that afternoon with a cashier's check. In the interim, the agent said, Mike Muzyka called and wanted the agent to let him buy the property for the minimum bid, which was almost $70,000.00 lower than Mr. Schroeder's winning bid. In exchange, Mike Muzyka said he would convey the property to Mr. Schroeder for $293,000.00. According to the agent, Mr. Muzyka said he did not want the $70,000.00 margin going to his brother, Clifton.

The agent conferred with Mr. Schroeder, and Mr. Schroeder said he wanted to make sure that what Mike Muzyka proposed was legal. The agent said he discussed Mike Muzyka's proposal with Mr. McCullough in the presence of Ms. Hedrick and Mr. Russ, and Mr. McCullough said there was no problem with Mike Muzyka's proposal. (Mr. McCullough would have been conflicted, because his firm represented Mike Muzyka, and his firm was conducting the foreclosure sale). The agent then withdrew Mr. Schroeder's bid, thereby allowing Mike Muzyka to purchase the property for nearly $70,000.00 less than Mr. McCullough's bid.

According to the agent, Mr. McCullough, Ms. Hedrick, and Mr. Russ then renounced Mike Muzyka's agreement the following day, refusing to convey the property to Mr. Schroeder. I have interviewed both the agent and Mr. Schroeder, and they corroborate one another's statements. Ironically, the agent is none other than Nester Leamon, one of the defendants in *Erwin v. Russ* and a former ally of Mr. Russ and Mr. McCullough. Mr. Leamon obviously does not care much for me, but I get the impression he is fed up with all of the misconduct of Mr. Russ and Mr. McCullough, and he is tired of getting caught in the crossfire. I encourage you to contact Mr. Leamon and Mr. Schroeder directly, because it appears that Mr. Russ, Mr. McCullough, and Ms. Hedrick violated Rules 8.04(a)(2) and (a)(3).

Remainder of correspondence to Judge Stansbury

Mr. Russ included his response to my original letter to Judge Thomas Stansbury, but I have included all of our correspondence. (Exhibits 11-13). Exhibit 12 is an e-mail exchange I had with Mr. Russ on April 11, 2012. As I pointed out to Judge Stansbury (Exhibit 11), Mr. Russ knew to contact me when his clients needed to resolve a disagreement with my clients over a child's desire to play t-ball. But when they wanted

to terminate my clients' parental rights a few months later, Mr. Russ and his son didn't think they should let me know?

In the May 16, 2013 letter to Judge Stansbury and Judge Underwood, I wrote as follows:

> It is "[a]n elementary and fundamental requirement of due process" that notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Trust Co.,* 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950). "The notice must be of such nature as reasonably to convey the required information and it must afford a reasonable time for those interested to make their appearance." *Id.,* [Internal citations omitted]. "[W]hen notice is a person's due, process which is a mere gesture is not due process." *Id.* at 315, 70 S.Ct. at 657.
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> Retzlaff v. GoAmerica Communications Corp., 356 S.W.3d 689, 695 (Tex. App. – El Paso 2011). In other words, the purpose of the requirement for new citation is to give *heightened* notice to someone whose custodial rights are being challenged, not a lower level of notice. In this case, Mr. Russ and Judge Stem tried to provide a lower level of notice via publication. And as a factual matter, one cannot plausibly claim that he/she has made diligent attempts at personal service when he/she has never even contacted counsel of record. *See, e.g.*, Smith v. Smith, 241 S.W.3d 904, 908 (Tex. App. - Beaumont 2007) (attorney may be authorized to accept service on behalf of client, but that is a question of fact).

May 16, 2013 Letter from Ty Clevenger to Judge Thomas Stansbury and Judge Olen Underwood (Exhibit 13). If the Moore case was an isolated incident, perhaps Mr. Russ and his son could claim they were acting in good faith. But it mirrors the same pattern in *Velnon, L.L.C. v. Unknown Heirs of Elizabeth Warren* and *Erickson v. Milstead*, *i.e.*, Mr. Russ and his son wanted to get a default judgment from Judge Stem while nobody was looking. Thus it appears that Mr. Russ (and perhaps his son) violated Rule 3.04(c)(1) to the extent that they "…habitually violate[d] an established rule of procedure or of evidence." Mr. Russ and his son both argue that they met the technical requirements of notice by publication, etc., but they should both know that rules of civil procedure cannot trump the Constitutional due process requirements for notice.

Conclusion

I have concluded that as long as Mr. Russ and his colleagues have law licenses (and certainly if Judge Stem is re-elected), they will keep plundering innocent people in Robertson County and elsewhere. For that reason, I urge you to investigate this matter thoroughly. Thank you for your consideration.

Sincerely,

Ty Clevenger