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August 15, 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:

Per my August 9, 2013 letter, I have obtained the names and cause numbers of various cases in which Bryan F. Russ, Jr. (or one of the lawyers at his firm) represented private clients against the firm's municipal clients in Robertson County. Mr. Russ serves as the city attorney for the cities of Hearne, Calvert, and Franklin. Molly Hedrick, an attorney at the same firm (Palmos, Russ, McCullough, & Russ, L.L.P.), serves as the city attorney for Bremond. Bryan F. Russ, III serves as the municipal prosecutor for Hearne, Calvert, and Franklin. James H. McCullough is a partner in the same firm.

All four municipalities informed me that they have no record that Mr. Russ (or anyone else from the firm) notified the cities that he and / or his colleagues would be representing other clients against the cities. Below are some of the civil cases in which one of the firm's lawyers represented a private party against one of the cities in the 82nd District Court of Robertson County:

- (1) *Hearne I.S.D., et al. v. Rodney Seymore, et al.*, Cause No. 13-01-07522-TX: Bryan F. Russ, III represents defendants Allen Parker, Jr. and Linda Jean Parker against the City of Hearne.
- (2) *Calvert I.S.D., et al. vs. Joyce L. Williams, et al.*, Cause No. 13-01-07520-TX: Bryan F. Russ, III represents defendants Natasha Williams Ramsey and Joyce Lorraine Springer Williams against the City of Calvert.
- (3) *Hearne I.S.D., et al. v Hearne Lumber Co., et al.*, Cause No. 07-02-07110-TX: Bryan F. Russ, Jr. represented defendants Hearne Lumber Co. and James Edward Chandler against the City of Hearne.

- (4) *Hearne I.S.D., et al. v. Teresa Cotton, et al.*, Cause No. 06-11-07086-TX: Bryan F. Russ, Jr. represented defendants Teresa Cotton and Teresa Consula Cotton against the City of Hearne.
- (5) *Franklin I.S.D., et al. v. Joe D. Davis*, Cause No. 11-01-07346-TX: Bryan F. Russ, Jr. represented defendant Joe Davis against the City of Franklin.
- (6) *Hearne I.S.D., et al. v. Thomas B. Matthews and Jan Matthews*, Cause No. 02-05-06712-TX: James H. McCullough represented both defendants against the City of Hearne.
- (7) *Hearne I.S.D., et al. v. Roy L. Henry*, Cause No. 01-10-06673-TX: James H. McCullough represented defendant Roy L. Henry against the City of Hearne.
- (8) *Hearne I.S.D., et al. v. Donald Denny*, Cause No. 06-08-7028-TX: Molly Hedrick represented defendant Donald Denny against the City of Hearne.

In addition to the foregoing civil cases, Mr. Russ and his colleagues routinely represent criminal defendants in cases brought by the police departments of the municipalities they represent. This, too, presents a conflict of interest.

As criminal defense attorneys, Mr. Russ and his colleagues occupy a position that is adversarial to the police officers who arrested / investigated the defendant. More to the point, their roles as criminal defense lawyers are inherently adverse to the interests of municipal employees *who are acting in their capacities as municipal employees*. For example, in defending a client in a criminal case, Mr. Russ might seek to establish that an officer conducted a search in violation of the defendant's Fourth Amendment rights. In so doing, he would simultaneously subject both the officer and his municipal client to civil liability under 42 U.S.C. §1983.

As a general proposition, a municipal police officer should be free to consult the city attorney about his actions without fear that the city attorney will subsequently use that information against him on the witness stand. Likewise, the city should be able to seek guidance from its city attorney regarding its police department policies without fear that the same attorney will try to pick those policies apart in a criminal case.

Below are some of the cases in which the firm's attorneys represented defendants in felony cases in the 82nd District Court against officers of their municipal clients:

- (1) *State of Texas v. Jose Alfred Neira*, Cause No. 13-05-19,667: Bryan F. Russ, Jr. is representing the defendant in a case brought by the Hearne Police Department.
- (2) *State of Texas v. Everett Glenn Thompson*, Cause No. 13-02-19,583: Bryan F. Russ, Jr. is representing the defendant in a case brought by the Bremond Police Department.
- (3) *State of Texas v. Daryl Gregg Lyles*, Cause No. 11-05-19,181: Bryan F. Russ, Jr. represented the defendant in a case brought by the Calvert Police Department.

- (4) *State of Texas v. Anita Loyd*, Cause No. 07-02-18,238: Bryan F. Russ, III represented the defendant in a case brought by the Hearne Police Department.
- (5) *State of Texas v. Frankie Lee Sires*, Cause No. 12-03-19,389: Bryan F. Russ, III represented the defendant in a case brought by the Calvert Police Department.
- (6) *State of Texas v. Nakia Tennelle Ross*, Cause No. 11-12-19,356: Bryan F. Russ, III represented the defendant in a case brought by the Hearne Police Department.
- (7) *State of Texas v. Luis Miguel Rodriguez*, Cause No. 07-12-18,401: Bryan F. Russ, III represented the defendant in a case brought by the Hearne Police Department.
- (8) *State of Texas v. Willie Joseph Hernandez*, Cause No. 09-10-18,784: Molly Hedrick represented the defendant in a case brought by the Hearne Police Department.
- (9) *State of Texas v. Juan Morales*, Cause No. 09-07-18,692: Molly Hedrick represented the defendant in a case brought by the Hearne Police Department.
- (10) *State of Texas v. Joseph Anthony Boone*, Cause No. 13-05-19,657: James McCullough represented the defendant in a case brought by the Calvert Police Department.
- (11) *State of Texas v. Laban Seth Graves*, Cause No. 12-12-19,552: James McCullough represented the defendant in a case brought by the Hearne Police Department.
- (12) *State of Texas v. Marlin David Holcombe*, Cause No. 10-01-18,838: James McCullough represented the defendant in a case brought by the Calvert Police Department.

This is only a sample of the cases in the district court, and does not include any of the misdemeanor cases in county court.

By copy of this letter, I wish to file grievances against James McCullough and Mollie Hedrick. I have enclosed grievance forms with this letter, and I have also enclosed a copy of my July 16, 2013 letter (“7/16 letter”) to you, which I incorporate by reference. Mr. McCullough and Ms. Hedrick both violated Rule 1.06 by representing private clients against the interests of the firm’s municipal clients. I also allege the following violations:

- (1) As a partner in the firm, Mr. McCullough violated Rule 5.01 by permitting widespread disciplinary violations as set forth in this letter, the 7/16 letter, and my original grievances against Bryan F. Russ, Jr. and Bryan F. Russ, III.
- (2) Mr. McCullough violated Rules 1.06, 1.09, 3.03, 4.01, 8.04(a)(2)-(a)(4), and 8.04(a)(6) in *Velnon, LLC v. Unknown Heirs of Elizabeth Warren* (see 7/16 letter).
- (3) Mr. McCullough and Ms. Hedrick violated Rules 3.05 as a result of the undisclosed attorney-client relationship with Judge Stem (see 7/16 letter).

- (4) Mr. McCullough and Ms. Hedrick violated Rule 4.02 by participating in the unlawful deposition of Alan Eppers (*see* 7/16 letter), further violating Rules 8.04(a)(2)-(a)(4) and 8.04(a)(6).
- (5) Mr. McCullough was the lead attorney in *Erickson v. Milstead* (*see* 7/16 letter), and he violated Rules 3.03, 3.05(a), 4.01, 8.04(a)(2)-(a)(4) and 8.04(a)(6) in that case.
- (6) Mr. McCullough, and Ms. Hedrick violated Rules 1.06, 8.04(a)(2) and (a)(3) in the matter of Leland Schroeder and Clifton Muzyka (*see* 7/16 letter).

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