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August 22, 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 the affidavits provided by Bryan F. Russ, Jr. on August 21, 2013. While attempting to save his own skin, Mr. Russ has only illustrated his willingness to ignore conflicts of interest. All of the affidavits appear to have been drafted by the same person, *i.e.*, Mr. Russ, and the affidavits from each of the mayors say essentially the same thing, with minor variations.

Consider the fact that each of those affidavits purports to waive Mr. Russ's conflicts. As a municipal attorney, Mr. Russ should know that in Texas, municipalities can only act through their city councils. "The only way that a political subdivision of the state can act is by and through its governing body.... It is a well-settled rule that the governing authorities of cities can express themselves and bind the cities only by acting together in a meeting duly assembled...." *DeSoto Wildwood Development, Inc. v. City of Lewisville*, 184 S.W.3d 814, 826 (Tex.App. – Ft. Worth 2006), quoting *Central Power & Light Co. v. City of San Juan*, 962 S.W.2d 602, 612–13 (Tex.App.-Corpus Christi 1998, *pet. dismiss'd w.o.j.*). "[S]ince a city acts through its council, not through its counsel, even statements by an individual council member are not binding on the City." *DeSoto*, 184 S.W.3d at 826, citing *Corpus Christi v. Bayfront Assocs.*, 814 S.W.2d 98, 105 (Tex.App.-Corpus Christi 1991, writ denied).

Each of the mayors is only a single member of his respective city council, ergo the mayors cannot and have not waived anything. But that's really a secondary issue. Did Mr. Russ advise his municipal clients that they needed to seek independent legal advice about whether to waive his conflicts? Of course not. He just threw together some affidavits and quickly distributed them among the mayors in an attempt to save himself

from a bar grievance, either oblivious or indifferent to the fact that his interests conflicted with those of his municipal clients *on the very issue of waiving all his conflicts*.

Contrast this with the lawful and ethical way to handle such conflicts. Mr. Russ should have informed the respective city councils of his desire for a waiver, and he should have informed the city councils that he could not ethically give them a recommendation one way or another. The issue would have been placed on the agenda of the respective councils, and the *public* would have some input on whether the city attorney should be representing private clients against the city. Likewise, the voters might have opinions about whether the city attorney should be cross-examining and impeaching the city's police officers as part of his private criminal defense practice. After public deliberation, the city councils might very well decide to waive Mr. Russ's conflicts, and that would be fine. But the point remains that Mr. Russ had a duty to inform the councils and seek a waiver *before* he undertook representation of the private clients, not after he became the subject of a state bar investigation.

Mr. Russ can be quite likeable and even charming (when he is not stealing from you), and he is one of the primary political brokers in Robertson County, so I do not doubt that the mayors and the county judge would like to provide Mr. Russ with some political cover. But their affidavits may have created more problems for Mr. Russ, and for themselves.

I have enclosed a copy of a July 16, 2013 letter that I sent to the City of Hearne, wherein I requested documents pertaining to Mr. Russ's representation (or his firm's representation) of private clients against the city. I sent the same request to the cities of Calvert, Franklin, and Bremond. None of those municipalities had any responsive records. In other words, there is no record whatsoever that Mr. Russ (or his firm) notified the cities of his conflicts or sought waivers, much less obtained waivers.

In his affidavit, Mayor Ruben Gomez refers to "our practice and understanding" and elsewhere "our long standing practice." As noted above, Mayor Gomez can only speak for himself, not the city. In my August 19, 2013 letter, I noted that I have spoken with one current and two former Hearne City Council members who did not know that Mr. Russ was representing private clients against the city. If Mayor Gomez is telling the truth, where are the records?

Let's assume, for the sake of argument, that Mayor Gomez is right, *i.e.*, the entire city council knew what Mr. Russ was doing and authorized it. Is Mayor Gomez saying that the city council considered the issue and reached a decision outside of a city council meeting? In other words, is Mayor Gomez saying that the city council has been acting in violation of the Texas Open Meetings Act? Is that what the other mayors are saying?

I don't think so. Mayor Greaves writes that the City of Calvert has "never objected" to Mr. Russ's practice of representing private clients against the city, but there is a big difference between "never objected" and informed consent, much less a waiver granted by the city council. Did Mr. Russ inform the respective city councils and seek a

waiver, or did the occasional council member learn about it on his own and keep it to himself? It would be one thing to declare that Mr. Russ informed the city council of his practices in 2005 and obtained a waiver, but the meeting minutes were destroyed when the Calvert City Hall burned in 2007. Instead, it appears that the mayors are trying to give Mr. Russ some political cover with vague references to understandings and practices. I encourage you to call Mayor Gomez (979-279-3461), Mayor Greaves (979-364-2881), and Mayor Ellison (979-828-3257) to find out the specifics of when and whether Mr. Russ informed the *entire* city councils, and when and whether a waiver was granted.

In his affidavit, tax attorney Alan Bristol claims that “[i]n each occasion, to the extent anyone may believe there is a conflict, the conflict is waived and no objection is made.” Mr. Bristol, however, is not in a position to waive conflicts, even when he is appearing in court on behalf of the city. *See DeSoto*, 184 S.W.3d at 826 (“a city acts through its council, not through its counsel...”). And Mr. Bristol has a conflict of his own. In my August 19, 2013 letter, I noted Section 4.05 of the Hearne City Charter: “The City Attorney, or such other attorneys selected by him with the approval of the City Council, shall represent the city in all litigations.” So Mr. Bristol has been asked to waive the conflict of the attorney who hires and supervises him?

All that said, Mr. Russ’s vigorous defense in response to this issue is almost a distraction. The conflicts with his municipal clients are small potatoes when compared with the uncontested evidence of a felony theft from his clients in *Velnon, L.L.C. v. Unknown Heirs of Elizabeth Warren*. Mr. Russ knows his actions were indefensible in that case, so he has not even tried to explain himself. Likewise, he has not attempted to explain the unlawful deposition of Alan Eppers, his undisclosed attorney-client relationship with Judge Stem, or his role in *Erickson v. Milstead*. Even now, after being presented with unequivocal proof that the City of Calvert is a contingent beneficiary of the Marium Oscar 1992 Trust (see *Marsh v. Frost National Bank*, 129 S.W.3d 174, 177-178 (Tex.App.–Corpus Christi 2004), cited in my August 9, 2013 letter), Mr. Russ continues to represent John Paschall against the interests of the City of Calvert. Has Mr. Russ requested a waiver from the Calvert City Council in that case? Of course not. Perhaps he will quickly draft another affidavit for the mayor.

Thank you for your consideration.

Sincerely,

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

Ty Clevenger

P.S. I am not certain why Mr. Russ sought an affidavit from Robertson County Judge Jan Roe. The county attorney (Coty Siegert) is elected by the voters, and I have not

alleged that Mr. Russ or Mr. Siegert have any conflict vis-à-vis representation of the county.

cc: Mr. Bryan F. Russ, Jr.  
Mr. Bryan F. Russ, III  
The Hon. Coty Siegert, County and District Attorney  
Robertson County  
Robertson County Commissioners Court  
Hearne City Council  
Calvert City Council  
Franklin City Council  
Bremond City Council