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December 17, 2014

Office of the Chief Disciplinary Counsel
State Bar of Texas

Via online submission

Re: Bryan F. "Rusty" Russ, Jr. (SBOT #17405010) and Bryan F. "Trey" Russ,
III (SBOT #24040236)

To Whom It May Concern:

I have enclosed a letter to Robertson County District Attorney Coty Siegert regarding what appears to be barratry and an ongoing fraud on the court in *Hearne Citizens Oversight Committee, et al. v. City of Hearne, et al.*, Cause No. 14-08-19,607-CV, 82nd District Court of Robertson County. I wish to file grievances against the attorneys listed above.

As explained in my correspondence with the Russes (attached as Exhibit 2 to the letter to Mr. Siegert), the Russes have a significant conflict of interest insofar as they are trying to represent one half of the Hearne City Council against the other. Regardless, they have not been authorized to appear before the district court nor the court of appeals on behalf of the city, but my clients inform me that the Russes have nonetheless sought payment for their unauthorized activities.

I also wish to file a grievance against Rusty Russ for violating Disciplinary Rule 4.04(a). I have attached a May 28, 2014 letter to U.S. Attorney Robert Pitman of the Western District of Texas and Postal Inspector in Charge Robert Wemyss of Houston, as well as a May 29, 2014 letter to state law enforcement officials. Mr. Pitman referred the matter to the FBI, and Mr. Siegert referred the matter to the Texas Rangers. I do not know the current status of those investigations.

It appears that someone in the Robertson County Jail intercepted my privileged letter to Brian Moore, a client, then diverted that letter to Mr. Russ. Rather than return the letter, Mr. Russ sprang the letter on Mr. Moore and his wife during a deposition. You can get more information from attorney Channa Borman of Bryan (855-233-4289), because she represented Mr. Moore during the deposition. It is my understanding that the letter is now an exhibit to the deposition transcript.

To the extent that Mr. Russ is culpable for any of the criminal violations outlined in the May 28 and May 29 letters, he has also violated Disciplinary Rule 8.04. Please contact me if you need any additional information, and thank you in advance for your attention to these matters.

Sincerely,

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

Ty Clevenger

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December 16, 2014

The Hon. Coty Siegert, District Attorney
Robertson County
Franklin, Texas 77856

Via e-mail attachment

Re: Bryan F. "Rusty" Russ, Jr. and Bryan F. "Trey" Russ, III

Dear Mr. Siegert:

I represent Hazel Embra, Joyce Rattler, and Lashunda White, all of whom are members of the Hearne City Council, in a petition for a writ of mandamus against the City of Hearne. My clients seek to force the city council to schedule a recall election for Maxine Vaughn, another member of the council. As a result of those proceedings in the Tenth Court of Appeals, I have obtained unequivocal evidence that Bryan F. "Rusty" Russ, Jr., the Hearne City Attorney, and his son Bryan F. "Trey" Russ, III, violated Section 38.12 of the Texas Penal Code, which outlaws barratry. On behalf of my clients, I request a criminal investigation.

Rusty Russ and Trey Russ both filed a counter-claim on October 17, 2014, another counter-claim on November 17, 2014, and a third on November 18, 2014, purportedly on behalf of the Hearne City Council, in *Hearne Citizens Oversight Committee, et al. v. City of Hearne, et al.*, Cause No. 14-08-19,607-CV, 82nd District Court of Robertson County. As set forth below, the latter claim was filed for the apparent purpose of delaying proceedings in the Tenth Court. Regardless, the Russes did not consult with the city council about the counter-claims, nor were they authorized to file the counter-claims. According to the Penal Code, "[a] person commits an offense if, with intent to obtain an economic benefit the person... knowingly institutes a suit or claim that the person has not been authorized to pursue..." Texas Penal Code §38.12(a)(1). My clients inform me that the Russes sought payment for the unauthorized court filings.

This apparent violation is aggravated by the fact that I had previously filed a bar grievance against both of the Russes after I learned that they were representing private clients against their municipal clients. Neither of the Russes notified the respective city councils, much less obtained a waiver of their conflicts of interest. In 2013, Rusty Russ even advised the Calvert City Council about whether it should intervene as a plaintiff in a case where Mr. Russ was already representing the defendant.

As part of the grievance process, Mr. Russ and I wrote back and forth to the state bar, and I explained in detail how the law obligates Mr. Russ to obtain the approval of the city council before purporting to act in court on behalf of a municipality. I have attached some of our 2013 correspondence as Exhibit 1. As a municipal attorney, Mr. Russ should have

already known that the city can only act through its city council, but he certainly was aware of that fact after I filed the grievance.

After I learned that the Russes filed the counter-claims without authorization, I wrote to both of them on behalf of my clients, demanding that they cease and desist immediately. I have attached a copy of that letter, as well as our subsequent correspondence, as Exhibit 2. You will note that I twice encouraged them to contact the state bar ethics hotline for further guidance. I doubt seriously that either one of them made that call, because they would have known what the state bar would tell them: cease and desist immediately.

As a further aggravating factor, you should know that the November 17 and November 18 counter-claims appear to be a fraud on both the district court and the Tenth Court of Appeals. I have attached a copy of the petition for mandamus (Exhibit 3), respondents' response (Exhibit 4), and relators' reply (Exhibit 5) from *In re Milton Johnson, et al.*, Case No. 10-14-00341-CV, Tenth Court of Appeals. The reply notes that the November 17, 2014 counter-claim was not only filed without authorization, but for the apparent purpose of delaying proceedings in the Tenth Court of Appeals. The same is true of the November 18, 2014 counter-claim.

You may wonder why the Russes have gone to such lengths to fight a recall election for Councilwoman Vaughn. For one thing, my clients wish to hire a forensic accountant to audit city finances, because the city has previously awarded taxpayer funds to companies and projects owned by council members or their relatives, as well as a company owned by Rusty Russ and his law partner. If Ms. Vaughn is recalled, my clients will constitute a majority of the council, and they will be able to force such an audit. Moreover, my clients intend to terminate Mr. Russ as city attorney because of his pattern of professional misconduct.

I might have more sympathy for the Russes, but for the fact that both of them have previously tried to frame me for barratry. In fact, Rusty Russ and his law partner have twice tried to frame me for barratry, and both times the charges were shown to be baseless. Whereas the Russes went behind my back and only presented partial information to your office, I have given the Russes fair warning to cease and desist, and I am even copying them on this letter (which is far more courtesy than they ever showed me). Regardless, the Russes are very familiar with the law against barratry, and it appears that they have violated it anyway.

A special grand jury is scheduled to convene on January 13, 2015 for the purpose of determining whether former District Attorney John Paschall misappropriated money from the estate of Marium Oscar, and I recommend that the case against the Russes be presented on that date. I filed a public information request with the City of Hearne, and I should have all the evidence needed to present to the grand jury prior to January 13. Yesterday I spoke with Asst. Attorney General Shane Attaway, the special prosecutor for the Paschall case, and he does not object.

I do not believe the case should be presented to the regular grand jury because the presiding judge, Robert M. Stem, has a serious conflict of interest. As detailed in my July 14, 2014 letter to you, Judge Stem secretly accepted free legal services from Rusty Russ around the same time that he was helping Mr. Russ and his law partner perpetrate a seven-figure real

estate fraud. Two weeks ago, I was informed that state and federal law enforcement agencies are now investigating that fraud. Moreover, when I asked Judge Stem to recuse himself from any grand jury investigation of Mr. Paschall, Judge Stem just carried on with business as usual, *e.g.*, stacking the grand jury with political cronies and appointing the sister-in-law of one of Paschall's attorneys as the forewoman.

I have copied this letter to Judge Olen Underwood and Judge Doug Shaver because I believe the scope of Judge Shaver's visiting-judge appointment should be expanded to include the barratry cases as well as any of the other matters pertaining to the Russes, Judge Stem, the real estate fraud, etc. I have copied Judge Towslee-Corbett on this letter because it appears that a fraud on the court is being perpetrated in Cause No.

Thank you in advance 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: The Hon. Olen Underwood, Judge Presiding
Second Judicial Administrative District
The Hon. Doug Shaver, Visiting Judge
82nd District Court of Robertson County
The Hon. Reva Towslee-Corbett, Visiting Judge
82nd District Court of Robertson County
The Hon. Robert M. Stem, Judge
82nd District Court of Robertson County
The Hon. Shane Attaway, Asst. Attorney General
Office of the Attorney General of Texas
Mr. Dirrell S. Jones, Asst. Disciplinary Counsel
State Bar of Texas
Mr. Frank Malinek, Assistant Chief
Texas Ranger Division
Mr. John Anderson, Special Agent
Federal Bureau of Investigation
Mr. Bryan F. "Rusty" Russ, Jr.
Mr. Bryan F. "Trey" Russ, III