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July 3, 2020

**Board of Disciplinary Appeals**

Attn: Jenny Hodgkins

Executive Director / GC

PO Box 12426, Austin, TX, 78711

Via Email: [appeal@txboda.org](mailto:appeal@txboda.org)

Dear Ms. Hodgkins

**COMPLAINT RE: MARK DANIEL HOPKINS**

We refer to your delayed letter dated 25 June, 2020, received via email on July 2, 2020, wherein you write;

*“After reviewing your grievance as you originally filed it **and no other information**, the Board has determined that the conduct **you described** in the grievance does not violate the Texas Disciplinary Rules of Professional Conduct or is otherwise not actionable under the Texas Rules of Disciplinary Procedure.”*

We specifically asked Ms Claire Reynolds, Public Affairs Counsel, Office of the Chief Disciplinary Counsel in a lengthy and detailed email thread prior to submitting our appeal to BODA that she was going to furnish BODA the email thread as part of the ‘appeal file’. On May 4<sup>th</sup>, 2020, in her email responses she wrote;

*“I am happy to answer any other questions you have”.*

We also confirmed this in our email/complaint to BODA.

Relying upon Ms. Reynolds statement as standard practice, we seek your earliest clarification of BODA's decision included reviewing the ***"other information"***.

This other information is critical as it revolved around a sole issue which is disputed. Mr Hsu, the Classification Attorney, rejected the Burkes case(s) against Hopkins as Ms Reynolds states in the email thread;

*"When we say "these allegations have been previously dismissed by BODA" we are just stating that the allegations in this grievance were presented in your prior dismissed grievance, and that BODA upheld that dismissal. In other words, the classification attorney believed that you had presented basically the same set of facts."*

### **This Error Can be Resolved Quickly.**

Hopkins lied when he stated aggressively and dishonestly to the court – not once – but twice – that the Burkes wanted ***"certain judges to be shot"***.

This has never ever been stated before in prior facts presented to Mr. Hsu or in a prior grievance filed by the Burkes against Hopkins.

If you read the complaint and the "other information", it clearly disposes of the statement by Classification Attorney, Mr. Hsu, as factually erroneous.

Surely BODA is not condoning this abhorrent, felonious and premeditated evil conduct as 'zealous advocacy' and acceptable practice by a Bar registered attorney in Texas?

Returning to that horrific day, included in the detailed complaint documentation BODA 'has reviewed', is this snippet from the transcript of the conference before Judge Bray, wherein he states;

6                   THE COURT: -- and I'm not your lawyer, but if  
7                   you're doing that, that's why more serious than any kind of  
8                   counterclaim.

There is only one way his words can be ‘textually’ interpreted, which we will discuss herein. (Note: there are many typographical errors and omissions from the transcript. The error in the above snippet; “why” should be replaced with “way”).

After reading your resume on the BODA website Ms Hodgkins, we are confident you know most judges and lawyers in the circuit and can recite Texas rules and laws better than most.

That said, Peter Bray was a public defender who was struggling to make a living, supplemented his job with a part-time retail position and could not subscribe to the pension plan as he could not afford it.

Clearly, he has achieved financial freedom when he upgraded to a Magistrate Judge and we assume he will no longer find it necessary to work a second job and can catch up with those missing pension payments to secure his retirement.

That said, considering the unnerving events which took place in rapid succession in 2018, an honest and outstanding predecessor left the bench to be replaced by Bray.

We remember our first meeting with Judge Bray, where he went from telling Hopkins in a packed courtroom at the initial scheduling conference something along the lines of; *“I hear you don’t like magistrate judges ... Well, we’ll deal with that later.”* - to his complete reversal at the September 2019 conference discussed herein.

Quite frankly, the optics would indicate to us and as former Texas Supreme Court Justice Tom Phillips stated on 60 Minutes 33 years ago (accurately named “Justice for Sale in Texas”) and again in a 2019 Texas Chapter of the Federalist Society, *“I took him at his word, but it didn’t look good...”*.

Unfortunately, Judge Bray’s [in]action from the bench<sup>1</sup>, his prejudgment [believing Hopkins lies at face value instead of controlling the courtroom and a rogue attorney]

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<sup>1</sup> See; former Goodwin Procter, LLP, lawyer, now law professor, Associate Professor Luke M. Scheuer who previously held adjunct positions at Boston College Law School, the University of Massachusetts School of Law, and Boston University School of Law and his paper; “Duty to Disclose Lawyer Misconduct” (2010), Available at: [https://works.bepress.com/luke\\_scheuer/2/](https://works.bepress.com/luke_scheuer/2/), wherein he discusses cases like *In Re Himmel*.

and pervasive bias from the bench including his resulting M&R in the Burkes case has only increased the constitutional “injury-in-fact” and further delayed justice.

Judge Bray’s history as a public defender is very relevant and extremely important in our case(s) before you and the circuit. We’ve *ferreted out* the relevant sections as Judge Bray likes to refer to;

### **Count I**

If BODA were to maintain the current untenable position by affirming Mr. Hsu’s erroneous statement, you would be overturning recent Texas Supreme Court precedent in *Comm’n for Lawyer Discipline v. Mark Cantu* (2019).

### **Count II**

If BODA were to maintain the current untenable position by affirming Mr. Hsu’s erroneous statement, you would, in effect, be repealing Disciplinary Rule(s) per *Comm’n for Lawyer Discipline v. Mark Cantu* (2019);

*"The obligation to report attorney misconduct applied doubly to Judge Isgur, who is not only a judge but a licensed Texas attorney."*

Under Texas Disciplinary Rule of Professional Conduct 8.03(a).<sup>2</sup>

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<sup>2</sup> As we reminded the Virginia State Bar earlier this week, they are lawyers themselves and have a duty to report misconduct. See their own presentation - and now based on our answer herein - the same standard must apply in Texas;

*“For example, we assume pro se, as own counsel, are under “other lawyers” or perhaps “concerned citizens”. Either way, it is clear parties or non-parties can file a complaint **at any time** – see <https://iclr.net/wp-content/uploads/2016/04/VirginiaDisciplinaryOverview.pdf>, in part;*

### **WHO FILES BAR COMPLAINTS**

*The BAR: in the course of investigating misconduct, the BAR investigator or Assistant Bar Counsel may discover conduct by the lawyer or some other lawyer that violates the Rules of Professional Conduct.”*

### Count III

Peter Bray was the Public Defender in the case; *United States v. Yarbrough* (4:14-cr-00526), District Court, S.D. Texas which is where Yarbrough threatened federal Judge David Hittner and was sentenced to 21 months in prison and 3 years supervised release for that threat. As such, Judge Bray was fully aware of the seriousness and criminal implications of Hopkins false statements on that fateful day. The above snippet from the transcript along with the Burkes affidavits confirm that when he shouted at John Burke “Are YOU a CRIMINAL?”.<sup>3</sup>

### Count IV

The complaint included Judge Bray’s M&R which includes;

*“Even if the Burkes had shown that Defendants are “debt collectors,” they have not alleged sufficient facts to show that Defendants engaged in prohibited conduct under either statute. Both statutes prohibit debt collection methods that threaten, harass, abuse, or deceive a debtor. Examples of prohibited methods include: sending a letter to a debtor that looks like it is from a government agency, using obscene or profane*

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Note: We have not included the full list, which you will see in the PDF referenced above. In short order, if you are a lawyer and you spot misconduct, you have a duty to report and/or investigate.

<sup>3</sup> See Judge confirming it is normal practice for the federal court to apply States Rules in federal court cases re attorney misconduct charges, in this case, Michigan:

“Ethical rules involving attorneys practicing in the federal courts are ultimately questions of federal law. The federal courts, however, are entitled to look to the state rules of professional conduct for guidance.

*In re Snyder*, 472 U.S. 634, 645 n. 6 (1985); see *National Union Fire Ins. Co. v. Pittsburgh, Pa. v. Alticor, Inc.*, 466 F.3d 456, 457-58 (6th Cir. 2006), vacated in part on other grounds, 472 F.3d 436 (6th Cir. 2007) (applying Michigan Rules of Professional Conduct). The district judges of this court have determined that the ethical obligations of attorneys practicing before it will generally be governed by Michigan Rules of Professional Responsibility. See W.D. MICH. LCIVR 83.1(j); *City of Kalamazoo v. Michigan Disposal Serv. Corp.*, 125 F. Supp. 2d 219, 231 (W.D. Mich. 2000).”

*El Camino Resources, Ltd. v. Huntington National Bank*, 623 F. Supp. 2d 863, 876 (W.D. Mich. 2007)

*language when contacting a debtor, and threatening a debtor with violence or illegal action. See 15 U.S.C. §§ 1692d-1692j; Tex. Fin. Code Ann. §§ 392.301-392.307 (West).*

Hopkins ‘live’ actions in Judge Bray’s courtroom that day alone is actionable per the above and shows the court the very “low bar” of this illegal debt collector, who is willing break the law and risk his State Bar license to win the case at any and all cost.

### **Count V**

At the top of the Burkes Objection to M&R;

THE BURKES’ ATTACHING AFFIDAVITS: The Burkes attach individual affidavits pointing out the MJ shouted at John Burke the following question;

*“Are you a CRIMINAL?”*

John Burke, calmly replied;

*“Do I look like a CRIMINAL, your honor?”.*

No Bar or Court of Law can defend Hopkins nor say Judge Bray didn’t take the false allegations seriously. It’s slander in civil language, its criminal in law. And disciplinary proceedings are quasi-criminal. The Burkes complaint(s) against Hopkins are valid.

### **Count VI**

In our email thread with Ms. Reynolds we explained our argument and citing;

*“Our inquiry relates to the classification of the crime, not the tribunal’s subjective judgment of character of the particular lawyer convicted. In short, we classify the crime, not the lawyer.” Thacker, Matter of, 881 S.W.2d 307, 309 (Tex. 1994).<sup>4</sup>*

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<sup>4</sup> Looking outwith Texas for comparison, the Burkes cite;

*A proceeding for the discipline of an attorney instituted by the Practice of Law Committee of the Minnesota State Bar Association is considered in a different light from an ordinary action; it is a proceeding “sui generis”*

Relying holistically on our response herein, we are convinced beyond a reasonable doubt, Mr. Hsu's rejection is error.

### The Rules

See footnotes.<sup>5</sup> Note: Nowhere could we find a local rule that says a rogue lawyer can falsely accuse opposing counsel (pro se's) of wanting certain judges to be shot as being acceptable conduct becoming of the bar. Furthermore, we've included S.D. Tex LR, TRDPC and ABA Model Rules of Professional Conduct based on *In re Dresser Industries, Inc.*, 972 F.2d 540 (5th Cir. 1992)

### Summary

The Burkes truly believe this delayed letter must have been issued by mistake.

*Comm'n for Lawyer Discipline v Daniel Rizzo* (May 2020) is an example of Texas perhaps trying to correct grave error and a travesty of justice in the Alfred Dewayne Brown case.

Fortunately, via this timely intervention, the Burkes case can be quickly rectified. BODA should correct this error and injustice by returning the Burkes complaint(s) to the Commission as a formal complaint.

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[a Latin phrase that means "of its/his/her/their own kind, in a class by itself", therefore "unique" – Wikipedia].

*It is not the trial of an action or suit between adverse parties but an investigation or inquiry by the court into the conduct of one of its officers. – In this complaint, it unequivocally presents NEW [MIS]CONDUCT by HOPKINS - again rebuffing Mr. Hsu.*

*The question before the court is the fitness of the attorney to continue as a member of the legal profession, and the test is whether the conduct of the attorney comes up to the standards set by the canons of ethics.*

***Held***, under the record here, the findings of the referee justify a disbarment of the respondent.

*In re Application for Discipline of Peterson*, 260 Minn. 339 (Minn. 1961)

<sup>5</sup> See Appendix A

We look forward to your earliest expedited response. Thanking you in advance for your continued assistance.

Stay safe. Happy Independence weekend to you and yours.

Respectfully

*s/ Joanna & John Burke*

**Joanna Burke & John Burke**

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*“We’re blessed with the opportunity to stand for something—for liberty and freedom and fairness. And these are things worth fighting for, worth devoting our lives to.” – Ronald Reagan*



## Appendix A

In order to assist, the Burkes now provide their own [pro se level of evidence/rules/citations/supporting documents] for your perusal and consideration:

**Hopkins has already admitted to his lies** on that day and there were several witnesses who can confirm this, including Magistrate Judge Peter Bray.

We are more than confident when Hopkins is questioned, he would also confirm that the Burkes and/or **Hopkins never made the same statement in the ‘prior grievance’** which Mr. Hsu relied upon to dismiss the complaint(s) as an inquiry.

The above facts are the substance of the Burkes complaint(s) against Hopkins and clearly show bad faith<sup>1</sup>, actual malice and reckless disregard as to the truth or falsity of his statements.<sup>1</sup>

### **The Texas Disciplinary Rules of Professional Conduct**

BODA should not need any assistance here. Hopkins has breached several Rules. The Burkes would point to the following categories, wherein there are Rule violations, namely; Client-Lawyer Relationship, Advocate, Non-Client Relationships, Law Firm and Associations and Maintaining the Integrity of the Profession.

### **The ABA Standards**

#### **5.1 FAILURE TO MAINTAIN PERSONAL INTEGRITY**

Absent aggravating or mitigating circumstances, upon application of the factors set out in Standard 3.0, the following sanctions are generally appropriate in cases involving commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, or in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation:

##### **5.11 Disbarment is generally appropriate when:**

- (a) a lawyer engages in serious criminal conduct a necessary element of which includes intentional interference with the administration of justice, false swearing, misrepresentation, fraud, extortion, misappropriation, or theft; or the sale, distribution or importation of controlled substances; or the intentional killing of another; or an attempt or conspiracy or solicitation of another to commit any of these offenses; or
- (b) a lawyer engages in any other intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that seriously adversely reflects on the lawyer's fitness to practice.

**LOCAL RULES OF THE United States District Court FOR THE SOUTHERN DISTRICT OF TEXAS**

**S.D. Tex. Local Rules, Appendix C, N.** “Avoid disparaging remarks and acrimony toward counsel, and discourage ill will between the litigants. Counsel must abstain from unnecessary references to opposing counsel, especially peculiarities.”

**S.D. Tex. Local Rules, Appendix D, Guidelines for Professional Conduct, A-K.**