Tuesday, June 15, 2021

The Office of Chief Disciplinary Counsel
Travis Park Plaza
711 Navarro Street, Suite 750
San Antonio, Texas 78205

RE: [redacted]

Dear Mr. Smith,

In rebuttal to Ms. [redacted]' response, I herein submit the following for your consideration.

BACKGROUND AND FACTS

While I concede there may be a difference between contractual litanies of services provided, and the things one may say to persuade someone to become a client; nevertheless, Ms. [redacted] did state verbally that she "never loses". At a minimum, this is braggadocious overconfidence. In the context of a lawyer contracting to represent a client in a legal action, such a statement elevates to something closer to negligent misrepresentation, or fraudulence under the DTPA. Ms. [redacted] may not have written into the contract that she "never loses", but she "sold" herself to me with the words any client would want to hear, to procure my business. Once again, what lawyer would admit this to the State Bar under examination for Professional Misconduct? Just because she denies it now, does not mean she did not recklessly oversell her capabilities.

THE CONTRACT

Regarding the contract that was actually written, Ms. [redacted] has presented the State Bar with what she proclaims is the "executed contract" between us, claiming that I violated its terms. In fact, Ms. [redacted] did not adhere to the terms of her own contract, which begs the question, is any of said contract still enforceable? On this point, please note:

**First Point Regarding the Contract – MY SIGNATURE**

1) The only document I signed for Ms. [redacted] was a Credit Card Authorization, signed in her office on March 9, 2020. Please see Exhibit "A", which shows my everyday signature at the bottom left of the first page, and the email wherein I sent this document to Ms. [redacted], on page two.
2) At this juncture let me direct you to Exhibit "B", which includes a copy of the signature page from "[redacted] Temporary Orders", page 17 of 17, on which I signed more formally; the document in its entirety is also attached.
3) Now, please look at Exhibit "C", the signature page 7 of 7 of the contract Ms. [redacted] submitted with her response in this matter; please note, that is a photocopy of my

signature taken from the Temporary Orders, affixed without my permission by someone in Ms. ██ office. As you can see that document is also undated.

**This is just the first point of note regarding the contract; my name was signed without my knowledge or consent. There are additional inconsistencies on Ms. ██ part, to wit:**

**Second Point Regarding the Contract – The Beginning of Ms. ██ Actual Work**

From the Contract page 1:

I. REPRESENTATION

"Firm's representation of Client will not commence until Firm has received a signed copy of this contract and Client has paid Firm's initial retainer."

II. CLIENT UNDERSTANDS THAT LEGAL REPRESENTATION WILL NOT COMMENCE UNTIL THE RETAINER FEE IS PAID IN FULL AND THIS CONTRACT HAS BEEN SIGNED BY CLIENT AND GIVEN TO FIRM.

**Retainer was contracted to have been $3,500.00, but the Firm began work with $2,000.00 down; and as stated, without my signature on the contract. Please see the final page of Exhibit "A", the email wherein Ms. ██ office accepted $2,000.00 to begin, and Exhibit "D", a copy of the receipt for same.**

**Third Point Regarding the Contract - OVERBILLING and NON-CONTRACTUAL CHARGES**

VII. FEE SCHEDULE

The article 'a' from the Fee Schedule in the contract states:

a. …… periodic time spent, if any, by ██ shall be billed at $250.00 and any time spent by an associate attorney will be billed at $150.00 an hour. Time spent, if any, by legal assistants, law clerks, or paralegal staff shall be billed at $150.00 per hour.

**Please see Exhibit "E", which includes the following invoices:**

244, dated 4/21/2020

277, dated 5/26/2020

314, dated 6/25/2020

402, dated 8/11/2020

543, dated 10/27/2020

**Please note ██ billed her services at $300.00 per hour and included charges for support staff at $200.00 per hour, on each of these invoices. There was never any discussion or written agreement wherein her fees were to be increased.**

**<u>Further, finance charges appear on the following invoices (see Exhibits "E" and "F"):</u>**

402, dated 8/11/2020 $170.58 (this is included in Exhibit "E" as shown immediately above)

403, dated 8/11/2020 $170.58 (Ex F)

405, dated 8/11/2020 $170.58 (Ex F)

476, dated 9/9/2020, $170.58 (Ex F)

477, dated 9/9/2020, $170.58 (Ex F)

These five invoices represent two total days, and in each of the five, that dollar amount of $170.58 is cumulatively added to a total due, increasing the balance overall by $852.90 in finance charges alone.

**There is no agreement in the contract or in writing anywhere else that says [redacted] may add finance charges to any outstanding balance; nor is there a rhyme or reason as to how these charges were calculated.**

Also, [redacted] charged me $1,200.00 for drafting discovery (see invoice 244 dated 4/21/2020, Exhibit "E"), though in her response to the Bar on the second page, second paragraph from the bottom, she states:

"Moreover, we were at the stage of trying to get temporary fees and modify the temporary orders and not ready to conduct discovery at that time……".

And again, on page 1 of Invoice 402 (Exhibit "E"), Ms. [redacted] billed $150.00 for a jury demand 7/30/2020, which is random and premature considering the status of the case at that time, and in light of her refusal to address other more relevant aspects of the case, such as serving discovery on my ex-husband.

When you consider the unauthorized increase in fees per hour for legal services, the billing for discovery Ms. [redacted] wouldn't serve (and claims was premature); the jury demand (premature), and the arbitrary accrual of unsubstantiated "finance charges", I can find a minimum of **$3,245.41** in overbilling that should be deducted from Ms. [redacted] records of service on my case.

**<u>Fourth Point Regarding the Contract – ATTORNEYS' FEES</u>**

Though Ms. [redacted] accurately states that we discussed an interim payment of $200.00 in lieu of the bi-weekly payments, (I did pay that $200.00), throughout the course of our professional relationship, I repeatedly advised Ms. [redacted] that my ex-husband was withholding and hiding payments that were due to me. I asked her to requisition his tax returns, conduct discovery, file Motions to recover the spousal support he stopped paying, to garnish his wages, and various financially related matters that would have helped me to survive, and including funds that would have helped to pay her fees.

In the Counterpetition filed on my behalf by Ms. [redacted], (see Exhibit "G"), article 18 addresses Attorney's Fees, Expenses, Costs and Interest. In this article Ms. [redacted] asked the Court to grant that my legal costs be paid by Counterrespondent (my ex-husband) because it was

"necessary for Counterpetitioner to secure the services of [REDACTED], a licensed attorney, to prepare and prosecute this suit." My understanding of Ms. [REDACTED] services was that if I became unable to meet the payments as set forth in the contract, she would file Motions for interim attorneys' fees to be obtained from the Counterrespondent. We anticipated Mr. [REDACTED] would be difficult with the money, and in fact Ms. [REDACTED] filed several such motions during the pendency of the case. These appear to be the only examples of substantive work she performed.

On a related point, please note Ms. [REDACTED] refused to address my concerns about my son being hidden on a day he was to have spent with me. Because she ignored my concerns and just kept asking for money, I asked her to withdraw from the case, having realized I would need to find another attorney. There still isn't proof she ever withdrew, but shortly after this juncture, she accepted a payment of $4,595.90 from opposing Counsel's office and/or Mr. [REDACTED] (see Invoice 543, included in Exhibit "E", dated 10/27/2020), applied those funds toward my account (see Exhibit "H", second page). I notified opposing Counsel that I intended to find a new attorney (Exhibit "H" page 3).

To date, I have been unable to retain a copy of any signed Order Granting Ms. [REDACTED] withdrawal from the case, which would have enabled me to have another attorney enter an Appearance on my behalf. Ms. [REDACTED] has refused to provide me with a copy of a signed Order Granting her withdrawal, stating "You can get a copy from the district clerk in Wilson county. (*improper capitalization is Ms.* [REDACTED] *error from her original*). Call them they can probably email it to you. We have closed your file and shredded the documents." (See Exhibit "I", email dated December 2, 2020, from [REDACTED]). Please note Ms. [REDACTED] copied [REDACTED] on that email, effectively violating our attorney/client privilege once that email was sent.

**Further, the Court record does not reflect that a signed Order Granting her withdrawal has ever been entered.** Having represented me poorly and then left me, in essence, to fend for myself, Ms. [REDACTED] caused me and my son great harm; to wit: while I waited for a signed Order Granting Ms. [REDACTED] withdrawal so that I could find a new attorney, [REDACTED] rode roughshod over me and entered a divorce Decree that I did not agree to and did not sign.

In light of these multiple matters of questionable integrity regarding her billing practices, lack of effort on my behalf, collusion with opposing counsel, and rendering me unable to procure new counsel for myself, I strenuously disagree with Ms. [REDACTED] proclamation that she "graciously gave Ms. [REDACTED] approximately $4,000.00 of free work…." (please see her Response to the State Bar, page 1).

DRUGS AND OTHER COMMENTS by MS. [REDACTED]

Moving to Ms. [REDACTED] next arguments, first of all, I do not need a "legally justifiable reason to move from Wilson County to Comal County", as Ms. [REDACTED] states in paragraph 2 of her Response. She is also in error, because I moved to be closer to the job I held at that time. On matters related to drug tests and charges, Ms. [REDACTED] is unnecessarily attempting to divert the Bar's attention; there are issues related to these things in the details of the case, but I will stick to these:

1) Page 2, paragraph 2: Ms. ██ states "It was apparent that her faculties were impaired and exhibited a complete lack of self-control or ability to refrain from interrupting all parties present." (*grammatical errors/exclusions are Ms.* ██ *from her original*).

Ms. ██ is neither a doctor, nor a medical professional of any kind; nor has she at any time presented any credentials to support that she is in any way qualified to label me as a "drug addict", or "impaired", or as suffering from a "drug problem". I have freely admitted that I use marijuana with a doctor's prescription for various health related issues, and the fact that my usage is under a doctor's orders is continuously left out of the narrative by others in this matter. Further, I reiterate, considering the lack of adequate representation by Ms. ██, in conjunction with the simultaneous bullying by Mr. ██, I did at times become quite emotional during various proceedings. I believe anyone in my shoes would have done the same, and – again, if the Court recordings and transcripts could be pulled – the Bar will see that Ms. ██ absolutely did lose control of herself at hearing, yelling and crying when she should have been properly representing my case.

As it pertains to the day my son was to have visited with me, but instead, was delivered to my parents and subsequently unavailable for the entirety of that day; I reiterate: my ex-husband had so intimidated my parents with his interpretation of the legalities of the divorce proceedings that my mother panicked and simply ignored the phone all day, while my ex-husband taunted me via text and telephone without ever admitting where my son actually was. When I described this to Ms. ██, I was still under the impression that my ex-husband had hidden our son, and I did use the "term" kidnapping, as lay persons are wont to do in such a situation. That said, no one told me exactly what was going on until after the expiration of my visitation.

By way of research, I've included the following language from the Texas Penal Code:

Sec. 20.03. KIDNAPPING. (a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

(1) the abduction was not coupled with intent to use or to threaten to use deadly force;

(2) the actor was a relative of the person abducted; and

(3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

By my understanding of the plain language at (a), "kidnapping" was the appropriate term. When I read further, I see that my family members would likely not be prosecuted; however, that is a different meaning that to say that it is "legally impossible" for a husband to kidnap his son, as Ms. ██ asserts in paragraph 4, page 2 of her response.

Regarding my file, Ms. ██ has to date not provided copies of transcripts from hearings, or copies of correspondence. All that she has given to me are copies of the items I provided to her during the pendency of the case.

Regarding my arrest record, I believe Ms. raises this point to attempt to discredit me to the State Bar. Also, her facts are wrong. The arrest she refers to from March 2020 was in Guadalupe County and I was charged with Obstruction of Highway Passageway. I was given, and have served, 10 months' probation.

At paragraph 4, page 3 of her response, Ms. says "Ms. has a severe substance abuse problem that affects her mental faculties and ability to recall facts and be truthful. I worked a large amount for free to try and help her, but when her dishonesty and failure to abide by the contract and payment agreements, I had no choice but to withdraw." (*Grammatical errors and omissions are from her original*).

Again, and I cannot stress this enough, Ms. is not qualified to make these statements, and in fact, they are defamatory. I invite her to present her medical credentials, her professional medical diagnosis, and her supporting medical records demonstrating she has evaluated me in any medical capacity to substantiate any of her opinions as to my mental health. Absent any of those items, she has submitted libelous statements about me in her defensive arguments. Further, Ms. apparently failed to review the documents I provided to her, since there is a psychiatric evaluation provided by a doctor that diagnoses me with ADHD and PTSD, but otherwise exonerates me from her claims regarding my mental state. (See Exhibit "J", hospital record).

While Ms. laments the extreme inconvenience it has been to her to provide me "so much free time", and to assure the State Bar that she felt sorry for me, she has egregiously mischaracterized her service, her motives, and her own integrity, as demonstrated by my various rebuttal points. Her closing remarks, wherein she references the "many serious issues regarding attorneys who actually do violate the ethical rules" and then remarks, snidely, "It is unfortunate that Ms. continues to exhibit a total lack of veracity and waste the time of all parties involved", suggest that my dissatisfaction with, and complaints regarding her unprofessionalism and with that of opposing counsel are matters of little to no import, and should be ignored.

It is a shame that the legal industry appears to have no equivalent to medicine's Hippocratic Oath to which legal professionals must adhere. I relied on Ms. statements of the high quality of her legal abilities to my own detriment. Faced with her own incompetence, she bailed out of the case and allowed me to be unduly harmed by my lack of legal representation, while she herself benefitted from and was compensated by the opposing Party. My ex-husband continues his strongarm tactics to date, interfering with my visitation with our son in flagrant violation of the divorce Decree. He continues to harass and threaten me regularly. His wages were not garnished, so his payments to me are at his whim and are accompanied by berating and condescending communications. My name was not legally changed back to my maiden name, which was a point included in the MSA. As a side note, Mr. has off-handedly told me that I can pay to have that done.

Worst of all these things, is that because there is no one holding him accountable, and because a Decree I did not agree to was entered without my signature and against my will, Mr.

█████ is getting away with anything he chooses to do or not do, and my son and I are not being given our time together in accordance with the law.

It should be noted that though I wanted the divorce, my ex-husband filed so he would be the Petitioner, which is heavily influenced by the Fire Department in order for their legal representation to be provided. I am named as the Respondent, but in reality, I am not. My ex-husband has been, is currently, and will continue to retaliate against me for "leaving him", and due to all the previously mentioned matters regarding both Mr. █████ and Ms. ████, he will get away with his punitive behavior indefinitely.

I can assure all of you that whether or not I matter to Ms. ████ or Mr. █████, I do matter to my son, and because of all of this, he is being denied the relationship with me that he is entitled to. I stayed home with him all his life, until divorce proceedings were well underway.

My deep and sincere hope is that the State Bar will allow all arguments to inure to my benefit. Both Mr. █████ and Ms. ████ have taken advantage of my circumstances and/or my trust, and both ultimately served only the interests of my ex-husband and themselves. I, and to a much greater degree my 12-year-old son, have been irreparably harmed by the reprehensible conduct of these two attorneys.

Please hold them accountable.

Regards,

██████████

Objectives of my Grievances

- I want an Amended Decree of Divorce that correctly reflects what the arrangements should be, in accordance with the terms of the MSA and with the law.
- I want Mr. [redacted]s financial statements, list of assets, tax records, etcetera in order to properly evaluate our joint marital estate. No such documents were ever produced to me.
- I want Mr. [redacted] and Ms. [redacted] reprimanded for abusing the legal system, tortious interference, and legal malpractice.
- I want Mr. [redacted] held accountable to the terms of the decree; he is presently in violation of the terms of visitation and I have not seen my son in accordance with the terms of the decree since the divorce was finalized. This may be outside the Disciplinary Committee's purview, but I want to state it anyway. This relates to how the decree was worded regarding my periods of possession, and the Petitioner's flagrant refusal to comply with the terms as written. If Mr. [redacted] and Ms. [redacted] had behaved appropriately and in the best interests of my son and their respective clients, perhaps Mr. [redacted] would comply with the governing orders, and it wouldn't have been necessary for me to file grievances.