



LOUISIANA ATTORNEY DISCIPLINARY BOARD

OFFICE OF THE DISCIPLINARY COUNSEL

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July 23, 2019

Billy Broussard
1307 South Main Street
Breaux Bridge, LA 70517

RE: RESPONDENT Robin Anne Sylvester
 COMPLAINANT Billy Broussard
 FILE NO. 0037659

Dear Mr. Broussard:

We have enclosed a copy of Ms. Sylvester's response to your complaint. Please review this response, and if you have any new information, provide it in writing to this office within fifteen (15) calendar days of this letter. If we do not hear from you promptly, we will assume that you have no new information to provide to this office and we may proceed to make our determination of appropriate action based upon the materials currently in our possession.

Also, please provide this office an audio copy of the entire conversation between yourself and Ms. Sylvester, which you previously recorded and attached a portion to your complaint.

In the event that the response resolves this complaint, please let us know that by return mail.

Thank you for your attention.

Respectfully,

A handwritten signature in black ink that reads "Robin K. Mitchell". The signature is written in a cursive style.

Robin K. Mitchell
Deputy Disciplinary Counsel

RKM/ki
Enclosure



ROBIN A. SYLVESTER
ATTORNEY

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July 1, 2019

VIA COURIER SERVICE

Ms. Robin K. Mitchell
Louisiana Attorney Disciplinary Board
4000 S. Sherwood Forest Blvd.
Baton Rouge, Louisiana 70816

RE: RESPONDENT Robin Anne Sylvester
 COMPLAINANT Billy Broussard
 FILE NO. 0037659

Dear Ms. Mitchell,

Enclosed please find my response to the Mr. Broussard's Complaint in this matter.

If you should have any questions or need further information, please do not hesitate to contact me.

With kind regards, I remain,

Sincerely,

A handwritten signature in black ink, appearing to read 'RAS', is written over the word 'Sincerely,'. The signature is fluid and stylized.

Robin A. Sylvester

RAS/al
Enclosure

LOUISIANA ATTORNEY DISCIPLINARY BOARD

FILE NO.: 0037659

RESPONDENT

ROBIN ANNE SYLVESTER

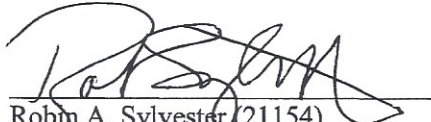
COMPLAINANT

BILLY BROUSSARD

OFFICE OF THE DISCIPLINARY COUNSEL
4000 S. SHERWOOD FOREST BLVD., SUITE 607
BATON ROUGE, LOUISIANA 70816

DEPUTY DISCIPLINARY COUNSEL ROBIN K. MITCHELL

ROBIN A. SYLVESTER'S WRITTEN RESPONSE TO COMPLAINT FILED
BY BILLY BROUSSARD


Robin A. Sylvester (21154)
SYLVESTER LAW FIRM, LLC
241 ½ La Rue France
Lafayette, Louisiana 70508
Telephone: (337) 513-0504
Facsimile: (337) 513-0514

Thank you for the opportunity to respond to the allegations in the complaint filed by Billy Broussard.

I. Previous Representation of Broussard

To understand the subject matter of the complaint brought by Broussard, is important to understand my previous representation of Broussard while working at another law firm. From 2009 - 2013, I represented Broussard's company, Broussard Construction Company of Acadiana, LLC ("Broussard Construction"), in litigation (the "Litigation") filed against the Gravity Drainage District 8 of Ward 1 of Calcasieu Parish ("Gravity Drainage District"). A copy of the Petition is enclosed and marked as Exhibit "A". In the Litigation, Broussard Construction sought payment for work that he claimed was beyond the scope of a contract for hurricane debris removal in Indian Bayou in Calcasieu Parish ("the Project"). The sole defendant was the Gravity Drainage District. Funding for the Project was provided to Gravity Drainage District by the Governor's Office of Homeland Security and Emergency Preparedness ("GOHSEP"), which was reimbursed those funds from the Federal Emergency Management Agency ("FEMA"). GOHSEP relied on documentation provided by Gravity Drainage District to seek reimbursement from FEMA. Neither GOHSEP nor FEMA were parties to the Litigation. The Petition alleged that Broussard Construction's scope of work on the Project had been modified by a change order to the contract, and the central issue in the litigation was the extent to which the change order had modified the scope of work. Under Broussard's interpretation, Broussard Construction was entitled to payment for "extra work", and Gravity Drainage District's interpretation was that Broussard had agreed to perform the modified scope of work for a lump sum price.

The Litigation ended when the Court granted Gravity Drainage District's summary judgment in October 2010 (the "2010 Judgment") on interpretation of the scope of work as modified by the change order, and as a result Broussard Construction was not entitled to any additional payments. The 2010 Judgment is attached as Exhibit "B".

The 2010 Judgment was affirmed by the Third Circuit Court of Appeals, and Broussard Construction's Writ of Certiorari was denied on February 22, 2013. This concluded my representation of Broussard Construction in the Litigation.

My agreement in 2017 to represent Broussard Construction was a result of Broussard's representations that new information had been discovered to prove that Gravity Drainage District and/or GOHSEP had engaged in fraud by withholding relevant documents and misrepresenting relevant facts during the Litigation, and had engaged in fraud, collusion, and cover-up after the Litigation.

II. Summary of My Response to Broussard's Complaint

1. Broussard Construction did not have a cause of action supporting a claim for damages against GOHSEP; therefore, while I placed my notes on a rough draft of a petition while researching potential causes of action against GOHSEP in 2017, I did not prepare or file the Petition. Further, any new litigation against GOHSEP filed in East Baton Rouge Parish would be completely separate from the Litigation in Calcasieu Parish.

2. The calendar alert presented by Broussard addresses nullification of the 2010 Judgment based on new evidence obtained from GOHSEP pursuant to a public records request. It does not address a prescriptive period for initiating litigation against GOHSEP. GOHSEP was *not* a party to the Litigation.
3. Prior to my retention, Broussard informed me that pursuant to a public records requests, GOHSEP gave him new documents on October 6, 2016 proving that Gravity Drainage District had withheld documents from discovery during the Litigation. The date provided in that calendar alert was one year from October 6, 2016.
4. After a thorough review of the file documents Broussard provided to me, I learned that in 2014, Broussard had filed a Pro Se Motion to Annul the 2010 Judgment based on the discovery of new documents demonstrating fraud; further, he had introduced those documents into the court record. As such, at the time he retained me in 2017, his ability to annul the 2010 Judgment for fraud had already perempted.
5. The documents produced by GOHSEP on October 6, 2016 did not provide any new information that might be used to argue that an action for nullity based on fraud or in ill-practices. As such, the GOHSEP documents Broussard received on October 6, 2016 did provide sufficient “new” evidence to annul the 2010 Judgment based on fraud.
6. The filing of a Petition for Nullity of the 2010 Judgment would *not* have made GOHSEP a party to the case.
7. Mr. Most did *not* advise Broussard that I allowed his claims against GOHSEP to prescribe.
8. I informed Broussard that since the last pleading filed in the record of the 2010 Litigation was on April 7, 2015 (an Injunction against Broussard) Broussard must file something in the court record before April 7, 2018 or the case would abandon. Broussard then began looking for new legal counsel.
9. Broussard had not yet retained new legal counsel in March 2018, so I timely filed a motion to dissolve the injunction, and met extensively with Broussard to review the motion and to explain that it only involved issues of law related to the injunction – nothing else.
10. Broussard retained new legal counsel in September 2018; however, Broussard threatened me with negative publicity if I didn’t participate in the hearing and use it as a platform to establish that Gravity Drainage District had committed fraud. Those arguments were not relevant to this hearing.
11. I immediately called Broussard to explain that I had terminated the attorney-client relationship. The recording provided by Broussard is only a small excerpt from that conversation. The excerpt provided does not reflect my personal opinion; rather, I was sarcastically repeating Broussard’s exact words back to him.

12. An attorney has no obligation to voluntarily provide malpractice insurance carrier information to a former client.

III. Scope of the Representation

A. Meeting Before My Representation

I met with Broussard on December 29, 2016, and declined representation at the conclusion of that meeting. During the December 2016 meeting, Broussard informed me that he had received new evidence from GOHSEP on October 5, 2016 showing that Gravity Drainage District had withheld documents during the Litigation. Broussard believed that those documents had the potential to serve as the basis for nullifying the Judgment in the Litigation (to which GOHSEP was *not* a party). I informed Broussard that Louisiana law provides for annulment of a final judgment within one year of his discovery of fraud or ill-practices. (La. CCP Art. 2004), and I emailed to him a calendar reminder to ensure he understood the time deadlines for nullifying the Judgment in the Litigation. The preemptive date in that calendar entry was based solely on Broussard's representations to me about the content of the allegedly newly discovered documents obtained from GOHSEP on October 5, 2016.

The calendar entry produced by Broussard doesn't show the date it was generated; however, on a much later date Broussard replied to my email containing the calendar entry, and his reply shows that I sent Broussard the calendar reminder about the deadline to nullify the judgment on December 29, 2016 (see Exhibit "C").

B. Scope of Representation

On April 4, 2017, after reviewing select documents provided by Broussard, I agreed to represent Broussard Construction on a contingency fee basis for the following scope of work:

Client employs Sylvester Law to represent Client by conference, negotiations, suit or otherwise, in a claim arising out of: the removal of debris from Indian Bayou in Calcasieu Parish and subsequent actions involving the failure to receive payment and fraudulent activities of various government agencies.

A copy of the Retainer Agreement is attached as Exhibit "D".

IV. By the Time I was Retained in 2017; Broussard's Ability to Annul the Judgment was Perempted, and He Had No Cause of Action Against GOHSEP

A. Broussard's Ability to Annul the Judgment Was Perempted in 2014 or 2015

Broussard provided me with a substantial number of documents that had been either discovered or generated after my previous representation terminated in 2013. In February 2014, Broussard had filed a Pro Se Motion to Annul the 2010 Judgment (2014 Pro Se Motion") a copy of which is attached as Exhibit "E". As the basis for his 2014 Pro Se Motion, Broussard claimed to have newly discovered evidence showing that Gravity Drainage District had fraudulently withheld documents

during the litigation. The transcript from a hearing on Gravity Drainage District's Motion to Quash May 7, 2014 is attached as Exhibit "F", and provides the following information:

Pages 4-5 In 2014, Broussard had filed a Pro Se Motion for a New Trial on the basis that he had discovered new documents that were previously withheld. It was denied.

Broussard then filed a Pro Se Motion to Annul the 2010 Judgment for the same reasons. The May 7, 2014 hearing was on the Gravity Drainage District's motion to quash 18 subpoenas issued at Broussard's request. According to the transcript of this hearing, Broussard was facing an Exception of Res Judicata filed in response to his Motion to Annul, and the hearing on the Exception was set for the week after the May 7, 2014 hearing.

Pages 23-25 Broussard testified that he has discovered new documentation showing that the Gravity Drainage District (referred to as the District in the transcript) knew that Broussard removed debris that was outside the scope of work of the contract, and fraudulently withheld that information despite the fact that we asked for it through the discovery process during litigation.

Pages 60-62 As support for his 2014 Motion to Annul, Broussard introduced by reference Exhibits A through AG (the "2014 Exhibits"), which he states he had filed into the court record before this May 7, 2014 hearing. The 2014 Exhibits were the documents supporting Broussard's claims that the Gravity Drainage District had committed fraud, and/or had withheld documents that were responsive to discovery requests during the litigation.

The one year preemptive period set forth in La CCP Article 2004 for filing a petition to annul a judgment for fraud or ill practices began on the date that Broussard discovered these new documents, which was sometime prior to filing them in the court record in 2014. As such, Broussard's ability to nullify the 2010 Judgment based on the 2014 Exhibits was preempted in 2014 or 2015, long before our meeting in December 2016 or my retention in April 2017.

After my review of the pro se pleadings, the 2014 Exhibits, and the transcript from the May 7, 2014 hearing, I met with Broussard in person to review the documents obtained from GOHSEP on October 5, 2016 and compare them to I asked him to explain to me, if possible, how the information in those documents differed from the exhibits he had introduced into the court record in 2014. Broussard was unable to identify any new and different information in the documents provided by GOHSEP on October 5, 2016 showing fraud. I explained to Broussard that if there was no new information, then the new documents did not provide an independent basis supporting an action for nullity of the 2010 Judgment. Broussard agreed with my assessment, and he expressed an understanding that he did not have new grounds to file another action to nullify the 2010 Judgment for fraud. We then turned our attention to potential claims against GOHSEP.

B. Broussard Had No Cause of Action Against GOHSEP

After conducting research and putting together notes to draft a Petition against GOHSEP in East Baton Rouge Parish, I determined that Broussard did not have a cause of action supporting a claim for damages against GOHSEP.

I met with Broussard in person to again review his claims against GOHSEP and the evidence he believed supported his claims. The draft petition provided by Broussard is actually a rough draft of my notes while trying to identify causes of action against GOHSEP. The section entitled "Summary" identifies the sole reason Broussard wanted to file suit against GOHSEP: his belief that in 2012, when GOHSEP certified to FEMA that the project documents from Gravity Drainage District were accurate and supported FEMA funding, that GOHSEP knew the documents from Gravity Drainage District were false. After reviewing the file documents with Broussard, we determined that there was not sufficient evidence to support Broussard's belief that GOHSEP had committed fraud when submitting documents to FEMA.

The Petition for Nullity discussed in the calendar alert provided by Broussard obviously refers to a potential nullification of the 2010 Judgment in Calcasieu Parish. GOHSEP was *not* a party to that litigation. Even if we had filed an action to nullify the 2010 Judgment, this would *not* have impacted on the timeliness of potential litigation against GOHSEP in East Baton Rouge parish.

V. Attorney William Most Did Not Advise Broussard that I Had Allowed His Claims Against GOHSEP to Prescribe

Broussard's Complaint contends that he was advised by another attorney, Mr. William Most, that my failure to file a motion to annul the 2010 Calcasieu Parish judgment by October 5, 2017 caused Broussard's alleged causes of action against GOHSEP, a non-party to the Litigation, to prescribe. In correspondence to Broussard, Mr. Most states that he did not provide that advice to Broussard. Mr. Most's letter is attached as Exhibit "G".

VI. I Filed A Motion to Dissolve A Permanent Injunction to Prevent the Litigation From Abandoning

I advised Broussard that since the last pleading filed in the record of the 2010 Litigation was on April 7, 2015 (Gravity Drainage District's injunction against Broussard) Broussard must file something in the court record before April 7, 2018 or the case would abandon pursuant to La CCP Article 561. Broussard said he intended to find new legal counsel.

Broussard had not yet retained new legal counsel in March 2018, so I timely filed a motion on Broussard's behalf to dissolve the injunction, and met extensively with Broussard to review the motion and to explain that it only involved issues of law related to the injunction – nothing else. A copy of the Motion to Dissolve the Permanent Injunction is attached as Exhibit "H". A hearing on this Motion was set for October 25, 2018.

Broussard repeatedly insisted that the hearing on the motion to dissolve the injunction must be used as a platform to call witnesses to establish that Gravity Drainage District had committed fraud during and after the litigation resulting in the 2010 judgment. He informed me that he had invited a media representative, Mr. Robert Burns, to observe and report on what he anticipated would be a vindication of his long-held beliefs of fraud and collusion by Gravity Drainage District, GOHSEP, their attorneys and the Court. I explained, repeatedly and extensively, why I would not call witnesses or make the arguments he demanded, and I also refused his persistent demand that I provide an interview to Mr. Burns after the hearing. My refusal to meet his demands is apparently the “timidity” Broussard refers to in his Complaint.

Broussard retained another attorney, Mr. William Most, to represent him (See Broussard’s email dated September 25, 2018, attached as Exhibit “I”. I provided Mr. Most with an electronic copy of Broussard’s file, prepared a motion to substitute Mr. Most as Broussard’s legal counsel, and spoke with Mr. Most extensively about the history of the case and Broussard’s file materials that I had provided to him.

Despite the fact that Broussard had retained another attorney, Broussard sent me an email on October 4, 2018 threatening negative media attention from a blogger, Mr. Robert Burns, if I did not follow his instructions regarding the handling of the hearing. A copy of that email is attached as Exhibit “J”.

I immediately called Broussard to ensure that he understood that after spending a significant amount of uncompensated time trying to help him, I had terminated the attorney-client relationship. The recording provided by Broussard with his Complaint is only a small excerpt from that conversation. In the excerpt provided, I sarcastically repeated Broussard’s exact words back to him when I stated that I wasn’t going to argue with Rusty Stutes (opposing counsel in the 2010 litigation), Kelly Fontenot (a witness not relevant to the issues at the hearing) or “crooked judges” – again, his words. I have never had the opinion that the judge presiding over the 2010 litigation was “crooked”.

I confirmed my conversation terminating all representation of Broussard in an email, attached as Exhibit “K”.

VII. I Did Not Have An Obligation to Provide Broussard With Insurance Information

An attorney has no obligation to voluntarily provide malpractice insurance carrier information to a former client, after representation had concluded.

VIII. Conclusion

Broussard’s ability to seek nullification of the 2010 Judgment preempted before I began representing him in 2017. Broussard had no cause of action supporting a claim for damages against GOHSEP. After the attorney-client relationship was terminated, I did not have an obligation to provide Broussard with information about my legal malpractice insurance coverage.