FILED
AUG 17 2017
CLERK, U.S. DISTRICT CLERK
WESTERN DISTRICT OF TEXAS
BY ______ DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
DEL RIO DIVISION

GREGORIO AND MARIA HERNANDEZ,	§	
Plaintiffs,	§	
	§	
v.	§	**Civil Action No. DR-15-CV-92-AM**
	§	
STATE FARM LLOYDS,	§	
Defendant.	§	

ORDER

Pending before the Court is the Defendant's Motion for Additional Sanctions (ECF No. 32), and the parties' subsequent filings on this issue (ECF Nos. 36, 37, 55, 63, and 68). This Court held two show cause hearings to investigate whether the Voss Law Firm had engaged in gross litigation misconduct. As discussed below, the Court finds that the Voss Law Firm has engaged in the alleged misconduct and will be sanctioned accordingly.

I. Factual and Procedural Background

A hailstorm moved through Eagle Pass, Texas in April of 2014 damaging Gregorio and Maria Hernandezes' home. (ECF No. 1, Ex. A at 7.) A lawsuit was fled in their name in state court against State Farm alleging multiple violations, and the Defendants removed to the case this Court. (*Id.*) The Plaintiffs are represented by Scott Hunziker, Bill Voss, and Chris Schlieffer of the Voss Law Firm. The substantive portion of the case was completed upon grant of the Defendant's Motion for Summary Judgment. (*See* ECF No. 42 (granting summary judgment for the Defendant).)

During the course of litigation, defense counsel alerted the Court of possible litigation misconduct, discovered while deposing the Plaintiffs. Specifically, State Farm alleged that the Voss Law Firm had failed to keep their clients abreast of material developments in their case,

served fraudulent interrogatories, and made critical decisions without consulting their clients. (ECF No. 32.) During the first show cause hearing held on March 8, 2017, the Court was not satisfied that it had heard the complete rendition of the facts because the Plaintiffs themselves were not present. It personally subpoenaed the Plaintiffs for the second hearing, which was held on April 19, 2017. This order is based on both hearings, the parties' briefings, and the Court's independent investigation of the matter.

II. Legal Standards

A. Inherent Power Sanctions

The courts possess the inherent power to "protect the efficient and orderly administration of justice . . . to command respect for the court's orders, judgments, procedures, and authority. *In re Stone*, 986 F.2d 898, 902 (5th Cir. 1993); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 44–45 (1991) (holding that federal courts possess inherent powers to fashion sanctions for conduct that abuses the judicial process). Included in this inherent power is "the power to levy sanctions in response to abusive litigation practices." *See Mendoza v. Lynaugh*, 898 F.2d 191, 195–97 (5th Cir. 1993). "The threshold for the use of inherent power sanctions is high," and there must be "bad faith" before the court may use its inherent powers to impose sanctions. *Chaves v. M/V Medina Star*, 47 F.3d 153, 156 (5th Cir. 1995). This power is particularly important to appropriately sanction bad faith conduct when other rules do not provide an adequate remedy. *See Chambers*, 501 U.S. at 50 ("[W]hen there is bad-faith conduct in the course of litigation that could be adequately sanctioned under the Rules, the court should ordinarily rely on the Rules rather than the inherent power. But if in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power.") Reliance on this inherent authority is appropriate when there is a "wide range

of willful conduct" implicating multiple rules, *Woodson v. Surgitek, Inc.*, 57 F.3d 1406, 1418 (5th Cir. 1995), or when the conduct at issue is altogether "beyond the reach of the rules," *Chambers*, 501 U.S. at 51. Furthermore, the Supreme Court has held that a court's use of its inherent powers to impose sanctions is reviewable for abuse of discretion. *Chambers*, 501 U.S. at 55.

This inherent power includes the power to award attorney's fees in certain circumstances. *Chambers*, 501 U.S. at 45 (quoting *Roadway Express, Inc. v. Piper*, 447 U.S. 752, 765 (1980)). A court should only invoke its inherent power to award attorney's fees when it finds that "fraud has been practiced upon it, or that the very temple of justice has been defiled." *Id.* at 46; *see also Matta v. May*, 118 F.3d 410, 416 (5th Cir. 1997). And, when a federal court exercises its inherent authority to sanction bad-faith conduct by ordering a litigant to pay the other side's legal fees, the award must be limited to the fees the innocent party incurred solely because of the misconduct. *Goodyear Tire & Rubber Co. v. Haeger*, 137 S. Ct. 1178, 1183–84 (2017).

In addition, a court's inherent power includes the authority to suspend or disbar lawyers. *In re Snyder*, 472 U.S. 634, 643 (1985); *Resolution Trust Corp. v. Bright*, 6 F.3d 336, 340 (5th Cir. 1993). A district court may disbar an attorney "only on the strength of clear and convincing evidence that they committed the disbarment offense." *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 708 (5th Cir. 1990), *aff'd* 501 U.S. 32 (1991). "Disbarment cases are quasi-criminal proceedings, and any disciplinary rules employed to impose disbarment must be strictly construed, resolving ambiguities in favor of the attorney charged." *In re Sealed Appellant*, 194 F.3d 666, 670 (5th Cir. 1999) (citing *In re Thalheim*, 853 F.2d 383 (5th Cir. 1988)). Furthermore, an attorney subject to disciplinary proceedings is entitled to due process, i.e. notice of the charges and an opportunity to explain or defend himself. *Dailey v. Vought*

Aircraft Co., 141 F.3d 224, 230 (5th Cir. 1998). A lawyer facing disbarment has the burden of showing good cause why he should not be disbarred. *Theard v. United States*, 228 F.2d 617, 618 (5th Cir. 1956). And although the Texas Disciplinary Rules of Professional Conduct ("TDRPC") do not expressly apply in federal court, a federal court may hold attorneys to the state standards for professional conduct. *Bright*, 6 F.3d at 341. The Western District of Texas has adopted the TDRPC. Local Rule AT-7(a).

B. Rule 11 Sanctions

Rule 11 permits the Court to impose an appropriate sanction if a pleading, motion, or other paper is presented for any improper purpose, such as to harass or needlessly increase the cost of litigation, or if the claims or arguments therein are frivolous. *See* FED. R. CIV. P. 11(b). "[T]he central purpose of Rule 11 is to deter baseless filings in district court and thus . . . streamline the administration and procedure of federal court." *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 393 (1990). The court must carefully choose sanctions that further the purpose of the Rule and should impose the least severe sanctions that would adequately deter its violation. *See Thomas v. Capital Security Servs. Inc.*, 836 F.2d 866, 875–76 (5th Cir. 1988). These may include monetary and injunctive sanctions. *Farguson v. MBank Houston, N.A.*, 808 F.2d 358, 359–60 (5th Cir. 1986). When warranted, sanctions may include an order directing payment to an opposing party of some or all the reasonable attorney's fees or costs incurred as a result of the violation. *See Merriman v. Security Ins. Co. of Hartford*, 100 F.3d 1188, 1191 (5th Cir. 1996); FED. R. CIV. P. 11(c)(2).

III. The Court's Findings

In this case, the Voss Law Firm has engaged in intentional litigation misconduct and fraud. It is clear from the Plaintiffs' depositions, the parties' briefings, and the two show cause

hearings that the Voss Law Firm (1) served fraudulent interrogatory verifications; (2) failed to keep their clients abreast of material developments in their case; and (3) initiated a lawsuit on behalf of Mr. Hernandez without a retainer agreement or a contingency fee agreement or even his assent. Furthermore, based on all the evidence before it, this Court finds that the issues in this case are not isolated occurrences or oversights by the Voss Law Firm, but rather a pattern and practice of deficient representation.[1]

A. Fraudulent Interrogatory Verifications

Based on the following evidence, this Court finds that the Voss Law Firm served fraudulent interrogatory verifications. The Voss Law Firm sent interrogatory verifications that were notarized in the Montgomery County, Texas, where the Voss Law Firm is headquartered.[2] (ECF No. 32, Ex. C-3, C-4.) They were notarized by Ambar Balderas, an employee of the Voss Law Firm, and purportedly signed by the Plaintiffs in Montgomery County, after they acknowledged that their answers were correct, accurate, and well-founded. (*Id.*) During the depositions, however, the Plaintiffs testified that neither of them had ever been to Montgomery County. (Maria Hernandez Depo., ECF No. 32, Ex. C-1 at 69:17–70:24, 71:22-72:1; Gregorio Hernandez Depo., Ex. C-2 at 65:23–66:11.) They reiterated that they had never been to Montgomery County in open court during the April hearing. (ECF No. 71 at 108:25–109:2, 110:25–111:1.) Mrs. Hernandez testified in her deposition that she had only ever spoken to Ambar Balderas over the phone, and had never met her in person. (Mario Hernandez Depo. at 70:25–71:8; 72:15–24.) Mr. Hernandez testified that he had never even spoken to Ambar

[1] The Court had already sanctioned the Voss Law Firm for nonappearance at a depositions in this case. (ECF No. 28.) The explanations the Court heard at that hearing, and not a part of this order, was that Zach Mosely was no longer at the firm and had neglected the case, and the firm had suffered water damage therefore no other attorney was available to attend the depositions.

[2] Montgomery County is in the greater Houston area, over 300 miles from the Plaintiff's residence.

Balderas over the phone, and had definitely never met her in person.[3] (Gregorio Hernandez Depo. at 66:12–19.) And when the Hernandezes came into court, they both stated, again, that they had never seen a list of questions or had an attorney or other employee of the Voss Law Firm review a list of questions with them. (ECF No. 71 at 108:3–24, 110:22–24.) In sum, the Plaintiffs had never been to the place the interrogatory verifications were notarized, they had never been in the same room as the notary, and they had never spoken to a Voss Law Firm attorney about a list of questions, therefore the answers to the interrogatories were not given to the Voss Law Firm by the Plaintiffs. Therefore, it is clear that the interrogatory verifications were fraudulently notarized, at a minimum.[4]

The Voss Law Firm was unable to explain what happened regarding these interrogatory verifications. In their Response to Order to Show Cause (ECF No. 55), the Voss Law Firm stated in their affidavits that propounding fraudulent interrogatory verifications was against firm policy and procedure. (ECF No. 55 at 5.) But even in those self-serving affidavits, none of the Voss Firm attorneys could say that they specifically went over the interrogatories with the Hernandezes or that the Hernandezes had signed them in the Woodlands with a notary. (*See id.*) They allege that the interrogatories were sent to the Plaintiffs, but not when the answers were completed with counsel. (*Id.*) It is not possible that the interrogatory verifications were properly verified in Montgomery County because the Plaintiffs have never been there, nor have they met Ambar Balderas, the notary, in person. Even worse, the Plaintiffs testified that they had never even had an attorney go over a list of questions with them, so the answers themselves may have

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[3] Even more shocking is that Mr. Hernandez denied ever speaking to an attorney until the day of the depositions. (ECF No. 71 at 111:3–10.) This pattern of conduct appeared in several deposition excerpts of other Voss Law Firm clients provided to the Court.

[4] The Plaintiffs also stated that they didn't remember signing the documents, so their signatures may have been forged as well. (Maria Hernandez Depo. at 64:22–65:12; Gregorio Hernandez Depo. at 62:4–25, 65:3–22.) However, because it isn't clear, the Court finds only that the interrogatory verifications were fraudulent.

been fraudulent, too, as noted above. Therefore, this Court finds that the Voss Law Firm served fraudulent interrogatory verifications, at a minimum.

B. Lack of Regular Communication with Clients

The Voss Law Firm attorneys failed to regularly communicate with their clients and keep them abreast of material developments in their case. And in failing to do so, they robbed their clients of the power to make substantive decisions in their case.

First, the Voss Law Firm failed to inform the Plaintiffs that State Farm had tendered a $2,733.94 indemnity payment to the Voss Law Firm on behalf of the Plaintiffs' claim in July 2015; the first time the Plaintiffs heard of the payment was at their depositions, almost a year later in June 2016. (Maria Hernandez Depo. at 123:2–12 (denying that State Farm had ever paid them for their claim); Gregorio Hernandez Depo. at 22:21–23:9, 23:20–24:13 (same).)

The Voss Law Firm, in their initial response, argues that the clients were made aware of the indemnity payment because Chris Schlieffer instructed a staff member to tell the clients about the payment. (ECF No. 55 at 3–4.) However, this is contrary to the Plaintiffs' own sworn testimony at their depositions, and their testimony in open Court at the April hearing. The Voss Law Firm also states that failure to pay the Plaintiffs was an oversight. But, in an insurance case like this one, any indemnity payment by the insurer is a material and critical fact that the Voss Law Firm should have discussed with their clients in a timely manner, and would ordinarily have come up in conversation had the Voss Law Firm maintained regular contact with their clients. Instead, the Hernandezes had no idea about the payment until a year later when they were asked what they did with the payment by opposing counsel in their depositions in the instant case.

Second, the Voss Law Firm failed to inform the Plaintiffs about two settlement offers in time for the Plaintiffs to accept or reject them. Mrs. Hernandez testified that she had not been

told about the $6,500 settlement offer made in August 2015 or the $7,300 offer of judgment made in September 2015. (Maria Hernandez Depo. at 112:13–113:1, 116:16–23.) Mr. Hernandez denied being informed either. (Gregorio Hernandez Depo. at 59:4–23.) Like with the indemnity payment, the first time the Plaintiffs heard about the offers was at their depositions. (Maria Hernandez Depo. at 112:13–117:14; Gregorio Hernandez Depo. at 59:4–61:23.) The Plaintiffs' lack of knowledge of the settlement offers is particularly significant because both were larger than the sum ultimately awarded through appraisal.

The Voss Law Firm, through Mr. Schlieffer's affidavit, state that the offers were conveyed through a bilingual employee. (ECF No. 55 at 3.) However, this is also contrary to the Plaintiffs' sworn testimony. Mrs. Hernandez did admit that she had been given a number, but that it was lower than $6,500, and she denies ever receiving notice of the $7,300 offer. (Maria Hernandez Depo. at 112:17–113:5.) Mr. Hernandez received neither offer. (Gregorio Hernandez Depo. at 59:4–23.) Nowhere in the Voss Law Firm's own affidavits do they state that an attorney went over the settlement offers or the indemnity payment with the Hernandezes. (*See* ECF No. 55.) And furthermore, Mr. Schlieffer's affidavit explains that he didn't relay the second offer of $7,300 knowing it would be unacceptable, but the Court finds the explanation to be a serf-serving, after the fact falsehood because the only number Mrs. Hernandez heard was lower than $6,500, and neither offer was discussed with Mr. Hernandez. (*See id.*)

Third, the Voss Law Firm invoked the appraisal clause in the insurance contract without consulting the Plaintiffs. (Maria Hernandez Depo. at 117:15–118:13; Gregorio Hernandez Depo. at 58:18–59:3.) And because they were not consulted, the Hernandezes likely did not know that invoking appraisal generally precludes litigation, and they were unable to make that important decision for themselves.

When questioned about these communication issues, the Voss Law Firm responded by stating that it has a policy and procedure of contacting its clients every 45 days, even if there are no material developments in their cases. (ECF No. 67 at 74:7–23.)

However, the Hernandezes' testimony at the April hearing paints a very different picture. For one, Mr. Hernandez had never met or spoken to a Voss Firm attorney until the day of his deposition, one year after the claim had been filed. (ECF No. 71 at 109:19–110:21.) Thus, the Voss Law Firm not only failed to contact him every 45 days, they failed to discuss filing the lawsuit with him, failed to discuss the indemnity payment with him, failed to discuss the two settlement offers with him, failed to prepare him for the deposition, failed to get his informed consent on every action the Voss Law Firm took in the litigation. More importantly, the Voss Law Firm did not even have a contract with Mr. Hernandez to represent him in any litigation. Mrs. Hernandez testified that she had spoken to an attorney from the Voss Law Firm on the phone a few times, but had not met an attorney in person until the date of the depositions. (ECF No. 71 at 106:6–17.) She also reaffirmed that she did not know that State Farm had tendered an indemnity payment and made settlement offers. (ECF No 71 at 106:23–107:7.) And she also stated that no one from the Voss Law firm had talked to her about the process of filing a lawsuit or invoking appraisal. (ECF No. 71 at 107:8–12.) In sum, Mr. Hernandez had absolutely no contact with the Voss Law Firm before the depositions, and Mrs. Hernandez's contact was limited at best.[5]

In an insurance case, the most basic conversations center around what was damaged, the cost of repair, the amount the insurance company paid, and whether that amount is enough to cover the repairs. In the instant case, it is clear that these basic items were not discussed, and

[5] The Court finds even more disturbing that the "pattern and practices and policies" of the Voss Law Firm were to have a "runner" meet with potential clients, have them sign documents, and have no further contact with the clients.

that the Hernandezes were unable to make informed decisions in their case because the Voss Law Firm failed to keep them informed. Therefore, this Court finds that the Voss Law Firm utterly failed to adequately and regularly communicate with their clients.

C. Lack of a Proper Retainer Agreement and Contingency Fee Agreement

The Voss Law Firm made legal decisions on behalf of Mr. Hernandez, such as the filing of the instant lawsuit, without a signed retainer agreement. Mr. Hernandez testified that he had not wanted to proceed with a lawsuit at the time it was filed. (Gregorio Hernandez Depo. at 46:11–47:11.) Mr. Hernandez also testified that he had never signed an attorney contract with the Voss Law Firm. (*Id.* at 56:15–22.) Furthermore, he was never told about the Voss Law Firm's 30 percent contingency fee (*id.* at 49:15–51:15), and because he never signed an attorney agreement, Mr. Hernandez also never signed a contingency fee agreement, which violates the TDRPC. Finally, he stated that he had not spoken with a Voss Law Firm attorney in person or over the phone until the date of the depositions, nearly a year after the Voss Law Firm filed suit on his behalf.[6] (ECF No. 71 at 109:19–110:21.)

And when questioned about the lack of an agreement, Bill Voss tried to explain that the reason there was no agreement with Mr. Hernandez was because the Hernandezes are married and Mrs. Hernandez was in charge. (ECF No. 67 at 60:4–8.) That is insufficient under the ethics rules, and the Voss Law Firm knows it. The Court finds that the response by Mr. Voss is utterly ridiculous and offensive. Therefore, because the Voss Law Firm is unable to produce signed agreements to the contrary, this Court finds that the Voss Law Firm made legal decisions on Mr. Hernandez's behalf without a proper retainer agreement, without a contingency fee agreement, and without his informed consent.

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[6] This lawsuit was filed in State Court on June 29, 2015, and the depositions took place on June 26, 2016.

D. Voss Law Firm's Policy and Procedure of Deficient Representation

In the course of the two hearings on this matter and the parties' briefings, the Court has determined that the Voss Law Firm's conduct amounts to more than just oversights and miscommunications; rather, the Voss Law Firm has a policy and procedure of deficient representation.

In response to the allegations discussed here, the Voss Law Firm stated that it had certain policies and procedures that it followed, and implied that they must have been followed in this case. For example, Mr. Voss stated that it is a policy of the firm to contact each of its clients every 45 days, even without any material developments in their case. (ECF No. 67 at 74:7–23.) He also stated that it is the firm's policy to go over interrogatories in person before they are verified before a notary. (*Id.* at 67:16–68:8.) Mr. Hunziker also explained that the firm had policies and procedures regarding communicating with the clients before making decisions. Suspiciously, none of the Voss Firm attorneys could explain what had happened in this particular case.

Because the Voss Law Firm brought up policies and procedures, this Court decided to investigate those procedures. The Voss Law Firm, at various times, had up to 23 cases before this Court in the Western District of Texas, Del Rio Division—all insurance cases.[7] The allegations in each of these 23 complaints span about 10 pages and are identical, with conclusory language not tied to the facts of the particular case. In each, they allege negligence, breach of

[7] *See Sotelo v. Allstate Texas Lloyds*, 2:14-CV-80; *Barrientos v. Allstate Texas Lloyds*, 2:14-CV-94; *Flores v. Nationwide Gen. Ins. Co.*, 2:15-CV-13; *Perez v. State Farm Lloyds*, 2:15-CV-19; *Adan v. Allstate Texas Lloyd's*, 2:15-CV-28; *Velasquez v. State Farm Lloyds*, 2:15-CV-44; *Vasque v. State Farm Lloyds*, 2:15-CV-46; *Mancha et al. v. State Farm Lloyds*, 2:15-CV-54; *Garza v. State Auto Prop. & Cas. Ins. Co.*, 2:15-CV-77; *Guillen v. Nationwide Prop. & Cas. Ins. Co.*, 2:15-CV-86; *De Leon Rivas v. Travelers Home & Marine Ins. Co.*, 2:15-CV-97; *Flores et al. v. State Farm Lloyds*, 2:15-CV-98; *Lopez v. State Farm Lloyds*, 2:15-CV-100; *Ledesma v. State Farm Lloyds*, 2:15-CV-101; *Huitron v. Travelers Lloyds of Texas Ins. Co.*, 2:15-CV-107; *Saucedo et al. v. State Farm Lloyds*, 2:15-CV-133; *Martinez et al. v. State Farm Lloyds*, 2:16-CV-14; *Vasquez et al. v. State Farm Lloyds*, 2:16-CV-17; *Lopez v. State Farm Lloyds*, 2:16-CV-22; *Rios v. Liberty Mut. Fire Ins. Co.*, 2:16-CV-31; *Lopez v. State Farm Lloyds*, 2:16-CV-38; *Robledo et al. v. State Farm Lloyds*, 2:16-CV-129.

contract, DTPA violations, Texas Insurance Code violations, bad faith (breach of the common law duty of good faith and fair dealing), breach of fiduciary duty, unfair insurance practices, misrepresentation, and common law fraud by negligent misrepresentation. *See e.g.*, (ECF No. 1, Ex. A at 6); ; (*Sotelo v. Allstate Texas Lloyds*, 2:14-CV-80, ECF No. 1, Ex. #1); (*Barrientos v. Allstate Texas Lloyds*, 2:14-CV-94, ECF No. 1, Ex. #1). In this case, the Voss Law Firm filed suit before State Farm even had a chance to inspect the property for damage. For that reason, it's hard to see how State Farm could have acted in bad faith or breached the contract when they hadn't even had the chance to inspect the property to see if they needed to pay under the contract. Similarly, in another case featuring the Voss Law Firm, the Voss Law Firm filed suit alleging the same list of violations when the Plaintiffs had already cashed the indemnity payment given by the insurance company for the loss. (*Ramirez v. Underwriters at Lloyd's of London*, 2:15-CV-40, ECF Nos. 11, 15.) In at least these two other cases, the Voss Law Firm did not have a good faith, factual basis to make many of the claims alleged in their complaints.

Regarding the fraudulent interrogatory verifications, defense counsel has brought two other cases of similar conduct to the Court's attention. First, in *Rodriguez v. State Farm Lloyds*, 5:15-CV-85, out of the Southern District of Texas in Laredo, the Plaintiff testified in her deposition that the signature on the retainer agreement was not hers, and that she did not sign a retainer agreement. (ECF No. 68 at 7 n.14.) She also testified that she did not authorize them to represent her. (*Id.*) In *Barrientos v. State Farm Lloyds*, 15-08-31797-MCVAJA, out of 365th Judicial District Court of Maverick County, Texas, the Plaintiff testified at his deposition that he did not sign the attorney contract the Voss Law Firm produced in discovery. (*Id.* at 7 n.15.) These other cases reinforce the Court's findings that the misconduct discussed in this order is not random, but rather it is part of the way the Voss Law Firm does business.

Furthermore, when accused of the above conduct, the Voss Law Firm danced around the accusations, shifting blame whenever possible. For example, in the March hearing, Mr. Voss was insistent that the Hernandezes were informed of their options and made the decision to go to appraisal. (ECF No. 67 at 58:4–16.) However, the Hernandezes testified that they had no idea what appraisal was, and definitely did not give the Voss Law Firm informed consent to invoke it. Mr. Voss told a bold-faced lie to the Court to hide his firm's conduct.

In their response to the Defendant's Motion for Additional Sanctions (ECF No. 32), the Voss Law Firm argued that the allegations were attributable to an attorney no longer employed by the firm, Zach Moseley.[8] (ECF No. 36 at 4.) However, Zach Moseley never made a formal appearance in any of the 23 cases before this Court involving the Voss Law Firm, and is not admitted to practice law in the Western District of Texas. Therefore, to the extent that Zach Moseley had anything to do with the case, the three attorneys of record, Bill Voss, Scott Hunziker, and Chris Schlieffer, had a duty to supervise and oversee any work done by him because they are subject to the ethics rules and the Court's jurisdiction for this case. *See* TDRCP 5.01 (explaining the duty to supervise).

In the March hearing, when asked which attorney handled the interrogatories and their verifications with the Hernandezes, Mr. Schlieffer stated that he was off the case at that point, and that he didn't know who handled them. (ECF No. 67 at 65:25–66:6.) When the Court pressed further, none of the Voss Law Firm attorneys could explain what had happened, but instead said that the firm's policy was to review the interrogatories with their clients. (*Id.* at 67:16–68:8.) And as discussed above, the policy was not followed in this case and similar conduct was occurred in other cases.

[8] In the first show cause hearing, held for the Voss Law Firm's failure to appear at a deposition, the three attorneys of record stated that Zach Mosley, an attorney who never formally appeared in this case, was to blame.

The Voss attorneys continued to try to deflect blame in their Supplemental Response; this time directed at opposing counsel. (ECF No. 68.) The Voss Law Firm accused Mr. Lotz of making "a litany of misrepresentations during the [] hearing," characterized his assertions as "disingenuous," and accused him of "spewing falsehoods." (*Id.*) However, Mr. Lotz did not, in any of the proceedings, overstate the Voss Law Firm's misconduct. For example, the Voss Law Firm's motion states that Mr. Lotz represented that there was no damage to the house. However, going over the transcript of the hearing, State Farm specifically noted that Mrs. Hernandez complained of damage to her roof, which prompted the $2,733.46 indemnity payment. (ECF No. 67 at 4:24–5:23.) Indeed, the Court has found nearly all of the issues Mr. Lotz brought to the Court's attention to be absolutely true.

Finally, the Voss Law Firm stated in their briefings and in open court that they planned to waive all expenses and fees on the Plaintiffs' recovery as if that would absolve them of their litigation misconduct. (*See* ECF No. 55 at 5–6 (stating that the Voss Law Firm was waiving fees and expenses); ECF No. 67 at 32:7–11, 43:1–19 (same).) It doesn't.

Taking all of the findings together, it has become clear to the Court that the Voss Law Firm intentionally practices law in a manner that puts their best interests before their clients and, at a minimum constitutes malpractice, if not outright fraud. By keeping their clients uninformed and making decisions on their behalf, the Voss Law Firm blithely fail to uphold their ethical obligations and applied pressure to insurance companies to obtain more money for themselves.[9] In this particular case, State Farm made a good faith effort to settle the case amicably on multiple

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[9] Similar conduct saw a McAllen attorney indicted for violation of state barratry laws. *See* Denise Johnson, *Texas Hail Attorney Indicted for Barrratry and Fraud*, CLAIMS JOURNAL, (June 9, 2017). Some of the victims have also sued for civil damages. David Yates, *Civil suit accusing Kent Livesay of barratry proceeding, hail attorney was recently charged with insurance fraud*, SE TEXAS RECORD, (June 21, 2017) ("Livesay was sued by the State Bar of Texas for Barratry and ultimately was suspended from practicing law . . . because Livesay and his cadre of hail damage case runners unlawfully solicited homeowners seeking to represent them for hail damage claims.").

occasions, but because the Plaintiffs were not informed of the payment and settlement offers, this case continued, wasting the Court's and the defense's resources. The Voss Law Farm even went as far as to serve fraudulently verified interrogatories to prolong the litigation for their own benefit. Therefore, the Court finds that the Voss Law Firm acted intentionally and in bad faith and abused the litigation process.

IV. Sanctions

Based on the Voss Law Firm's abuse of the litigation process, this Court must use its inherent powers to levy sanctions. *See Mendoza*, 898 F.2d at 195–97. The wide range of misconduct does not fit neatly into Rule 11, or any other Rule. This Court first notes that the procedural due process protections of notice and opportunity to be heard were met in this case: the Court issued a show cause order specifying the alleged sanctionable conduct, and held two hearings, totaling over five hours, where the Voss Law Firm attorneys, Chris Schlieffer, Bill Voss, and Scott Hunziker, had the opportunity to show cause regarding the allegations. *See Chambers*, 501 U.S. at 50 (stating that a court must comply with due process before imposing sanctions under its inherent power). Regarding a finding of bad faith, another prerequisite to the use of a court's inherent power, the evidence overwhelmingly supports a finding of bad faith, and intentional conduct on the part of the Voss Law Firm attorneys. From their baseless and offensive attacks on opposing counsel to their utter lack of communication with their clients and their lies about their clients' knowledge and assent, the Voss Law Firm attorneys have committed a multitude of disciplinary rule violations. Lawyering is a service profession. The lawyer provides legal advice to his client, but allows the client to make the substantive decisions in his case—it is, after all, the client's legal rights that are affected. The Voss Law Firm has shown the opposite practice here, hijacking the litigation process for its own benefit rather than

serving as an advocate for its clients. This type of conduct is particularly dangerous and egregious when the Plaintiffs speak limited English and have little knowledge of the American legal system as was the case for the Hernandezes. The Court finds it appropriate to use its inherent power in this case.

First, the Court orders the Voss Law Firm to pay attorney's fees to the defense counsel for the costs of litigating this motion for sanctions (ECF No. 36). To award attorney's fees and expenses under a court's inherent power, the court must make a specific finding that the party at issue has acted in bad faith. *See Matta*, 118 F.3d at 416. Also, the award must be limited to the fees and expenses incurred solely because of the misconduct, or put another way, fees not ordinarily incurred but for the bad faith conduct. *Goodyear Tire*, 137 S. Ct. at 1183–84. The undersigned has already found that the Voss Law Firm attorneys have engaged in fraudulent, intentional misconduct in this case. And, but for the Voss Law Firm's conduct in this case, State Farm would not have had to litigate this motion for sanctions, including the initial motion, subsequent filings, and preparation for the two show cause hearings. This Court orders defense to provide a reasonable accounting of the fees incurred in litigating the motion for sanctions. The Court will determine what fees and expenses are reasonable in light of the defense's accounting and all the circumstances in a separate order.

Second, the Court orders the Voss Law Firm to pay the Plaintiffs' mileage and travel expenses for their appearance at the April hearing. The Supreme Court was clear that the primary purpose of inherent powers sanctions is to fashion appropriate sanctions for bad-faith conduct. *Chambers*, 501 U.S. at 44–45. The Eleventh Circuit found that this extended to expert witness fees that were incurred only as a result of the sanctionable conduct. *Barnes v. Dalton*, 158 F.3d 1212, 1215 (11th Cir. 1998).

At the first hearing on the instant motion for sanctions, the Court ordered the Voss Law Firm to have their clients at the hearing. Instead, the Voss Law Firm sent a letter to the Hernandezes in English, which was worded in legally correct, but highly threatening, language. Not surprisingly, the Plaintiffs failed to appear at the first hearing necessitating a second. The Plaintiffs were then subpoenaed by the Court and served with the order by the United States Marshal's Service, while ordering the Voss Law Firm to refrain from having contact with the Hernandezes. The Court needed the Hernandezes presence to elicit more information to shed more light on the issues discussed above. And even though they had already testified to their lack of knowledge in their depositions, the Court wanted to be absolutely sure due to the seriousness of the allegations. Their presence would not have been required but for the Voss Law Firm's sanctionable conduct in this case. The Court has already determined the Plaintiffs for their travel to Del Rio cost the Plaintiffs $270.00. Therefore, the Voss Law Firm shall reimburse the Plaintiffs through the Court for the cost of the Plaintiffs' travel.

Third, the Court finds it appropriate that an objective body review the actions of the Voss Law Firm attorneys, Chris Schlieffer, Scott Hunziker, and Bill Voss, in this case for possible additional sanctions. The three Voss Law Firm attorneys committed a multitude of TDRPC violations in this case. For example, TDRPC 1.03(a) requires a lawyer to "keep a client reasonably informed about the status of a matter." As discussed, the Voss Law Firm intentionally failed to do so on many occasions. Another example: TDRPC 1.04(d) states that "a contingency fee agreement must be in writing signed by the client." Neither client had a signed contingency fee agreement; Mr. Hernandez never even sign a retainer agreement. Further, TDRCP 1.02(a)(1) states that "a lawyer shall abide by a client's decisions concerning representation." The Hernandezes were unable to make critical decisions in their case because

they were not informed. And the Voss Law Firm only made matters worse for themselves when they came into court and danced around the allegations. *See* TDRCP 8.04(a)(3) ("A Lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.").

However, a lawyer is entitled to due process when facing disbarment. *See Dailey*, 141 F.3d at 230. The hearings in this case were thorough, but the possibility of disbarment was not discussed. Therefore, this Court refers the issue to the Western District of Texas Disciplinary Committee, to address whether further sanctions are appropriate. Among possible additional sanctions, the Court requests that the Committee consider whether disbarment from the Western District of Texas is proper. This Court also requests that the Committee consider whether forwarding this Order and the Committee's findings to the State Bar of Texas and any other state and federal licensing authority is appropriate.

V. Conclusion

Accordingly, the Defendants' Motion for Additional Sanctions (ECF No. 36) is **GRANTED**. Defense counsel shall be awarded attorney's fees and expenses for the costs of litigating the motion for sanctions. State Farm is hereby **ORDERED** to provide the Court with a reasonable accounting of the fees and expenses it incurred litigating this motion for sanctions. Furthermore, the Voss Law Firm is hereby **ORDERED** to provide the Court with a payment of

$270.00 for the Herenandezes' travel expenses to the April hearing. Finally, the Clerk's Office is **ORDERED** to send a copy of this order to the Western District of Texas Disciplinary Committee.

SIGNED and ENTERED on this 17th day of August, 2017.

ALIA MOSES
U.S. DISTRICT JUDGE