## IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS WACO DIVISION

JASMIN HERNANDEZ,

Plaintiff,

V.

Civil Action No. 6:16-CV-00069-RP-JCM

BAYLOR UNIVERSITY BOARD OF REGENTS; ART BRILES, in his official capacity as head football coach; IAN MCCAW, in his official capacity as athletic director,

Defendants.

## DEFENDANT ART BRILES'S EMERGENCY MOTION FOR SUBSTITUTION OF COUNSEL AND CLARIFICATION OF MOTION TO EXTEND THE TIME FOR FILING AN ANSWER

Defendant Art Briles files this Motion for Substitution of Counsel and to Clarify Motion to Extend the Time for Filing an Answer as follows:

## I. FACTUAL BACKGROUND

On March 30, 2016, Jasmin Hernandez filed the above-styled lawsuit against the Baylor University Board of Regents, Head Football Coach Art Briles, and Athletic Director Ian McCaw. Coach Briles was never served with the lawsuit. On or around April 7th, 2016, Coach Briles met with Doug Welch, an attorney on staff with the Office of the General Counsel of Baylor University, and Lisa Brown, an attorney from Houston. Welch and Brown informed Coach Briles that they represented him as his attorneys in the Hernandez lawsuit.

At the same time, Welch and Brown interviewed Coach Briles in Welch's office for purposes of this litigation and discussed the case and allegations with him. Coach Briles provided his attorneys, Welch and Brown, with extensive personal information related to this

case and other matters during the interview. Coach Briles believed that Welch and Brown were looking after his interests in all respects. Meanwhile, between April 7, 2016 and this date, Welch and Brown have:

- (1) waived Service of Process on behalf of Coach Briles without informing Coach Briles or seeking his permission;
- (2) made public comments on behalf of Coach Briles without his permission or even notifying Coach Briles (*See, e.g., Documents: BU, Briles Want to Settle Rape Victim's Lawsuit Quickly*, GRAY TELEVISION 10 KWTX, (June 10, 2016), http://www.kwtx.com/content/news/Documents--BU-Briles-want-to-settle-rape-victims-lawsuit-quickly-382526751.html, attached as Ex. A);
- (3) requested an extension of time to settle this lawsuit and implied to the Court that all defendants agreed and requested an extension of time without ever informing or conferring with Coach Briles;
- (4) used statements, text messages, emails, and other personal information obtained for the purpose of this litigation in the above-referenced interview with Coach Briles in support of Baylor University's termination of Coach Briles from his job as Head Football Coach on May 26, 2016;
- (5) scheduled a mediation with the Plaintiff in this litigation for this Friday, June 17,2016, without ever notifying Coach Briles;
- (6) failed to honor the attorney-client relationship, the attorney-client privilege, and Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas<sup>1</sup> relating to conflicts

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<sup>&</sup>lt;sup>1</sup> Specifically, under Article X of the Disciplinary Rules, attorneys Welch and Brown have violated Rule 1.02(a)(1) and (2); Rule 1.03(a) and (b); Rule 1.05(a) and (b)(1)(II) and (2) and (4); Rule 1.06(b)(1) and (e); Rule 1.08(f); Rule 3.04(a) and Rule 3.07(a).

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of interest and confidentiality by continuing to represent Coach Briles after using his personal

information obtained for purposes of this litigation, to support his termination and thereby take

advantage of a direct conflict of interest. Attached as Exhibit B to this pleading is a letter sent to

the Baylor Office of the General Counsel that provides a complete recitation of these facts.

It is also clear that any joint representation of Baylor University and Coach Briles before

after his termination resulted in liability to Coach Briles for damages under Texas statutory and

common law for breach of contract, fraud, libel and slander, misrepresentation, breach of

fiduciary duty, negligence, and intentional infliction of emotional distress, among others.

II. RELIEF REQUESTED

WHEREFORE, Defendant Art Briles prays for the following:

1. Substitution of counsel for Defendant Art Briles to be represented by Ernest H.

Cannon and Janet Hansen;

2. Clarification of Defendant Baylor University's Board of Regents' Motion to Extend

the Time for Filing an Answer;

3. A Court Order requiring attorneys Welch and Brown to refrain from continued violation of the attorney-client relationship and the attorney-client privilege by

ceasing all use of any information obtained through the representation of Defendant

Art Briles against him in any termination proceedings, mediations, or arbitrations.

4. A Court Order requiring attorneys Welch and Brown to produce all statements, text messages, emails, oral or video recordings, interview notes, and any information of

any kind obtained in the representation of Defendant Art Briles.

Dated: June 16, 2016

Respectfully Submitted,

/s/ Ernest H. Cannon

Ernest H Cannon

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ATTORNEYS FOR DEFENDANT ART BRILES

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served upon opposing counsel on June 16, 2016, via the Court's ECF/CMF electronic filing and service system as follows:

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