

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 00- 9024

Appointment of a District Judge to Preside
in a State Bar Disciplinary Action

The Supreme Court of Texas hereby appoints the Honorable Rick Morris, Judge of the 146th District Court of Bell County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Mark Taboada

to be filed in a District Court of Harris County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Harris County, Texas, a copy of this Order and of the Disciplinary Petition for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

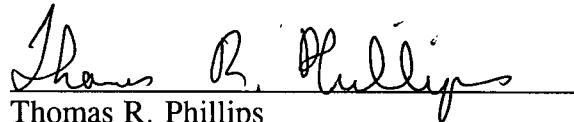
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 14th day of February, 2000.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 00-9024, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 15 day of February, 2000.


Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR LAWYER DISCIPLINE §
Petitioner §
§
v. §
MARK TABOADA §
Respondent §

IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

_____ **JUDICIAL DISTRICT**

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF THE COURT:

Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (the "CFLD"), complains of Respondent **MARK TABOADA** ("Respondent") as follows:

1. DISCOVERY CONTROL PLAN

1.1 Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan. Pursuant to Rule 190.3(b), TRCP, Petitioner affirmatively pleads that it seeks monetary relief aggregating fifty thousand and no/100 dollars (\$50,000.00) or more, not excluding costs, pre-judgment interest and attorneys' fees

2. NATURE OF PROCEEDING

2.1 The CFLD brings this disciplinary action pursuant to the State Bar Act, Texas Government Code Annotated §81.001, *et seq.* (Vernon 1988 and supp. 1994), the TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT, and the TEXAS RULES OF

DISCIPLINARY PROCEDURE. The complaint that forms the basis of this Disciplinary Petition was filed on or after May 1, 1992.

3. VENUE

3.1 Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent's address and principal place of practice is Harris County, Texas; therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the TEXAS RULES OF DISCIPLINARY PROCEDURE, (TRDP). Respondent, **MARK TABOADA** may be personally served with citation at River Oaks Tower, 3730 Kirby, Suite 1200, Houston, Texas, 77098.

4. ALLISON COMPLAINT

PURSUANT TO PART III OF THE TEXAS RULES OF DISCIPLINARY PROCEDURE, PETITIONER REQUESTS THIS COURT DISCIPLINE TABOADA FOR HIS ACTS OF PROFESSIONAL MISCONDUCT.

4.1 A. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01(a) for accepting or continuing employment in a legal matter which the lawyer knew or should have known was beyond lawyer's competence;

1. Respondent was retained for criminal representation by Jesus Huerta in or around May 1997.
2. As guarantee for payment of services, Respondent had his client to sign over his house for amount of services with no consideration of his client's equity.
3. Respondent drew up a warranty deed for the property being transferred and had his office staff, Maria L. Taboada to notarize the documents.
4. Mr. Huerta's property had an outstanding balance with Amarillo National Bank when transfer to Respondent was executed with a general warranty deed.

B. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01 (b)(1) for neglecting a legal matter entrusted to the lawyer;

1. Mr. Huerta, as many lay people, is not sophisticated in real estate transactions combined with the language barrier, left him at a legal disadvantage.
2. Mr. Huerta relied on Respondent for competent representation in the real estate transaction, required by Respondent for criminal representation, to be fair and equitable
3. Respondent failed to keep Mr. Huerta's best interest in mind in conducting the real estate transaction between him and his client.

C. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01(b)(2) for failing to carry out completely the obligations owed to a client;

1. Respondent failed in his obligation to his client by taking unfair advantage of his client in acquiring his client's real estate.
2. Respondent failed to safeguard his client's property transfer so that an equitable sale of the property was maintained.
3. Respondent failed to advise his client to seek independent counsel regarding the transfer of the real estate to Respondent.

D. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.01(c) as used in this Rule "neglect" signifies inattentiveness involving a conscious disregard for the responsibilities owed to a client or clients;

1. Respondent neglected his client in preparing real estate documents when Respondent did not have expertise to do so.
2. Respondent failed to advise his client to seek independent counsel concerning real estate transaction.

3. Respondent failed to keep his client informed of status of his criminal matter during Mr. Huerta's absence from the city

E. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.02(c) for assisting or counseling a client to engage in conduct that the lawyer knows is criminal or fraudulent;

1. Respondent assisted his client in executing fraudulent documents in the form of a general warranty deed when there was an outstanding mortgage with Amarillo National Bank.
2. Respondent was fully aware of his client's whereabouts when court appearance was required and did not advise his client of the need to be present at the hearing.

F. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.02(f) when a lawyer knows that a client expects representation not permitted by the rules of professional conduct or other law, the lawyer shall consult with the client regarding the relevant limitations on the lawyer's conduct.

1. Respondent failed to advise his client of the conflict of interest in executing the real estate transaction.

G. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.02(g) for failing to take reasonable action to secure the appointment of a guardian or other legal representative for, or seek other protective orders with respect to, a client whenever the lawyer reasonable believes that the client lacks legal competence and that such action should be taken to protect the client;

1. Respondent failed to seek competent representation for Mr. Huerta, knowing his client did not possess the education or exposure to real estate transactions.
2. Respondent failed to provide verbatim documents in Spanish to his client knowing his client could not read or understand English.

H. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.03(a) for failing to keep a client reasonably informed about the status of a matter

1. Respondent failed to stay in contact with Mr. Huerta concerning his criminal matter while his client was in another county.
2. Respondent continued to send letters to his client at the property address Respondent acquired from Mr. Huerta.

I. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.04(a), (b), and (c) for entering into an arrangement for, charging or collecting an illegal fee or unconscionable fee; several factors may be considered in determining the reasonableness of a fee; and for failing to communicate to the client the basis or rate of the fee before or within a reasonable time after commencing the representation.

1. Respondent executed a real estate transaction in where the value of the property far exceeded the amount of attorney's fees due Respondent.
2. Respondent failed to assign equity or make provisions to assign equity in real estate to his client.
3. Respondent continued to fail in compensating Mr. Huerta for his equity in the property after Respondent sold the house to other individuals.
4. Respondent failed to obtain a written fee agreement with his client Mr. Huerta.

J. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.06(b)(2) for representing a person where the representation of that person reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to the law firm's own interests;

1. Respondent executed a real estate transaction in where the value of the property far exceeded the amount of attorney's fees due Respondent.
2. Respondent failed to assign equity or make provisions to assign equity in real estate to his client.

K. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.08(a) for entering into a business transaction with a client unless: 1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonable understood by the client; 2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and 3) the client consents in writing thereto.

1. Respondent executed a real estate transaction in where the value of the property far exceeded the amount of attorney's fees due Respondent.
2. Respondent failed to assign equity or make provisions to assign equity in real estate to his client.
3. Respondent continued to fail in compensating Mr. Huerta for his equity in the property after Respondent sold the house to other individuals.
4. Respondent failed to obtain a written fee agreement with his client Mr. Huerta.

L. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

1.14(a) for failing to hold funds and other property belonging in whole or part to clients or third persons in a lawyer's possession separate from the lawyer's own property and **1.14(c)** for failing to keep funds or other property in which both the lawyer and another person claim interests separate until there is an accounting and severance of their interests.

1. Respondent executed a real estate transaction in where the value of the property far exceeded the amount of attorney's fees due Respondent.
2. Respondent failed to assign equity or make provisions to assign equity in real estate to his client.

3. Respondent continued to fail in compensating Mr. Huerta for his equity in the property after Respondent sold the house to other individuals.

M. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

2.01 for failing to give a client straightforward advice, expressing the lawyer's honest assessment of the case;

1. Respondent executed a real estate transaction in where the value of the property far exceeded the amount of attorney's fees due Respondent.

N. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.01(a) for knowingly making a false statement of material fact;

1. Respondent made contradicting statements in his response to the Grievance Committee by saying the original Contract For Deed and a copy was in his files; then stating Mr. Huerta took the original copy of the Contract for Deed.
2. Respondent states Mr. Huerta corrected the amount in the Contract For Deed and initializing those corrections when Respondent's office staff, Maria Liliana Taboada, initialized those corrections.

O. TABOADA ENGAGED IN CONDUCT VIOLATING TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT:

8.04(a)(3) for engaging in conduct involving dishonesty, fraud, deceit or misrepresentation;

1. Respondent acknowledged facts of his actions concerning Mr. Huerta's property to Complainant and second criminal defense attorney in meeting on or about March 29, 1999.
2. Respondent acknowledges facts of his actions concerning Mr. Huerta's property in his response to the grievance committee.

5. **The complaint that forms the basis of this cause of action was brought to the attention of the office of the General Counsel of the State Bar of Texas by David Allison filing a complaint on or about April 29, 1999.**

PRAYER

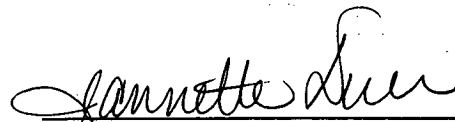
WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent as the facts shall warrant by finding professional misconduct with regard to the above-stated rule violations and imposing a sanction of reprimand, suspension and/or disbarment; and that the CFLD have all other relief to which it may show itself to be justly entitled, including costs of court, restitution to Jesus Huerta, and attorneys' fees.

Respectfully submitted,

Dawn M. Miller
Acting General Counsel

Jeannette M. Duer
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
Phone: (713) 759-6931
Fax: (713) 752-2158



JEANNETTE M. DUER
State Bar No. 00793645

ATTORNEYS FOR PETITIONER THE
COMMISSION FOR LAWYER

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

January 5, 2000

John T. Adams, Clerk
Supreme Court of Texas
P.O. Box 12248
Austin, Texas 78711

Re: Commission for Lawyer Discipline v. Mark Taboada

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Mark Taboada. Mark Taboada has designated Harris County, Texas, as his principal place of practice. Request is hereby made that the Court appoint an active District Judge who does not reside in the Administrative Judicial Region in which Respondent resides to preside in this case. Upon appointment, request is made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Mark Taboada
River Oak Tower
3730 Kirby, Suite 1200
Houston, Texas 77098

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would respectfully request that an alternate appointment be made.


Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Mr. John Adams
January 5, 2000
Page Two

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Harris County, Texas, and a return envelope to be sent to the District Clerk of Harris County, Texas, for the Clerk's use in returning a file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,



Jeannette M. Duer
Assistant Disciplinary Counsel

Enclosures

J:\TABOADA\CLERK1.SCT



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

FEB 23 2000

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77002

Dear Mr. Bacarisse:

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing State Bar of Texas Disciplinary Action styled: *The Commission for Lawyer Discipline v. Mark Taboada*, and a copy of the Supreme Court's order appointing the Honorable Rick Morris, Judge of the 146th District Court, Belton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Rick Morris
Ms. Jeannette M. Duer
Mr. Mark Taboada
Ms. Melissa Dartez



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
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DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

FEB 23 2000

Honorable Rick Morris
Judge, 146th District Court
P.O. Box 747
Belton, Texas 76513-0747

Dear Judge Morris:

We enclose for your information a copy of the order of assignment, a copy of the Disciplinary Action, a copy of the notification letter to Mr. Taboada and Ms. Duer, and a copy of the letter to the District Clerk of Harris County.

It is recommended that, six to eight weeks after receipt of this letter, you contact the Harris County District Court Administrative Office (713-755-7593) to find out the district court to which this disciplinary case has been assigned. We then recommend that, either before or immediately after you set the case for trial, you again contact the Harris County District Court Administrative Office (713-755-6593) to reserve a courtroom, provide for a court reporter, etc. Finally, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (713-471-3911) to obtain information on lodging, allowable expenses, and claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

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ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

FEB 23 2000

Ms. Jeannette M. Duer
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Mark Taboada
River Oak Tower
3730 Kirby, Suite 1200
Houston, Texas 77098

Dear Ms. Duer and Mr. Taboada:

Pursuant to Rule 3.02 of the Texas Rules of Disciplinary Procedure, I hereby notify you that the Supreme Court of Texas has appointed the Honorable Rick Morris, Judge of the 146th District Court, Belton, Texas to preside in

Commission for Lawyer Discipline v. Mark Taboada

Sincerely,

SIGNED

John T. Adams

Clerk