

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97-9221

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

The Supreme Court of Texas hereby appoints the Honorable Ronald M. Yeager, Judge of the 36th District Court of San Patricio County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. Gary A. Roth

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.

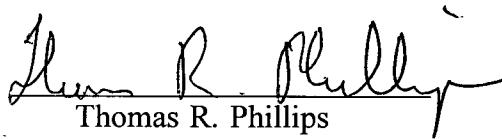
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 10th day of December, 1997.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 97-9221, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this day of December, 1997.

A handwritten signature in cursive script, appearing to read "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINES	§	IN THE DISTRICT COURT OF
VS	§	_____ COUNTY, TEXAS
GARY A. ROTH	§	_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas, complaining of Respondent, **Gary A. Roth**, showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't Code Ann. §81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint which forms the basis of the Disciplinary Petition was filed with the State Bar of Texas on or after May 1, 1992.

II.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Harris County, Texas. An officer may serve citation on Respondent at his business address located at 800 W. Sam Houston Parkway South, Suite 220, Houston, Harris County, Texas 77042.

III.

On or about November 23, 1993, Pansy Culberson underwent medical surgery at the Doctor's Hospital in Conroe, Texas. Culberson was not satisfied with the physician who handled her health care, and sought legal advice. On or about March 24, 1994, Culberson signed a contingent fee contract with Respondent to represent her in a medical malpractice lawsuit on her behalf. Culberson's contract with Respondent also authorized him to take whatever action necessary against her insurance company for refusing to authorize additional surgical revision.

Respondent successfully negotiated an agreement with Culberson's insurance carrier for additional surgery. Respondent also decided that filing a malpractice lawsuit against the doctor who performed the initial surgery on Ms. Culberson should not be pursued.

During the course of his representation of Culberson regarding the medical malpractice lawsuit, Respondent failed to keep his client updated as to the status of the lawsuit, refused to return her telephone calls, and did not meet with her again until October 7, 1996. At that meeting, Respondent acknowledged to Ms. Culberson that he had failed to notify her that he had closed her case. Respondent failed to notify Ms. Culberson that he had decided not to pursue the medical malpractice lawsuit before the statute of limitations passed, causing Ms. Culberson to lose her opportunity to pursue the claim in court.

IV.

By failing to communicate his decision not to pursue his client's medical malpractice lawsuit before the statute of limitations ran on his client's opportunity to pursue the matter in court, Respondent engaged in conduct in violation of Rules 1.02(a)(1)[a lawyer shall abide by a client's decisions concerning the objectives and general methods of representation]; 1.02(b)[a lawyer may limit the scope, objectives and general methods of the representation if the client consents after consultation]; 1.03(a)[a lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information]; and 1.15(d)[upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled]of the Texas Disciplinary Rules of Professional Conduct, and of Rule 1.06(Q) of the Texas Rules of Disciplinary Procedure.

V.

The complaint which forms the basis of this lawsuit as hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the filing of a complaint by Pansy Culberson on or about January 10, 1997.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent, Gary A. Roth, be disciplined by reprimand, suspension, or disbarment, as the facts shall warrant; and that Petitioner have such other and further relief to which entitled, including costs of Court and attorney's fees.


Respectfully submitted,

Steven W. Young
General Counsel

Mary F. Klapperich
Assistant General Counsel

Office of the General Counsel
State Bar of Texas

1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6932
(713) 752-2158 FAX



MARY F. KLAPPERICH
State Bar of Texas No. 11550700

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

November 6, 1997

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

Re: Commission for Lawyer Discipline v. Gary A. Roth

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 Gary A. Roth. Mr. Roth 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 practices to preside in this case. Upon appointment, request is hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

Gary A. Roth
800 W. Sam Houston Parkway South, Ste. 220
Houston, Texas 77042

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to 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 Civil Case Information Sheet, and 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, citation be issued, and citation, along with a file-stamped copy of the petition be returned to the undersigned.

Mr. John T. Adams, Clerk
Supreme Court of Texas
DATE
PAGE 2

Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents 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 filemarked copy of the petition to the undersigned.

If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,



Mary F. Klapperich
Assistant General Counsel

MFK/rr
enclosures



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

DEC 18 1997

Ms. Mary F. Klapperich
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Mr. Gary A. Roth
800 W. Sam Houston Parkway South, Suite 220
Houston, Texas 77042

Dear Ms. Klapperich and Mr. Roth:

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 Ronald M. Yeager, Judge of the 36th District Court of Sinton, Texas to preside in

Commission for Lawyer Discipline v. Gary A. Roth

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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GREG ABBOTT

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

DEC 18 1997

Honorable Ronald M. Yeager
Judge, 36th District Court
P.O. Box 1303
Sinton, Texas 78387-1303

Dear Judge Yeager:

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. Roth and Ms. Klapperich, 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
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GREG ABBOTT

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FAX: (512) 463-1365

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEC 18 1997

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77210

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. Gary A. Roth, and a copy of the Supreme Court's order appointing the Honorable Ronald M. Yeager, Judge of the 36th District Court of Sinton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Ronald M. Yeager
Ms. Mary F. Klapperich
Mr. Gary A. Roth