

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 98-9088

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

The Supreme Court of Texas hereby appoints the Honorable Wayland W. Kilgore, Judge of the 267th District Court of Victoria County, Texas, to preside in the Disciplinary Action styled:


The Commission for Lawyer Discipline v. David E. Myers

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.

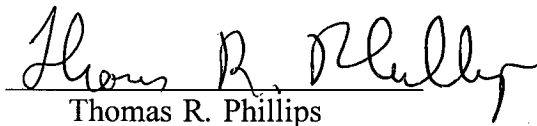
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 29th day of May, 1998.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9088, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 2 day of June, 1998.

A handwritten signature in cursive script, reading "Thomas R. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE §
v. §
DAVID E. MYERS §
§

IN THE DISTRICT COURT OF
HARRIS COUNTY, TEXAS
_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION AND PETITION FOR IMMEDIATE INTERIM SUSPENSION

TO THE HONORABLE JUDGE OF THE COURT:

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter called "Petitioner"), files this Petition for Immediate Interim Suspension, complaining of Respondent, DAVID E. MYERS (hereinafter called "Respondent"), showing the Court:

I. Nature of Proceeding

Petitioner brings this disciplinary action pursuant to the State Bar Act, the 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 complaints that form the basis of this Disciplinary Petition were filed on or after May 1, 1992.

II. Venue

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent is a resident of Denver County, Colorado. Respondent's principal place of practice is Harris County, Texas, and therefore venue is appropriate in

Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure.

An officer may serve citation on Respondent at his business address located at 6984 East Jarvis Place, Denver, Denver Count, Colorado, 80237.

III. First Cause of Action

Petitioner brings this First Cause of Action pursuant to the Texas Rules of Disciplinary Procedure, Part XIV, et seq. which provide as follows:

Section 14.01 Irreparable Harm to Clients: Upon a finding by an investigatory panel that an attorney poses a substantial threat of irreparable harm to clients or prospective clients, the investigatory panel shall authorize Chief Disciplinary Counsel to seek the immediate interim suspension of the attorney. The Chief Disciplinary Counsel shall file a petition with a district court of proper venue alleging immediate irreparable harm, and the district court shall, if the petition alleges facts that meet the evidentiary standard in Section 14.02, set a hearing within ten days. If the Chief Disciplinary Counsel, at the hearing, meets the evidentiary standard and burden of proof as established in Section 14.02, the court shall enter an order without requiring bond, immediately suspending the attorney pending the final disposition of the Disciplinary Proceedings or the Disciplinary Action based on the conduct causing the harm. The matter shall thereafter proceed in the district court as in matters involving temporary injunctions under the Texas Rules of Civil Procedure. If a temporary injunction is entered, the court may appoint a custodian under Part XIII. If, at the conclusion of all Disciplinary Proceedings and Disciplinary Actions, the Respondent is not found to have committed Professional Misconduct, the immediate interim suspension may not be deemed a "Sanction" for purposes of insurance applications or any other purpose.

IV.

Petitioner has received evidence that Respondent poses a substantial threat of irreparable harm to clients or prospective clients. An investigatory panel for State Bar District Number 4E voted on or about August 28, 1997, to authorize the Office of the General Counsel of the State Bar of Texas to seek immediate interim suspension of Respondent's license to practice law pursuant to Part XIV of the Texas Rules of Disciplinary Procedure. Petitioner believes, premised upon the acts and/or omissions of Respondent described in the Second

Cause of Action and/or Third Cause of Action hereinafter set forth, that Respondent poses a substantial threat of irreparable harm to clients and prospective clients by reason of his conduct with clients or former clients as set forth therein.

IV. Second Cause of Action

On or about December 22, 1995, at the request of Danny Joe Chavera (hereinafter called "Chavera"), Respondent gave him a business card. At that time, it was not Chavera's intent to hire Respondent to represent him, and Chavera gave no indication to Respondent that he wanted to hire him. However, on that day Respondent took it upon himself to sign a reset form on behalf of Chavera and was entered as Chavera's attorney of record in Cause No. 9553351, *The State of Texas v. Danny Joe Chavera*.

Thereafter, Chavera made many attempts to communicate with Respondent that he was not sure he wanted to hire Respondent, but each time was put off by Respondent.

On or about January 11, 1996, a hearing was held in Chavera's case. When the case was called, Chavera answered "no attorney." However, when asked by Judge Mark Atkinson (hereinafter called "Judge Atkinson") if Chavera had hired him, Respondent responded that he had. As such, Respondent made a false statement to the Court. Further, because of Respondent's actions, Chavera's case had to be delayed so that Chavera could obtain other counsel.

Further, at the grievance hearing held on or about August 28, 1997, Respondent was questioned about an altered subpoena sent to an attorney named Jonathan Gol in connection with this cause of action. The altered subpoena contained the same certified mail number as a

subpoena issued to Respondent by the State Bar of Texas. Respondent denied any knowledge of the altered subpoena when questioned by the grievance committee. As such, Respondent made a false statement of material fact in his testimony before the 4E panel of the State Bar of Texas.

V.

The acts and/or omissions of the Respondent described in Paragraph IV above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 3.02[a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays resolution of the matter], 3.03(a)(1)[a lawyer shall not knowingly make a false statement of material fact or law to a tribunal], 3.03(a)(5)[a lawyer shall not knowingly offer or use evidence that the lawyer knows to be false], 3.03(b)[if a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence; if such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts], 8.01(a)[a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact], and 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the Texas Disciplinary Rules of Professional Conduct (hereinafter called "TDRPC").

VI.

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 Judge Mark Atkinson's filing of a complaint on or about November 12, 1996.

VII. Third Cause of Action

On or about December 22, 1995, Respondent threatened his client, Patrick Johnson (hereinafter called "Johnson") with jail time in an attempt to coerce Johnson into paying Respondent his attorneys' fees. Johnson had hired Respondent to represent him in Cause No. 9544095, *The State of Texas v. Patrick Johnson*, wherein Johnson was charged with driving with an invalid driver's license. Respondent worked out a plea arrangement wherein if Johnson obtained insurance and a clearance letter from the Department of Public Safety, he would not serve any jail time. When Johnson appeared in court without any money, Respondent made the threat of Johnson serving ten to twelve days in prison. Jail time was never an option for punishment for Johnson.

VIII.

The acts and/or omissions of the Respondent described in Paragraph VII above, which occurred on or after January 1, 1990, constitute conduct in violation of rules 4.01(a)[a lawyer shall not knowingly make a false statement of material fact or law to a third person], 8.04(a)(1)[a lawyer shall not knowingly violate the Texas Disciplinary Rules of Professional Conduct], 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation], and 8.04(a)(12)[a lawyer shall not violate any other laws of this state relating to the professional conduct of lawyers and to the practice of law] of the TDRPC.

IX.

The complaints 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 Judge Mark Atkinson's filing of a complaint on or about November 12, 1996.

X. Fourth Cause of Action

On or about August 22, 1997, Respondent received a State Bar of Texas Subpoena (hereinafter called "Subpoena"), which commanded him to appear before the grievance committee on or about August 28, 1997. The Subpoena was served on Respondent by certified mail no. P436514947. Respondent signed the United States Postal green card evidencing his receipt of same. Thereafter, Respondent caused the same Subpoena, with the same certified mail no. P436514947 to be altered and served upon an attorney named Jonathan Gol.

In addition, Respondent prepared a false subpoena for another witness in violation of Rule 15.01 of the Texas Rules of Disciplinary Procedure. Instead of requesting that the Chair of the Panel sign and issue the subpoena as is required, Respondent signed the subpoena that was served on witness Hector Bolivar. Respondent has no authority to issue a subpoena.

XI.

The acts and/or omissions of the Respondent described in Paragraph X above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 8.04(a)(2)[a lawyer shall not commit a serious crime or commit any other criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects] and

8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the TDRPC.

XII.

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 the State Bar of Texas' filing of a complaint on or about September 3, 1997.

XIII. Fifth Cause of Action

On or about February 3, 1997, Respondent approached Judge Diane Bull (hereinafter called "Judge Bull"), Judge of the Harris County Criminal Court at Law Number 11, and asked if Judge Bull would write a recommendation letter for him since he was moving to another state. This occurred prior to one of Respondent's jury trials set before Judge Bull that day. Respondent wanted Judge Bull to "critique his trial skills." Thereafter, the case was dismissed by the State five minutes into the voir dire, so Judge Bull was not able to "critique Respondent's trial skills."

On or about February 4, 1997, Respondent again approached Judge Bull and presented her with a draft of a raving recommendation letter. Respondent's letter was not what he had asked Judge Bull to compose for him, so Judge Bull told Respondent that she would consider it. Judge Bull did not sign, nor agree to sign Respondent's letter. Thereafter, Judge Bull did not hear from Respondent regarding the recommendation letter.

At a monthly judges' meeting on or about February 6, 1997, Judge Regan C. Helm (hereinafter called "Judge Helm") informed Judge Bull that Respondent had showed him the

recommendation letter that Judge Bull had supposedly written. Respondent showed Judge Helm the recommendation letter purportedly prepared by Judge Bull in an attempt to influence Judge Helm into preparing a recommendation letter.

XIV.

The acts and/or omissions of the Respondent described in Paragraph XIII above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, deceit, fraud or misrepresentation] and 8.04(a)(5)[a lawyer shall not state or imply an ability to influence improperly a government agency or official] of the TDRPC.

XV.

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 the State Bar of Texas' filing of a complaint on or about February 25, 1997.

XVI. Sixth Cause of Action

On or about September 11, 1996, Respondent appeared before Judge Jean Hughes (hereinafter called "Judge Hughes"), Judge of the Harris County Criminal Court at Law Number 15, as counsel for the defendant in a jury trial.

Court was recessed for the lunch break, and upon his return, Respondent was not wearing a tie or dress shirt. When questioned, Respondent replied that he had spilled his coffee and had taken his clothes to a dry cleaners. Judge Hughes inquired further as to the location of the dry cleaners so that she could verify Respondent's statement since it is a Court

policy that male attorneys must wear a tie and dress shirt. Upon further investigation, Judge Hughes determined that Respondent did not take his clothes to the dry cleaners he specified. Respondent intentionally lied to Judge Hughes so as to cause a delay and a mistrial.

Respondent was also questioned as to why his client did not return from the lunch break at the instructed time of 1:30 p.m. Respondent stated that he had informed his client to return at the appointed time, but she did not return until approximately 3:00 p.m. When the client returned to Court, she told Judge Hughes that Respondent told her that she did not need to necessarily return at 1:30 p.m. because she did not need to be present throughout the entire trial. This was another attempt by the Respondent to cause a delay and a mistrial.

XVII.

The acts and/or omissions of the Respondent described in Paragraph XVI above, which occurred on or after January 1, 1990, constitute conduct in violation of Rules 3.02[in the course of litigation, a lawyer shall not take a position that unreasonably increases the costs or other burdens of the case or that unreasonably delays the resolution of the matter], 3.03(b)[if a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall make a good faith effort to persuade the client to authorize the lawyer to correct or withdraw the false evidence; if such efforts are unsuccessful, the lawyer shall take reasonable remedial measures, including disclosure of the true facts] , and 8.04(a)(3)[a lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation] of the TDRPC.

XVIII.

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 the Judge Jean Hughes' filing of a complaint on or about January 27, 1997.

Prayer


WHEREFORE, PREMISES CONSIDERED, Petitioner the COMMISSION FOR LAWYER DISCIPLINE respectfully prays that this Court discipline Respondent, DAVID E. MYERS, by reprimand, suspension or disbarment, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorneys' fees.

Respectfully submitted,

**Steven W. Young
General Counsel**

**Stephen D. Statham
Assistant General Counsel**

**Office of the General Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
Fax No. (713) 759-1932**


STEPHEN D. STATHAM
State Bar No. 19082500

**ATTORNEYS FOR THE COMMISSION
FOR LAWYER DISCIPLINE**

STATE BAR OF TEXAS



Office of the General Counsel

March 25, 1998

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

Re: *Commission for Lawyer Discipline v. David E. Myers*

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of a Disciplinary Petition and Petition for Immediate Interim Suspension being filed by the Commission for Lawyer Discipline against David E. Myers. Mr. Myers 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:

David E. Myers
6984 East Jarvis Place
Denver, Denver County, Colorado 80237

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; and (2) whether he or she can accommodate compliance with Mellon Service Co., et al v. Touche Ross Co., 946 S.W.2d 862 (Tex. App. - Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. If not, I would respectfully request that an alternate appointment be made.

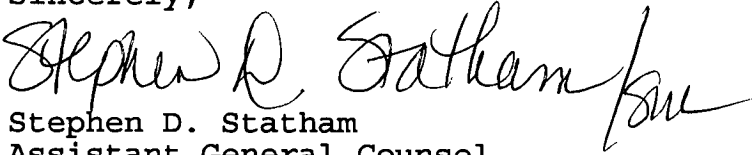
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition and Petition for Immediate Interim Suspension, the Civil Case Information Sheet, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris 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
March 25, 1998
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,

A handwritten signature in cursive script that reads "Stephen D. Statham". The signature is written in dark ink and is positioned to the right of the typed name.

Stephen D. Statham
Assistant General Counsel

SDS/sml
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

JUN 05 1998

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
NATHAN L. HECHT
CRAIG T. ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON

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. David E. Myers, and a copy of the Supreme Court's order appointing the Honorable Wayland W. Kilgore, Judge of the 267th District Court of Victoria, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Wayland W. Kilgore
Mr. Stephen D. Statham
Mr. David E. Myers



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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CLERK
JOHN T. ADAMS

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GREG ABBOTT
DEBORAH G. HANKINSON

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUN 05 1998

Honorable Wayland W. Kilgore
Judge, 267th District Court
115 Bridge Street
Victoria, Texas 77901

Dear Judge Kilgore:

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. Myers and Mr. Statham, 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

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JUN 05 1998

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Judge, 267th District Court
115 Bridge Street
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Sincerely,

SIGNED

John T. Adams
Clerk