

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 98- 9101**

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

The Supreme Court of Texas hereby appoints the Honorable Mary Lou Keel, Judge of the 232nd District Court of Harris County, Texas, to preside in the Disciplinary Action styled:

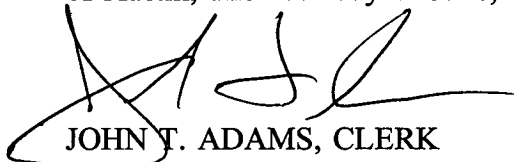
**The Commission for Lawyer Discipline v. Eugene X. Mercier**

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Nueces 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.

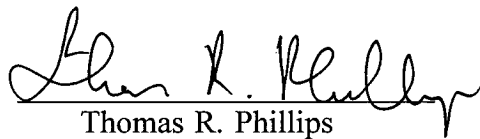
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City  
of Austin, this 17th day of June, 1998.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9101, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 19 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 the printed name and title.

Thomas R. Phillips  
Chief Justice

No. \_\_\_\_\_

COMMISSION FOR LAWYER  
DISCIPLINE

V.

EUGENE X. MERCIER

§  
§  
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§

IN THE DISTRICT COURT OF

NUECES COUNTY, TEXAS

\_\_\_\_\_TH JUDICIAL DISTRICT

**DISCIPLINARY PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complaining of Respondent, EUGENE X. MERCIER, and in support thereof would respectfully show the Court the following:

**Parties**

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, EUGENE X. MERCIER, Texas State Bar Number 13946700, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas. Respondent is a resident of Nueces County, Texas. Respondent may be served with citation and a copy of this petition by serving his attorney, James R. Harris, at 615 Upper North Broadway, Suite 1700, Corpus Christi, Texas 78477.

**Venue**

Respondent's principal place of law practice is in Nueces County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Nueces County, Texas.

## I.

Petitioner brings this disciplinary action pursuant to State Bar Act, Tex. Gov't. Code Ann., Sec. 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 this action was filed on or about June 12, 1997. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

## II.

1. On or about October 29, 1996, Respondent was hired by Virginia Cruz and her daughter, Irma, to take over as their attorney of record in Cause No. C-96-1073-D1, styled *Virginia Cruz and Irma Linda Cruz v. Hubert Brisner, Jr.*, a suit for damages arising out of a pedestrian accident that occurred on November 20, 1995 (hereinafter the "Pedestrian Case").
2. Said lawsuit had originally been filed by Mr. Claxton B. Seely, Attorney at Law, on or about September 13, 1996, in the 49th Judicial District Court of Webb County, Texas. Mr. Seely was subsequently fired by Virginia and Irma Cruz on or about October 29, 1996 and withdrew from the case on or about December 2, 1996. Although Virginia and/or Irma Cruz signed an employment agreement on October 29, 1996 expressly relating to Respondent's representation in the Pedestrian Case, Respondent never filed an appearance with the court in that case.
3. In or about April of 1997, Virginia Cruz provided Respondent with copies of the defendant's Requests for Admissions and the defendant's Motion for Summary Judgment for Respondent's action. Although the response date for the Requests for Admissions had expired, Respondent represented that he would ask the court for leave to file a Motion to Withdraw/Strike the deemed admissions. Respondent represented further that he would appear on his clients' behalf at the May

28, 1997 hearing on the defendant's Motion for Summary Judgment.

3. On or about May 5, 1997, Respondent attempted to refer the Pedestrian Case to another attorney, David Garcia, for handling. On or about May 23, 1997, Respondent was notified by Mr. Garcia that he would not accept the Pedestrian Case. Respondent was also advised by Mr. Garcia to pursue the Motion to Strike the deemed admissions or to non-suit the Pedestrian Case.

4. On or about May 28, 1997, Respondent failed to appear at the scheduled hearing on behalf of his clients and a Summary Judgment was entered against Virginia and Irma Cruz in the Pedestrian Case.

5. On or about June 11, 1997, following the entry of the aforementioned Summary Judgment, Respondent sent letters to Virginia and Irma Cruz withdrawing from representation in the Pedestrian Case.

### III.

The conduct of Respondent described above constitutes a violation of the following Texas Disciplinary Rules of Professional Conduct:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client.

Rule 1.15 (d) -- Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests.

**PRAYER**


WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steve Young  
General Counsel

Seana B. Willing  
Assistant General Counsel

Office of the General Counsel  
State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205  
Telephone: (210) 271-7881  
Telecopier: (210) 271-9642

  
SEANA B. WILLING  
State Bar No. 00787056

ATTORNEYS FOR PETITIONER

# STATE BAR OF TEXAS



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
P 583 840 741

Office of the General Counsel  
Regional Office  
Soledad Plaza West  
425 Soledad, Suite 300  
San Antonio, Texas 78205  
(210) 271-7881  
FAX: (210) 271-9642

May 11, 1998

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

RE: Commission for Lawyer Discipline v. Eugene X. Mercier

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Eugene X. Mercier. Mr. Mercier has designated **Nueces County** 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:

Eugene X. Mercier  
BY AND THROUGH ATTORNEY OF RECORD  
James R. Harris  
615 Upper North Broadway, Suite 1700  
Corpus Christi, Texas 78477

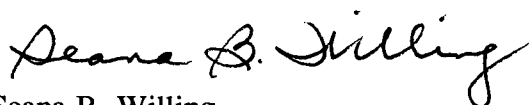
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure; and (2) 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 three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Nueces County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition returned to the undersigned.

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

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Seana B. Willing".

Seana B. Willing  
Assistant General Counsel

Enclosures

cc: Jesse Rodriguez, Harlingen Field Office, State Bar of Texas, 1109 N. 77 Sunshine Strip,  
Harlingen, Texas 78550





# 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  
CRAIG T. ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

JUN 30 1998

Ms. Seana B. Willing  
Assistant General Counsel, State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205

Mr. Eugene X. Mercier  
c/o James R. Harris  
615 Upper North Broadway, Suite 1700  
Corpus Christi, Texas 78477

Dear Ms. Willing and Mr. Mercier:

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 Mary Lou Keel, Judge of the 232<sup>nd</sup> District Court, Houston, Texas to preside in

*Commission for Lawyer Discipline v. Eugene X. Mercier*

Sincerely,

**SIGNED**

John T. Adams  
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

JUN 30 1998

Honorable Mary Lou Keel  
Judge, 232<sup>nd</sup> District Court  
631 Criminal Courts Building  
301 San Jacinto Street  
Houston, Texas 77002

Dear Judge Keel:

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. Mercier and Ms. Willing, and a copy of the letter to the District Clerk of Nueces County.

It is recommended that, six to eight weeks after receipt of this letter, your coordinator contact the District Court Administrator (512-888-0220) to learn the names, addresses, and telephone numbers of counsel for purposes of scheduling a conference. This should also be the number to call to reserve a court room, court reporter, etc. Also, either before or immediately after you set the case for trial, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-544-0847) to obtain 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

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK  
JOHN T. ADAMS

JUSTICES  
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NATHAN L. HECHT  
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PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

EXECUTIVE ASS'T  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T  
NADINE SCHNEIDER

JUN 30 1998

The Honorable Oscar Soliz  
District Clerk of Nueces County  
County Courthouse  
901 Leopard  
Corpus Christi, Texas 78401

Dear Mr. Soliz:

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. Eugene X. Mercier*, and a copy of the Supreme Court's order appointing the Honorable Mary Lou Keel, Judge of the 232<sup>nd</sup> District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Hon. Mary Lou Keel  
Ms. Seana B. Willing  
Mr. Eugene X. Mercier