

ORDER OF THE SUPREME COURT OF TEXAS

9156

Misc. Docket No. 01-----

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

The Supreme Court of Texas hereby appoints the Honorable J. Ray Gayle, III, Judge of the 239th District Court of Brazoria County, Texas, to preside in the Disciplinary Action styled

The Commission for Lawyer Discipline v. Patrick J. Stolmeier
to be filed in a District Court of Bexar County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar County, Texas, a copy of the Disciplinary petition and this Order 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 7th day of September, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9156, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 7 day of September, 2001.

Thomas R. Phillips
Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER DISCIPLINE § IN THE DISTRICT COURT OF
§
§
§
§
V. § BEXAR COUNTY, TEXAS
§
§
PATRICK JOHN STOLMEIER § JUDICIAL DISTRICT

ORIGINAL 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, PATRICK JOHN STOLMEIER, 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, PATRICK JOHN STOLMEIER, Texas State Bar Number 19284370, 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 Bexar County, Texas. Respondent may be served with citation and a copy of this petition at his principal place of business located at 219 E. Craig Place, San Antonio, Texas 78212-3547.

Venue

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

Discovery Level Designation

I.

Pursuant to Tex.R.Civ.P. 190.1, Petitioner designates that discovery in this action should proceed pursuant to Level 2 (Tex.R.Civ.P. 190.3).

Professional Misconduct

2.

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 complaints which form the basis of this action were filed with the State Bar of Texas as follows:

Edward Cabel	January 7, 2000
Brant Haass	February 9, 2000
Elena M. Villavicencio, M.D.	October 6, 2000

The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

Count I -- Edward Cabel

3.

On or about November 16, 1998, Complainant hired Respondent to draft a letter on behalf of his then fiancé, Debra Kay Cabel, to her former husband, David Gallardo, to enforce proper execution of visitation as per the divorce decree.

4.

Respondent had formerly represented David Gallardo in his divorce action against Debra Kay Gallardo, now Debra Kay Cabel. Respondent and his employed attorney, without the consent of their former client David Gallardo, undertook the representation of Complainant in a matter adverse to their former client and were paid a fee of \$250.00 by Complainant. Complainant and his spouse questioned the actual sending of the subject letter to Mr. Gallardo.

5.

Respondent failed to withdraw from the representation once Respondent and his associate were aware of the potential conflict.

6.

Respondent failed to promptly refund the fee and failed to promptly surrender the requested letter which was part of the file.

7.

Respondent permitted the conduct involved and, as the supervising attorney, failed to take reasonable remedial action to avoid or mitigate the consequences of the other lawyer's violation.

8.

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

Rule 1.09(a): Without prior consent, a lawyer who personally has formerly represented client in a matter shall not thereafter represent another person in a matter adverse to the former client:

- (1) in which such other person questions the validity of the lawyer's services or work product of the former client;
- (2) if the representation in reasonable probability will involve a violation of Rule 1.05; or
- (3) if it is the same or a substantially related matter.

Rule 1.15(a)(1): A lawyer shall decline to represent a client, or where representation has commenced, shall withdraw from the representation of a client, if:

- (1) the representation will result in violation of Rule 3.08, other applicable rules of professional conduct, or other law;

Rule 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 and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make an informed decision regarding the representation.

Rule 5.01(a) A lawyer shall be subject to discipline because of another lawyers violation of these rules of professional conduct if:

- (a) The lawyer is a partner or supervising lawyer and orders, encourages, or

knowingly permits the conduct involved; or

Rule 5.01(b) The lawyer is a partner in the law firm in which the other lawyer practices, is the general counsel of a government agencies legal department in which the other lawyer is employed, or has direct supervisory authority over the other lawyer, and with knowledge of the other lawyers violation of these rules knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of the other lawyers violation.

Count II - Brant Haass

9.

On or about April 1998, Complainant hired Respondent to represent him in a criminal case for a total fee of \$30,000.

10.

Respondent failed to appear at an October 14, 1999 hearing which resulted in material harm to the Complainant.

11.

Respondent failed to notify Complainant of a setting on or about April 6, 1999, which resulted in material harm to the Complainant's position.

12.

Respondent failed to keep the Complainant reasonably informed about the status of his case and did not comply with Complainants request for information. Respondent also failed to sufficiently explain legal matters to Complainant thereby allowing him to make informed decisions regarding his case.

13.

Respondent failed to provide Complainant with a full accounting of fees paid by Complainant upon request.

14.

Respondent knowingly made false statements of material fact to the investigatory panel when he denied missing hearings and setting in the face of evidence indicating his active representation before April 6, 1999 and before October 14, 1999.

15.

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 1.03(a): A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b): A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(b): Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full

accounting regarding such property.

Rule 3.03(a)(1): A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

Rule 8.04(a)(3): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count III - Elena M. Villavicensio, M.D.

16.

On or about June 1995, Complainant undertook medical treatment of Respondent's client, Elizabeth Olivarez, and was provided with a letter of protection dated September 13, 1995 which was signed by Respondent. Complainant also obtained an assignment of benefits from Elizabeth Olivarez dated June 19, 1995.

17.

Following settlement of the client's claims on December 18, 1998 for the sum of \$4,750.00, Respondent failed to promptly notify Complainant of the receipt of the settlement funds. Instead, Respondent informed Complainant on January 2, 1997 that Ms. Olivarez received no monetary compensation from her case and Respondent was unable to satisfy the letter of protection.

18.

After Complainant learned from opposing counsel on February 19, 1999 that Respondent had actually received settlement funds, Respondent advised Complainant that the balance of his client's settlement funds after his contingency fee was paid were assigned to Respondent's firm as attorney fees. These additional attorney fees were to pay for Respondent's representation of

Ms. Olivarez in two previous and unrelated criminal cases.

19.

After Respondent deducted his contingency fee and expenses of the suit from the \$4,750.00 settlement, there was a recovery for the client. However, Respondent allocated all of the client's recovery to unrelated sums owing to the Respondent.

20.

Respondent failed to maintain complete records of these funds after termination of representation in January 1997.

21.

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

Rule 1.14(a): A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded.

Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.14(b): Upon receiving funds or other property in which a client or third person has

an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 4.01(a): In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

Rule 8.04(a)(3): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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 and further relief to which it is entitled, including costs of court, restitution, and reasonable attorney fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

Robert E. Kaszczuk
Assistant Disciplinary Counsel

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

Robert E. Kaszczuk
ROBERT E. KASZCZUK
State Bar No. 11106300

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

The foregoing document was served in accordance with the Texas Rules of Civil Procedure upon Patrick E. Stolmeier, 219 E. Craig Place, San Antonio, Texas 78212-3527, by regular mail, on the 16th day of July, 2001.

Robert E. Kaszczuk
Robert E. Kaszczuk

STATE BAR OF TEXAS



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

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7000 1670 0005 9695 8647

July 16, 2001

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

RE: Commission for Lawyer Discipline v. Patrick J. Stolmeier

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 Patrick J. Stolmeier. Mr. Stolmeier has designated **Bexar 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:

Patrick J. Stolmeier
219 E. Craig Place
San Antonio, Texas 78212-3547

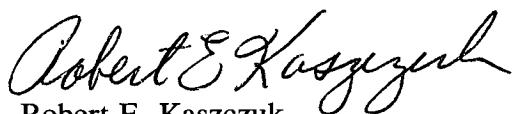
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would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

Once a trial judge has been appointed, please forward the original and 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 Bexar 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 Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar 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,



Robert E. Kaszczuk
Assistant Disciplinary Counsel

Enclosures

REK/apr



The Supreme Court of Texas

CHIEF JUSTICE

THOMAS R. PHILLIPS

JUSTICES

NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

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

Sept 12 2001

CLERK

JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

The Honorable Reagan Greer
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Greer:

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. Patrick J. Stolmeier*, and a copy of the Supreme Court's order appointing the Honorable J. Ray Gayle, III, Judge of the 239th District Court, Angleton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable J. Ray Gayle, III
Mr. Robert E. Kaszczuk
Mr. Patrick J. Stolmeier



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
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

6/12/01

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Mr. Robert E. Kaszczuk
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Patrick J. Stolmeier
219 E. Craig Place
San Antonio, Texas 78212-3547

Dear Mr. Kaszczuk and Mr. Stolmeier:

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 J. Ray Gayle, III, Judge of the 239th District Court, Angleton, Texas to preside in

Commission for Lawyer Discipline v. Patrick J. Stolmeier

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

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

10/12/2001

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Honorable J. Ray Gayle, III
Judge, 239th District Court
401 Courthouse
111 Locust Street
Angleton, Texas 77515-4678

Dear Judge Gayle:

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. Stolmeier and Mr. Robert E. Kaszczuk, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210-335-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, obtain a court reporter, obtain claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk