

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99- 9207

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

The Supreme Court of Texas hereby appoints the Honorable J. Michael Wilkinson, Judge of the 179th District Court of Harris County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Frank L. Carrillo

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 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 26th day of October, 1999.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9207, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 7 day of November, 1999.



Thomas R. Phillips
Chief Justice

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

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IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, TEXAS

FRANK L. CARRILLO

_____ 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, FRANK L. CARRILLO, 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, FRANK L. CARRILLO, State Bar Number 00786399, was, at the time the following alleged acts of professional misconduct occurred, an attorney licensed to practice law in the State of Texas and a member of the State Bar of Texas. Respondent may be served with process at 9710 Silver Moon, San Antonio, Bexar County, Texas 78250, his usual place of business.

Venue

At the time the alleged professional misconduct occurred, Respondent maintained a law office in San Antonio, Bexar County, Texas. The alleged acts of professional misconduct occurred in whole or in part in Bexar County, Texas. Accordingly, pursuant to Texas Rules of

Disciplinary Procedure 3.03, venue is proper in Bexar County, Texas.

Discovery Level Designation

1.

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:

Jorge Golarte	July 30, 1998
Leticia J. Velasquez	October 13, 1998
Kestla M. Eike	March 13, 1998
State Bar of Texas	August 4, 1998

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

Count I -- Jorge Golarte

3.

Jorge Golarte hired Respondent in August of 1997 to represent him in a Federal criminal matter. Complainant deposited \$2,500.00 with Respondent. The Respondent was to place \$500.00 in the Complainant's Commissary account for his Federal incarceration. The remaining \$2,000.00 was to be placed into an escrow account. The Respondent was to use \$1,000.00 if the

Respondent was granted a bond on his Federal charges and if he was not granted bond the money was to be returned to the Complainant. The Complainant was not granted bond. The remaining \$1,000.00 was to be used by Respondent in the event that Respondent represented the Complainant in pending Travis County warrants. The Respondent never represented the Complainant on these warrants.

4.

Respondent in January of 1998 removed the Complainant's funds from the escrow account for an unspecified purpose not approved by the Complainant and returned the funds to the escrow account at a later time. Once again, the Respondent in February of 1998 removed the funds belonging to the Complainant from the escrow account for an unspecified purpose not approved by the Complainant and returned the funds to the escrow account at a later time. In April of 1998, Respondent removed the funds from the escrow account for an unspecified purpose without the consent of the Complainant and has failed to return the funds to the escrow account. Respondent has failed to provide an accounting to the Complainant for the funds withdrawn from the escrow account.

5.

Upon termination of the attorney/client relationship and upon requests from Mr. Golarte, Respondent failed to timely communicate with Mr. Golarte as to the status of the funds deposited with him for the benefit of Mr. Golarte.

6.

Respondent failed to return the unearned fee after Respondent did not represent Complainant in the matter.

7.

Mr. Golarte is due restitution in the amount of \$2,000.00.

8.

In relation to the representation of Mr. Golarte, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

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 1.14(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 persons 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 by agreement with the client, a lawyer shall promptly deliver to the client or third person any fund 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 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 * * * refunding any advance payments of fee that has not been earned.

Rule 8.01(b) -- A lawyer in connection with a bar disciplinary matter, shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

Rule 8.04(a)(8) -- A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as

required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal grounds for failure to do so.

Count II - Kestla M. Eike

9.

Complainant, Kestla M. Eike, hired Respondent on December 5, 1997 to file for divorce, child support and protective orders. Complainant was paid \$250.00 for the representation. Respondent failed to file any documents for Complainant after numerous requests for him to file and that it was a matter of urgency that he do so timely. Respondent failed to respond to Complainant's numerous requests for information and made material misrepresentations by accepting money from Complainant although no work had been done and by telling the Complainant that he had filed the documents in court, when in fact no documents were on file.

10.

Respondent failed to return the unearned fee upon request.

11.

Respondent failed to furnish the district grievance committee a response or to provide other information relating to the allegations in the complaint. Respondent continued to practice law and represent this Complainant while administratively suspended from the practice of law.

12.

Ms. Eike is due restitution in the amount of \$250.00.

13.

In relation to the representation of Ms. Eike, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

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 or clients.

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 1.15(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 advanced payments of fee that has not been earned.

Rule 8.01(b) -- A lawyer in connection with a bar disciplinary matter, shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.

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

Rule 8.04(a)(8) -- A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal grounds for failure to do so.

Rule 8.04(a)(11) -- A lawyer shall not engage in the practice of law when the lawyer is on in active status or when the lawyer's right to practice has been suspended or terminated, including but not limited to situations where the lawyer's right to practice has been administratively suspended for failure to timely pay required fees or assessments or for failure to comply with Article XII of the State Bar Rules relating to Mandatory Continuing Legal Education.

Count III - Leticia J. Velasquez

14.

Leticia J. Velasquez hired Respondent to represent her in a divorce proceeding. After the divorce was granted and the agreed final decree of divorce was granted on September 21, 1995, Respondent was to file the appropriate documents with the Federal Government to secure direct

deposit of Complainant's agreed portion of her former spouse's military retirement as part of the divorce settlement. Respondent neglected the legal matter entrusted to him by failing to file the required documents. Respondent has failed to return Complainant's phone calls seeking information on the status of her case.

15.

Respondent received notice of this grievance on November 5, 1998 and his response was due on December 7, 1998. Respondent has failed to provide the required response to the district grievance committee.

16.

In relation to the representation of Ms. Velasquez, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

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 or clients

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 8.04(a)(8) -- A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for the failure to do so.

Count IV - State Bar of Texas

17.

On march 10, 1998, an agreed Judgment of Public Reprimand was reached by a panel of the District 10 A Grievance Committee and the Respondent in No. S0089705726 Larry C. Weisel - Frank L. Carrillo. Respondent has failed to comply with the following provision of the Judgment of Public Reprimand and is in violation of a disciplinary judgment: Respondent shall agree to participate in the San Antonio Professionalism Enhancement Program (PEP) for the period and to the extent prescribed by that committee.

18.

Respondent, although having been duly served with notice of the complaint filed by the State Bar of Texas and a request for a response, failed to timely furnish to the district grievance committee a response to the complaint as requested by the committee and failed to furnish a good faith reason for the failure to respond.

19.

In relation to the complaint filed by the State Bar of Texas, the conduct of Respondent described above constitutes a violation of the following Disciplinary Rules:

Rule 8.04(a)(7) -- A lawyer shall not violate any disciplinary or disability order or judgment.

Rule 8.04(a)(8) -- A lawyer shall not fail to timely furnish to the Chief Disciplinary Counsel's office or a district grievance committee a response or other information as required by the Texas Rules of Disciplinary Procedure, unless he or she in good faith timely asserts a privilege or other legal ground for the failure to do so.

PRAYER

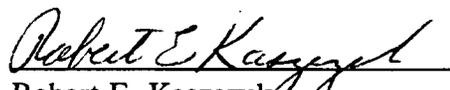
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court, litigation expenses and attorney's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

Respectfully submitted,

Dawn Miller
Acting General Counsel

Robert E. Kaszczuk
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


Robert E. Kaszczuk
State Bar No. 11106300

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Z 292 150 058**

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

August 23, 1999

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

RE: Commission for Lawyer Discipline v. Frank L. Carrillo

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 Frank L. Carrillo. Mr. Carrillo 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:

Frank L. Carrillo
9710 Silver Moon
San Antonio, Texas 78250

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 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.

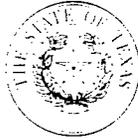
Sincerely,



Robert E. Kaszczuk
Assistant General Counsel

Enclosures

REK/ch



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 465-1312

FAX: (512) 465-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

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

NOV 09 1999

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

Mr. Frank L. Carrillo
9710 Silver Moon
San Antonio, Texas 78250

Dear Mr. Kaszczuk and Mr. Carrillo:

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. Michael Wilkinson, Judge of the 179th District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Frank L. Carrillo

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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FAX: (512) 463-1365

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HARRIET O'NEILL
ALBERTO R. GONZALES

NOV 09 1999

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. Frank L. Carrillo*, and a copy of the Supreme Court's order appointing the Honorable J. Michael Wilkinson, Judge of the 179th District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. J. Michael Wilkinson
Mr. Robert E. Kaszczuk
Mr. Frank L. Carrillo



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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ALBERTO R. GONZALES

NOV 09 1999

Honorable J. Michael Wilkinson
Judge, 179th District Court
301 San Jacinto Street, #812
Houston, Texas 77002

Dear Judge Wilkinson:

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. Carrillo and Mr. 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