

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 02 - **9052**

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

The Supreme Court of Texas hereby appoints the Honorable Thomas Gossett, Judge of the 391st District Court of Tom Green County, Texas, to preside in the Disciplinary Action styled

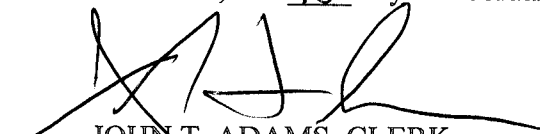
The Commission for Lawyer Discipline v. Robert Areche, Jr.

filed in the 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 pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

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

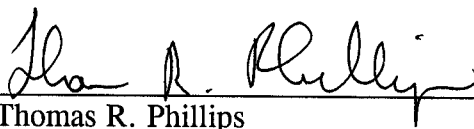
With the Seal thereof affixed at the City
Of Austin, this 28th day of February, 2002.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 02-9052 is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this ___ day of February, 2002.



Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR
LAWYER DISCIPLINE,
Petitioner

vs.

ROBERT ARECHE, JR.
Respondent

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§
§
§
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§
§

IN THE DISTRICT COURT

_____ JUDICIAL DISTRICT

BEXAR COUNTY, TEXAS

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

Discovery proceedings in this cause should be conducted on Level 2 pursuant to Tex.R.Civ.P. Rule 190.3.

II.

PARTIES

Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas. Respondent, Robert Areche, Jr., State Bar No. 10299125, is presently an attorney licensed to practice law in the State of Texas and a member of the State Bar of

Texas. Respondent maintains his principal place of practice and residence in San Antonio, Bexar County, Texas. Respondent may be served with citation in this cause at his principal place of business at 306 E. Cevallos Street, San Antonio, Bexar County, Texas 78204.

III.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

The cause of action and the relief sought in this case are within the jurisdictional requirements of this Honorable Court. Venue of this case is proper in Bexar County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Bexar County is the county of the Respondent's principal place of business and residence. All conditions precedent to proceeding with this cause have been performed or fulfilled.

IV.

PROFESSIONAL MISCONDUCT

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't.Code §81.001 *et seq.*, the Disciplinary Rules of Professional Conduct ("DRPC") and the Texas Rules of Disciplinary Procedure ("TRDP"). The complaints, which form the basis of this action, were filed by Macario C. Garza and Chris A. Garza. The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKGROUND

In the process of representing the complainants in personal injury matters, Respondent settled the claims and received the proceeds from the settlement. Respondent collected his fees from the settlement, withheld a portion of the proceeds to pay medical bills, and paid the remainder to the clients. Respondent did not, however, pay the medical bills and failed to keep the funds separate from his own funds. Respondent used the withheld funds for his personal benefit. After being given notice of the complaints against him and an opportunity to respond, Respondent failed to timely provide a written response to the grievance committee.

VI.

DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The conduct exemplified above is in violation of the following Texas Rule of Disciplinary 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 by 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 1.14(c) -- When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.

Rule 8.04(a)(8) -- (8) A lawyer shall not fail to timely furnish to the Chief Disciplinary Councils 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 failure to do so.

VII.

RELIEF SOUGHT

Petitioner would show that this Honorable Court should enter a judgment of professional misconduct and impose a sanction against Respondent which is in the Court's discretion appropriate under the facts established. Additionally, Respondent should be ordered to pay restitution to the complainants and all attorney fees and all costs associated with this litigation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Honorable

Court impose an appropriate sanction against Respondent as the facts proved shall warrant. Petitioner further prays to recover costs of court and all expenses associated with these proceedings, including attorney fees as provided in TRDP Rule 1.06(T)(8)(b). Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel
PAUL H. HOMBURG III,
Disciplinary Counsel

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

By: 

PAUL H. HOMBURG III
State Bar No. 09934050
ATTORNEYS FOR PETITIONER



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

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

MAR 07 2002

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Mr. Paul H. Homburg, III
Assistant Disciplinary Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. Robert Areche, Jr.
306 E. Cevallos Street
San Antonio, Texas 78204

Dear Mr. Homburg and Mr. Areche:

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 Thomas Gossett, Judge of the 391st District Court, San Angelo, Texas to preside in

Commission for Lawyer Discipline v. Robert Areche, Jr.

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

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MAR 07 2002

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. Robert Areche, Jr.*, and a copy of the Supreme Court's order appointing the Honorable Thomas Gossett, Judge of the 391st District Court, San Angelo, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Thomas Gossett
Mr. Paul H. Homburg, III
Mr. Robert Areche, Jr.



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

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DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

Honorable Thomas Gossett
Judge, 391st District Court
112 W. Beauregard Avenue
San Angelo, Texas 76903-5850

Dear Judge Gossett:

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. Areche and Mr. Homburg, 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 (956-335-2300) 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

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7099 3220 0000 0580 7310

January 25, 2002

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

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

RE: Commission for Lawyer Discipline v. Robert Areche, Jr.

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 Robert Areche, Jr. Mr. Areche 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:

Robert Areche, Jr.
306 E. Cevallos Street
San Antonio, TX 78204

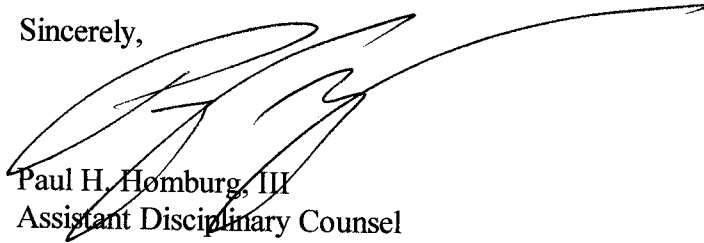
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would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

A large, stylized handwritten signature in black ink, appearing to read 'PHH', is written over the typed name and title.

Paul H. Homburg, III
Assistant Disciplinary Counsel

Enclosures

PHH/apr