

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 97- 9049**

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

The Supreme Court of Texas hereby appoints the Honorable Jack H. Robison, Judge of the 207th District Court of Comal County, Texas, to preside in the Disciplinary Action styled:

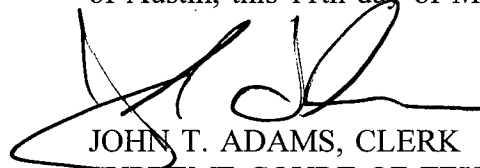
**The Commission for Lawyer Discipline v. Pablo Avila**

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Zavala 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,

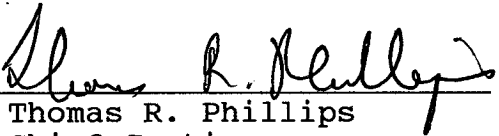
with the Seal thereof affixed at the City  
of Austin, this 11th day of March, 1997.

A handwritten signature in black ink, appearing to read 'J. Adams', is written over the typed name of the clerk.

JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 9-9049, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 11 day of March, 1997.

  
Thomas R. Phillips  
Chief Justice

COPY

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

COMMISSION FOR LAWYER  
DISCIPLINE

V.

PABLO AVILA

§  
§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

ZAVALA COUNTY, T E X A S

\_\_\_\_ 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, PABLO AVILA, 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, PABLO AVILA, State Bar Number 20211100, 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 Zavala County, Texas. No service is necessary at this time.

**Venue**

Respondent resides in and maintains his principal place of practice in Zavala County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Zavala County, Texas.

## Professional Misconduct

### 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 complaints which form the basis of this action were filed by Susan Surman and Rose Kendrick on or about January 23, 1996. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

### II.

On or about April 15, 1994, Respondent accepted employment and a \$5000 retainer from plaintiff's counsel, Pat Maloney, to serve as local counsel for breast implant cases in Zavala County, Texas. On or about October 1, 1995, Respondent accepted employment and a \$10,000 retainer plus an hourly fee to serve as local defense counsel for Baxter Healthcare, in a breast implant case, against two plaintiff's represented by Pat Maloney in the case styled Rose Lynn Kendrick and Susan Surman vs. Baxter Healthcare Corporation, Cause number 94-04-08755-CV-A in the District Court, 365th Judicial District, Zavala County, Texas. The Respondent assisted defense counsel in a review of the jurors summoned for the case in violation of Rule 1.09(a)(3) and 1.06(a) of the Texas Disciplinary Rules of Professional Conduct.

Once the plaintiffs discovered this situation and upon a motion for disqualification filed by the plaintiffs, the respondent was disqualified from further involvement in the case. However, Respondent allowed defense counsel for Baxter to use his office during the trial even though the Respondent was disqualified from the case in violation of Rule 1.06(e) of the Texas Disciplinary Rules of Professional Conduct.

After being disqualified from representing Baxter, Respondent, on or about October 3, 1995, sought to influence the Court to reconsider its decision by delivering an ex-parte written communication to the Court without providing notice to counsel in the case in violation of Rule 3.05(b) of the Texas Disciplinary Rules of Professional Conduct.

Finally, on or about October 13, 1995, Respondent accepted \$7500 from plaintiffs counsel, Pat Maloney, through attorney Phil Watkins, to serve as local counsel on the same case he had been disqualified from and for other pending breast implant cases involving Baxter Healthcare after Respondent had already conferred with defense counsel while picking the jury in violation of Rules 1.06(e) and 1.09(a)(2) of the Texas Disciplinary Rules of Professional Conduct.

## VII.

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

Rule 1.09(a)(2) - Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if the representation in reasonable probability will involve a violation of Rule 1.05.

Rule 1.09(a)(3) - Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if it is the same or a substantially related matter.

Rule 1.06(a) - A lawyer shall not represent opposing parties to the same litigation.

Rule 1.06(e) - If a lawyer has accepted representation in violation of this Rule, or if multiple representation properly accepted becomes improper under this Rule, the lawyer shall promptly withdraw from one or more representations to the extent necessary for any remaining representation not to be in violation of these Rules.

Rule 3.05(b) - A lawyer shall not except as otherwise permitted by law and not prohibited by applicable rules of practice or procedure, communicate or cause another to communicate ex parte with a tribunal for the purpose of influencing that entity or person

concerning a pending matter other than:

- (1) in the course of official proceedings in the case;
- (2) in writing if he promptly delivers a copy of the writing to opposing counsel or the adverse party if he is not represented by a lawyer;
- (3) orally upon adequate notice to opposing counsel or to the adverse party if he is not represented by a lawyer

**PRAYER**

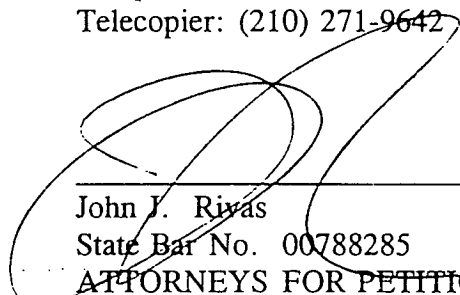
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steve Young  
General Counsel

John J. Rivas  
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



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John J. Rivas  
State Bar No. 00788285  
ATTORNEYS FOR PETITIONER

# STATE BAR OF TEXAS



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
P 583 840 623

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

January 24, 1997

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

RE: Commission for Lawyer Discipline v. Pablo Avila

Dear Mr. Adams:

Enclosed please find an original and two (2) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Pablo Avila. Mr. Avila has designated Zavala 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 practices 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:

Pablo Avila  
P.O. Drawer 688  
Crystal City, Texas 78839-0688

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 two (2) copies of the Disciplinary Petition and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Zavala 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 Zavala County, Texas and a return envelope to be sent to the District Clerk of Zavala 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 black ink that reads "John Rivas/mc". The signature is written in a cursive style with a large initial "J" and a trailing "mc".

John Rivas  
Assistant General Counsel

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

CLERK  
JOHN T. ADAMS

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
JOHN CORNYN  
CRAIG ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT

MAR 17 1997

Mr. John J. Rivas  
Assistant General Counsel, State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205

Mr. Pablo Avila  
P.O. Drawer 688  
Crystal City, Texas 78839-0688

Dear Mr. Rivas and Mr. Avila:

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 Jack H. Robison, Judge of the 207<sup>th</sup> District Court, New Braunfels, Texas to preside in

Commission for Lawyer Discipline v. Pablo Avila

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

MAR 17 1997

The Honorable Rosa Elva Mata  
District Clerk of Zavala County  
P.O. Box 704  
Crystal City, Texas 78839

Dear Ms. Mata:

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. Pablo Avila, and a copy of the Supreme Court's order appointing the Honorable Jack H. Robison, Judge of the 207<sup>th</sup> District Court, New Braunfels, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams  
Clerk

cc: Hon. Jack H. Robison  
Mr. Jack J. Rivas  
Mr. Jack H. Robison



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JAMES A. BAKER  
GREG ABBOTT

MAR 17 1997

Honorable Jack H. Robison  
Judge, 207<sup>th</sup> District Court  
317 Courthouse Annex  
150 N. Seguin Street  
New Braunfels, Texas 78130

Dear Judge Robison:

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. Rivas and Mr. Avila, and a copy of the letter to the District Clerk of Zavala County.

We then recommend that, four or five weeks after receipt of this letter, you or your coordinator contact the presiding judge or the District Clerk of Zavala County 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 date for trial, the judge or coordinator of that court be contacted 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 (210-220-3954) 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