

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 00- 9014

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

The Supreme Court of Texas hereby appoints the Honorable Ronald M. Yeager, Judge of the 36th District Court of San Patricio County, Texas, to preside in the Disciplinary Action styled:

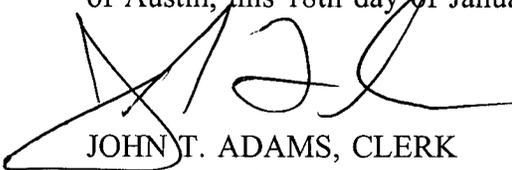
The Commission for Lawyer Discipline v. Mark A. Cantu

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

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

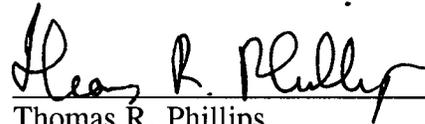
with the Seal thereof affixed at the City
of Austin, this 18th day of January, 2000.

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

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 00-9014, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 19 day of January, 2000.

A handwritten signature in black ink, appearing to read "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR
LAWYER DISCIPLINE,
Petitioner

§
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§

IN THE DISTRICT COURT

vs.

_____ JUDICIAL DISTRICT

MARK A. CANTU,
Respondent

HIDALGO COUNTY, TEXAS

PETITIONER'S ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW PETITIONER, COMMISSION FOR LAWYER DISCIPLINE,
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, Mark A. Cantu, State Bar No. 03767445, is a member of the
State Bar of Texas presently licensed to practice law in the State of Texas. He may be
served with process in this proceeding at his place of employment at 1300 North 10th
Street, Suite 400, McAllen, Hidalgo County, Texas.

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 Hidalgo County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Hidalgo County is the county of the Respondent's 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 on or about January 21, 1998 and April 23, 1998 by Santos Perez ("Perez"). The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKGROUND

Perez hired Respondent Mark A. Cantu ("Cantu") to represent him in a personal injury case on January 10, 1995, with a written contingent fee agreement that allowed Cantu to be paid 40 per cent of any amount received by Perez in the case. On August 20, 1996, the case settled for a total of \$360,000.00. Cantu represented to Perez that the

case had settled for \$488,000.00. Cantu represented to Perez that \$125,000.00 of the settlement funds had been paid on Perez behalf to satisfy a workers' compensation insurance lien, when in fact, no funds were paid to the insurance carrier.

VI.

When calculating the fee Cantu charged Perez, Cantu deducted his 40 per cent from the \$488,000.00 figure instead of the actual \$360,000 settlement figure. By that deception, Cantu charged his client \$195,200.00 (40 per cent of \$488,000.00) instead of the \$144,000.00 (40 per cent of \$360,000.00) to which Cantu may have been entitled. Cantu also charged his client litigation expenses of \$47,604.10, when some of the expenses were unreasonable or unsubstantiated. In response to a subpoena, Cantu was able to provide receipts totaling only \$25,514.25.

VII.

During the course of the representation, Cantu entered into a business transaction with Perez, purporting to sell Perez a mobile home for a price of \$10,000.00, when Cantu never had the ability to transfer clear title of the mobile home to Perez. Despite his inability to provide clear title, Cantu charged Perez the entire purchase price and deducted the amount from the settlement proceeds as an expense. Moreover, Cantu retains possession of the mobile home.

VIII.

Cantu also engaged in a business transaction with Perez during the course of the representation by leasing to Perez the space where the mobile home was located.

\$2,735.00 was charged to Perez for rent on the space at the time of settlement.

IX.

Perez requested Cantu give him a copy of his file at the time of the August 20, 1996 settlement. The file was not delivered. Perez again requested a copy of his file in January and in February of 1998. The file was not delivered. On March 9, 1998, Perez paid \$600.00 in copying fees to Compex Legal Services, where the file had been stored, but still could not obtain a complete copy of the file and had to pay Cantu an additional \$25.00 when he picked up the records which were provided. On March 24, 1998, Cantu told Perez that Perez would have to pay an additional \$3,000.00 in order to retrieve the complete file. At the time of making his complaint to the State Bar, Perez had not yet received a complete copy of his file.

X.

DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The conduct described above is in violation of the following Texas Rules of Disciplinary Conduct:

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

Rule 1.04(a) -- A lawyer shall not enter into an arrangement for, charge, or collect an illegal or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

Rule 1.08(a)(1) -- A lawyer shall not enter into a business transaction with a

client unless the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed in a manner which can be reasonably understood by the client.

Rule 1.08(a)(3) -- A lawyer shall not enter into a business transaction with a client unless the client consents in writing thereto.

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 payment 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.

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 for all 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,
Interim Chief Disciplinary Counsel

PAUL H. HOMBURG III,
Assistant General Counsel

Office of General 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

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#Z 292 150 094

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

October 27, 1999

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

RE: Commission for Lawyer Discipline v. Mark A. Cantu

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 Mark A. Cantu. Mr. Cantu has designated **Hidalgo 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:

Mark A. Cantu
1300 North 10th, Suite 400
McAllen, Texas 78501

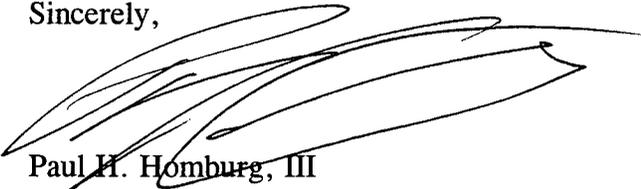
As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as set forth in Section 3.07 of the Texas Rules of Disciplinary Procedure. If not, I would 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 Hidalgo 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 Hidalgo County, Texas and a return envelope to be sent to the District Clerk of Hidalgo 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, appearing to read "Paul H. Homburg, III". The signature is written in a cursive style with several overlapping loops and is positioned above the typed name.

Paul H. Homburg, III
Assistant General Counsel

Enclosures

PHH/apr

cc: State Bar of Texas
1109 N. 77 Sunshine Strip
Harlingen, Texas 78550



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
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JAN 21 2000

Honorable Ronald M. Yeager
Judge, 36th District Court
P.O. Box 1303
Sinton, Texas 78387-1303

Dear Judge Yeager:

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. Cantu and Mr. Homburg, and a copy of the letter to the District Clerk of Hidalgo County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the District Court Administrative Office (210-318-2200) 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 (210-546-0724) 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



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
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JAMES A. BAKER
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DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

JAN 21 2000

The Honorable Pauline Gonzales
District Clerk of Hidalgo County
P.O. Box 87
Edinburg, Texas 78540

Dear Ms. Gonzales:

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. Mark A. Cantu*, and a copy of the Supreme Court's order appointing the Honorable Ronald M. Yeager, Judge of the 36th District Court, Sinton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Ronald M. Yeager
Mr. Paul H. Homburg, II
Mr. Mark A. Cantu



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

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NADINE SCHNEIDER

JAN 21 2000

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

Mr. Mark A. Cantu
1300 North 10th Street, Suite 400
McAllen, Texas 78501

Dear Mr. Homburg and Mr. Cantu:

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 Ronald M. Yeager, Judge of the 36th District Court, Sinton, Texas to preside in

Commission for Lawyer Discipline v. Mark A. Cantu

Sincerely,

SIGNET

John T. Adams
Clerk