

ORDER OF THE SUPREME COURT OF TEXAS

9050

Misc. Docket No. 02 - _____

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

The Supreme Court of Texas hereby appoints the Honorable Don Chrestman, Judge of the 43rd District Court of Parker County, Texas, to preside in the Disciplinary Action styled

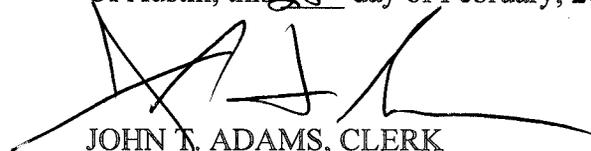
The Commission for Lawyer Discipline v. Richard Scherba

filed in the District Court of Dallas County, Texas.

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Dallas 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. 02-9050 is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 26 day of February, 2002.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR
LAWYER DISCIPLINE

V.

RICHARD SCHERBA

§
§
§
§
§
§

IN THE DISTRICT COURT OF

DALLAS COUNTY, TEXAS

_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complains of Respondent, Richard Scherba, (hereinafter called "Respondent"), showing the Court:

I.

Discovery Control Plan

Pursuant to Rules 190.1 and 190.3, TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level III Discovery Control Plan. Rule 3.07 of the Texas Rules of Disciplinary Procedure requires the court set a trial date for this matter to commence no later than 180 days after the date this Disciplinary Petition is filed with the District Court.

II.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaint, which forms the basis of the Disciplinary Petition,

was filed on or after May 1, 1992.

III.

Respondent is an attorney licensed to practice law in Texas and is a member of the State Bar of Texas. Respondent is a resident of and has his principal place of practice in Dallas County, Texas.

Respondent can be served at 6160 Oram, Dallas, Texas 75214. Multi-Service Process will serve citation.

FIRST CAUSE OF ACTION
ARISING OUT OF BALTAZAR COMPLAINT

IV.

On or about May 17, 1996, Celia Baltazar ("Baltazar") hired Respondent to represent her and two other family members in a personal injury matter arising from an accident. On or about June 27, 1997, the matter settled for the sum of \$25,500.00. At that time, a distribution of the settlement funds occurred wherein Respondent received attorney's fees in the amount of \$8,490.00, Baltazar and her family members received the sum of \$4,166.00 in a partial settlement, expenses for certain fees and costs were paid in the sum of \$2,375.00 and the remaining sum of \$10,459.00 was placed in Respondent's trust account for pending medical expenses. Thereafter, Respondent failed to pay any medical bills and failed to release funds owed to Baltazar and her family members.

V.

Further, during the period of representation, Respondent failed to properly supervise his non-lawyer assistant to ensure that his conduct was compatible with Respondent's professional obligations as a lawyer. Respondent abandoned his office and his client files on or about January, 2000, and took no action to supervise his non-lawyer assistant on matters pertaining to his client files

thereafter. Respondent permitted his non-lawyer employee to violate the Texas Disciplinary Rules of Professional Conduct and, having direct supervisory authority over his non-lawyer employee and having knowledge of the non-lawyer employee's actions, failed to take reasonable remedial action to avoid or mitigate the consequences of this misconduct. Respondent failed to direct and therefore had knowledge that his non-lawyer assistant failed to disburse moneys held in Respondent's trust account to pay medical expenses.

VI.

Additionally, in Respondent's May 31, 2001 written response to the complaint to the State Bar of Texas he stated that he could not completely respond to the complaint as Baltazar's file was in the possession of attorney Marcus Norman ("Norman"), and that Norman was unable to find the file. However, Norman informed the State Bar of Texas on June 22, 2001 that he had informed Respondent in early May 2001 that Respondent could pick up all of his files, including Baltazar's file, at Respondent's convenience.

VII.

Such acts and/or omissions on the part of Respondent as are described in Paragraph V, VI and VII, hereinabove, which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.14(a), (b), 5.03(a), (b)(1) & (2), 8.01(b), and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

VIII.

The complaint, which forms the basis of the Cause of Action hereinabove set forth, was brought to the attention of the Chief Disciplinary Counsel of the State Bar of Texas by Celia

Baltazar filing a complaint on or about January 16, 2001.

SECOND CAUSE OF ACTION
ARISING OUT OF MORALES COMPLAINT

IX.

On or about June 8, 1999, Claudio Morales ("Morales") hired Respondent to represent him in a personal injury matter arising from an automobile accident. The passengers in Morales's car, Merced Morales ("Merced"), Ponciano Zuniga ("Zuniga") and Felipe Balderas ("Balderas"), also employed Respondent to represent them in the same accident. Respondent settled the matters but failed to pay any of the claimants their share of the settlement. The claims of Merced, Zuniga and Balderas were settled on December 17, 1999 for \$4,383.00, \$2,997.00 and \$2,942.00, respectively. Morales was at fault in the collision and was only eligible to receive Personal Injury Protection funds from Allstate, Morales's insurance carrier. On May 2, 2000 checks for \$981.00 and \$565.00 were issued on Complainant's behalf. As the checks were not negotiated, they were re-issued on January 26, 2001.

X.

Further, during the period of representation, Respondent failed to properly supervise his non-lawyer assistant to ensure that his conduct was compatible with Respondent's professional obligations as a lawyer. Respondent abandoned his office and his client files on or about January, 2000, and took no action to supervise his non-lawyer assistant on matters pertaining to his client files thereafter. Respondent permitted his non-lawyer employee to violate the Texas Disciplinary Rules of Professional Conduct and, having direct supervisory authority over his non-lawyer employee and having knowledge of the non-lawyer employee's actions, failed to take reasonable remedial

action to avoid or mitigate the consequences of this misconduct. Respondent failed to direct and therefore had knowledge that his non-lawyer assistant failed to disburse moneys held in Respondent's trust account to pay medical expenses.

XI.

Additionally, in Respondent's May 31, 2001 written response to the State Bar of Texas he stated that he could not completely respond to the complaint as Morales' file was in the possession of Norman, and that Norman was unable to find the file. However, Norman informed the State Bar of Texas on June 22, 2001 that he had informed Respondent in early May 2001 that Respondent could pick up all of his files, including Morales' file, at Respondent's convenience.

XII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs X, XI and XII, hereinabove, which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.06(a), (b), 1.14(b), 5.03(a), (b)(1) & (2), and 8.01(a), 8.04(a)(1), (2), (3) of the Texas Disciplinary Rules of Professional Conduct.

XIII.

Claudio Morales filing a complaint on or about January 30, 2001 brought the complaint, which forms the basis of the Cause of Action hereinabove set forth, to the attention of the Chief Disciplinary Counsel of the State Bar of Texas.

THIRD CAUSE OF ACTION
ARISING OUT OF SHARON EASON COMPLAINT

XIV.

In 1999, Sharon Eason hired Respondent to represent her in a personal injury matter. Respondent settled the matter and received moneys for settlement, but Sharon Eason never received the settlement funds from Respondent.

XV.

In Respondent's May 31, 2001 written response to the complaint of Sharon Eason to the State Bar of Texas he stated that he could not completely respond to the complaint as Sharon Eason's file was in the possession of Norman and that Norman was unable to find the file. However, Norman informed the State Bar of Texas on June 22, 2001 that he had informed Respondent in early May 2001 that Respondent could pick up all of his files, including Sharon Eason's file, at Respondent's convenience.

XVI.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XV and XVI, hereinabove, which occurred on or after January 1, 1990, constitute conduct that violates Rules 8.01(a) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

XVII.

Sharon Eason filing a complaint on or about February 23, 2001 brought the complaint, which forms the basis of the Cause of Action hereinabove set forth, to the attention of the Chief Disciplinary Counsel of the State Bar of Texas.

FOURTH CAUSE OF ACTION
ARISING OUT OF WILLIAM EASON COMPLAINT

XVIII.

In 1999, William Eason hired Respondent to represent him in a personal injury matter. Respondent settled the matter and received moneys for settlement, but William Eason never received the settlement funds from Respondent.

XIX.

In Respondent's May 31, 2001 written response to the complaint of William Eason to the State Bar of Texas he stated that he could not completely respond to the complaint as William Eason's file was in the possession of Norman and that Norman was unable to find the file. However, Norman informed the State Bar of Texas on June 22, 2001 that he had informed Respondent in early May 2001 that Respondent could pick up all of his files, including Eason's file, at Respondent's convenience.

XX.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XIX, and XX, hereinabove, which occurred on or after January 1, 1990, constitute conduct that violates Rules 8.01(a) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

XXI.

William Eason filing a complaint on or about February 23, 2001 brought the complaint, which forms the basis of the Cause of Action hereinabove set forth, to the attention of the Chief Disciplinary Counsel of the State Bar of Texas.

FIFTH CAUSE OF ACTION
ARISING OUT OF MENDEZ COMPLAINT

XXII.

On or about October 29, 1998, Julian Mendez ("Mendez") employed Respondent to represent him in a personal injury matter. On or about May 17, 1999, Respondent settled the matter without Mendez's knowledge or consent. Respondent received two settlement checks from the insurance carrier, one for \$25,000.00 and one for \$5,000.00. Respondent affixed Mendez's name to the checks without Mendez's knowledge or consent and negotiated the checks. Respondent then converted those funds to his own use and provided neither Mendez nor any medical providers with their portions of the funds.

XXIII.

Further, during the period of representation, Respondent failed to properly supervise his non-lawyer assistant to ensure that his conduct was compatible with Respondent's professional obligations as a lawyer. Respondent abandoned his office and his client files on or about January, 2000, and took no action to supervise his non-lawyer assistant on matters pertaining to his client files thereafter. Respondent permitted his non-lawyer employee to violate the Texas Disciplinary Rules of Professional Conduct and, having direct supervisory authority over his non-lawyer employee and having knowledge of the non-lawyer employee's actions, failed to take reasonable remedial action to avoid or mitigate the consequences of this misconduct. Respondent failed to direct and therefore had knowledge that his non-lawyer assistant failed to disburse moneys held in Respondent's trust account to pay medical expenses.

XXIV.

Additionally, in Respondent's May 31, 2001 written response to the State Bar of Texas he stated that he could not completely respond to the complaint as Mendez's file was in the possession of Norman, and that Norman was unable to find the file. However, Norman informed the State Bar of Texas on June 22, 2001 that he had informed Respondent in early May 2001 that Respondent could pick up all of his files, including Mendez's file, at Respondent's convenience.

XXV.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XXIII, XIV, and XV, hereinabove, which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.14(a), (b), 5.03(a), (b)(1) & (2), 8.01(a), (b), 8.04(a)(2), (3) and 8.04(a)(8) of the Texas Disciplinary Rules of Professional Conduct.

XXVI.

Julian Mendez filing a complaint on or about February 27, 2001 brought the complaint, which forms the basis of the Cause of Action hereinabove set forth, to the attention of the Chief Disciplinary Counsel of the State Bar of Texas.

PRAYER

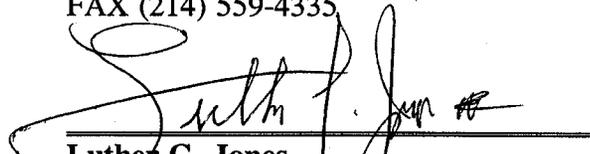
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

Dawn Miller
Chief Disciplinary Counsel

Luther G. Jones
Assistant Disciplinary Counsel

State Bar of Texas
Litigation - Dallas
3710 Rawlins
Suite 800
Dallas, Texas 75219
(214) 559-4353
FAX (214) 559-4335



Luther G. Jones
State Bar Card No. 10973200

ATTORNEYS FOR PETITIONER



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
XAVIER RODRIGUEZ

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

CLERK
JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

MAR 07 2002

Mr. Luther Jones
Assistant Disciplinary Counsel, State Bar of Texas
3710 Rawlins, Suite 800
Dallas, Texas 75219

Mr. Richard Scherba
P.O. Box 141050
Dallas, Texas 75214

Dear Mr. Jones and Mr. Scherba:

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 Don Chrestman, Judge of the 43rd District Court, Weatherford, Texas to preside in

The Commission for Lawyer Discipline v. Richard Scherba

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

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

Honorable Don Chrestman
Judge, 43rd District Court
117 Fort Worth Street
Weatherford, Texas 76086

Dear Judge Chrestman:

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. Scherba and Mr. Jones, and a copy of the letter to the District Clerk of Dallas County.

We then recommend that, either before or immediately after you set the case for trial, the Dallas County District Court Administrative Office (214-653-6510) 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 (214-653-2943) 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



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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JOHN T. ADAMS

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

MAR 07 2002

The Honorable Jim Hamlin
District Clerk of Dallas County
George L. Allen Courts Building
600 Commerce Street
Dallas, Texas 75202

Dear Mr. Hamlin:

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. Richard Scherba*, and a copy of the Supreme Court's order appointing the Honorable Don Chrestman, Judge of the 43rd District Court, Weatherford, Braunfels, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Honorable Don Chrestman
Mr. Luther Jones
Mr. Richard Scherba

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

January 25, 2002

CMRRR NO. 7001 0320 0004 3990 0468

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

RE: Commission for Lawyer Discipline v. Richard Scherba

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 Richard Scherba. Mr. Scherba has designated Dallas County, Texas, 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:

**Richard Scherba
P.O. Box 141050
Dallas, Texas 75214**

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 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.

Regency Plaza, 3710 Rawlins, Suite 800, Dallas, Texas 75219
Telephone: (214) 559-4353 Fax: (214) 559-4335

John T. Adams, Clerk

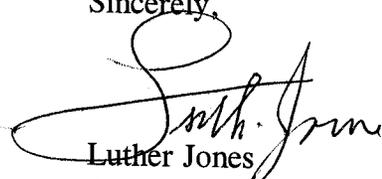
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Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Dallas County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the petition be returned to the undersigned.

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Dallas County, Texas, and a return envelope to be sent to the District Clerk of Dallas County, Texas, for the Clerk's use in returning a file-marked copy of the petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Luther Jones".

Luther Jones
Assistant Disciplinary Counsel

Enclosures