

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 93- 0122

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

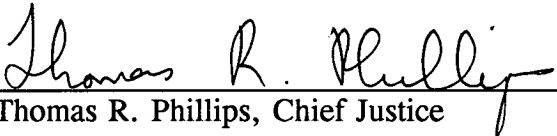
The Supreme Court of Texas hereby appoints the Honorable Mark Davidson, Judge of the 11th District Court, to preside in the Disciplinary Action styled:

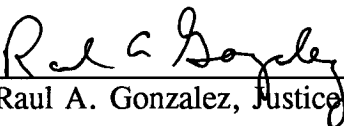
The Commission on Lawyer Discipline v. James P. Murtagh


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

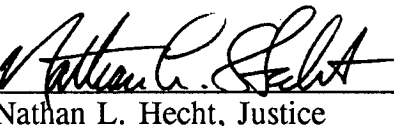
The Clerk of the Supreme Court shall promptly forward to the District Clerk of Dallas County, Texas, a copy of this Order and of the Disciplinary Petition for filing and service pursuant to Rule 3.03, Texas Rules of Disciplinary Procedure.

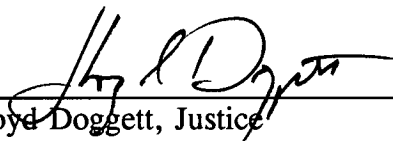
In Chambers, this 28<sup>th</sup> day of June, 1993.

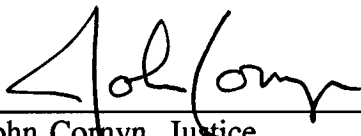
  
Thomas R. Phillips, Chief Justice

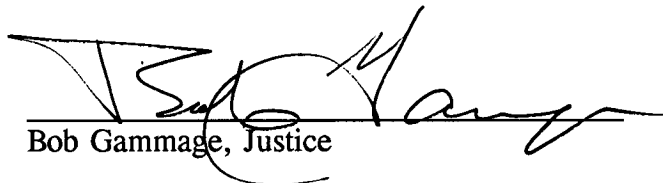
  
Raul A. Gonzalez, Justice


  
Jack Hightower, Justice

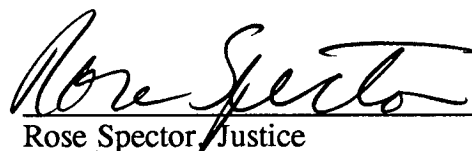
  
Nathan L. Hecht, Justice

  
Lloyd Doggett, Justice

  
John Cornyn, Justice

  
Bob Gammage, Justice

  
Craig Enoch, Justice

  
Rose Specter, Justice

NO. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	DALLAS COUNTY, TEXAS
JAMES P. MURTAGH	§	_____ 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, James P. Murtagh (hereinafter called "Respondent"), showing the Court:

I.

Petitioner brings this disciplinary action pursuant to the State Bar Act, Texas Gov't. Code Ann. §81.001, et seq. (Vernon 1988), the Texas Rules of Professional Responsibility, and the Texas Rules of Disciplinary Procedure. The complaint which forms the basis of the Disciplinary Petition was filed after May 1, 1992.

II.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent has his principal place of practice in Dallas County, Texas. An officer may serve citation on Respondent at his business address located at 702 South Beckley Avenue, Dallas, Dallas County, Texas 75203.

III.

In and around September, 1992, Catalina Sarmiento (hereinafter called "Sarmiento") hired Respondent to represent her husband, Ramon Sarmiento-Maldonado (hereinafter called

"Sarmiento-Maldonado") on federal charges of conspiracy to distribute heroin. Both Sarmiento and her husband are purportedly natives of Mexico and do not speak English. Respondent does not speak, read or write Spanish. During the month of September, 1992, Sarmiento made periodic payments of attorney's fees to Respondent, and paid him a total of Eleven Thousand and no/100 (\$11,000.00) Dollars in attorney's fees.

#### IV.

On or about November 3, 1992, Sarmiento-Maldonado entered into a plea agreement. The provisions of such plea agreement were not adequately explained to Sarmiento-Maldonado. Furthermore, the documentation evidencing such plea agreement was written entirely in English and was not fully explained to and/or translated for Sarmiento-Maldonado by Respondent. On or about December 9, 1992, the prosecution submitted a Presentence Investigation Report. Such report was not explained to and/or translated for Sarmiento-Maldonado by Respondent. On or about December 22, 1992, Respondent filed written objections to the Presentence Investigation Report. Such objections were prepared and filed without consultation with or input from Sarmiento-Maldonado. Sarmiento-Maldonado was subsequently sentenced to two-hundred thirty-five (235) months in federal prison.

#### V.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III. and IV. hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.02(a)(1), 1.02(a)(3), 1.03(b), and/or 1.04(a) of the Texas Disciplinary Rules of Professional Conduct.

VI.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the office of the General Counsel of the State Bar of Texas by Catalina Sarmiento's filing of a complaint on or about February 2, 1993.

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,

James M. McCormack  
General Counsel

E. Lynn Rodriguez  
Assistant General Counsel

Office of the General Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
(512) 463-1381



E. Lynn Rodriguez  
State Bar of Texas No. 17143880

ATTORNEYS FOR PETITIONER



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

JUSTICES  
RAUL A. GONZALEZ  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
BOB GAMMAGE  
CRAIG ENOCH  
ROSE SPECTOR

EXECUTIVE ASST.  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.  
MARY ANN DEFIBAUGH

July 6, 1993

The Honorable Mark Davidson  
11th District Court  
Harris County Courthouse  
Houston, Texas 77002

RE: COMMISSION FOR LAWYER DISCIPLINE v. JAMES P. MURTAGH.

Dear Judge Davidson,

We enclose for your information, a copy of the order of assignment, a copy of the Disciplinary Action, a copy of the notification letters to the State Bar General Counsel and respondent's attorney, as well as to the district clerk, in the referenced case.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.



THE SUPREME COURT OF TEXAS

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ROSE SPECTOR

EXECUTIVE ASS'T.  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.  
MARY ANN DEFIBAUGH

July 6, 1993

Hon. Bill Long  
District Clerk  
Dallas County Courthouse  
600 Commerce  
Dallas, Texas 75212

RE: COMMISSION FOR LAWYER DISCIPLINE v. JAMES P. MURTAGH.

Dear Mr. Long,

Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing, the State Bar of Texas Disciplinary Action referenced above and a copy of the Supreme Court's order appointing a judge to preside in this action.

Sincerely,

SIGNED  
John T. Adams  
Clerk

Encl.

cc: Hon. Mark Davidson  
Mr. James P. Murtagh  
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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MARY ANN DEFIBAUGH

July 6, 1993

Mr. James M. McCormack  
General Counsel, State Bar of Texas  
Post Office Box 12487  
Austin, Texas 78711

Mr. James P. Murtagh  
702 South Beckley Avenue  
Dallas, Texas 75203

RE: COMMISSION FOR LAWYER DISCIPLINE v. JAMES P. MURTAGH.

Dear Mr. McCormack and Mr. Murtagh,

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 Mark Davidson, 11th District Court, Harris County Courthouse, 301 Commerce, Houston, Texas 77002 to preside in the above referenced action.

Copies of pertinent documents are enclosed for your use.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

Encl.

cc: Hon. Mark Davidson