

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 94-9187

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

The Supreme Court of Texas hereby appoints the Honorable John D. Montgomery, Judge of the 309th District Court of Harris County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Richard W. Favaloro

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.

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

with the Seal thereof affixed at the City
of Austin, this 6th day of December, 1994.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 94-9187, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 9 day of December, 1994.


Thomas R. Phillips
Chief Justice

COPY

NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	DALLAS COUNTY, TEXAS
RICHARD W. FAVALORO	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the Commission for Lawyer Discipline, a committee of the State Bar of Texas (hereinafter called "Petitioner"), complaining of Respondent, Richard W. Favaloro, (hereinafter called "Respondent"), showing the Court:

I.

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.

II.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent is a resident of and has his principal place of business in Dallas County, Texas. An officer may serve citation on Respondent at his business address located at 703 McKinney Avenue, Suite 302, Dallas, Dallas County, Texas 75202.

III.

On September 23, 1992, Respondent filed a lawsuit styled "Tonya Atkins v. Pennco Containers", Cause No. C-92-8174A in the County Court at Law Number One of Dallas County, Texas (hereinafter called "the lawsuit"). The lawsuit alleged, among other things, that Tonya Atkins' (hereinafter called "Atkins") employment at Pennco Containers (hereinafter called "Pennco") was terminated in retaliation for her planning to file a worker's compensation claim and/or filing a complaint against Pennco with the Occupational Safety and Health Administration (hereinafter called "OSHA").

IV.

The litigation between the parties involved in the lawsuit was quite contentious, with several sanction motions filed by each party. In the original petition, Respondent claimed his client was wrongfully terminated because she notified her employer that she was contemplating filing a worker's compensation claim. Atkins, however, was deposed and stated under oath that not one of her actions were related to filing a worker's compensation claim, or even in contemplation of doing so. In spite of this testimony, Respondent continued to amend the lawsuit and each time alleged the wrongful discharge claim based on the non-existent worker's compensation claim.

V.

During the pendency of this lawsuit, on January 13, 1993, a hearing was held on Pennco's special exceptions, and the special exceptions were overruled. Respondent later submitted an Order in an attempt to memorialize the court's ruling. This Order, which was signed by the judge, differed greatly from the actual ruling of the court. It was not until after

the Order was signed that Mary Ludwick (hereinafter called "Ludwick"), attorney for Pennco, was informed of its entry. Ludwick immediately protested regarding some of the language used in the Order. As a result, an Order *Nunc Pro Tunc* was entered to properly reform the Order previously submitted by Respondent. Later, in a "Motion for Recusal" filed by Respondent on or about September 1, 1993, Respondent, with regard to the January 13, 1993 Order, stated that "Defendant filed a Motion to Reconsider, the court denied it, and found it violated Rule 13". In fact, the court made no such finding.

VI.

On March 14, 1993, the court heard Respondent's "Motion to Compel Discovery and for Sanctions against Pennco". On or about March 29, 1993, Respondent secured the judge's signature on an Order that widely varied from the oral pronouncement of the court during the March 14th hearing. Again, this Order was presented to the court without Respondent allowing Ludwick to review it and comment on it. Thereafter, on September 1, 1993, a revised Order was entered which properly reflected the court's ruling.

VII.

On or about September 1, 1993, Respondent caused to be filed in the lawsuit the "Motion for Recusal" directed at Judge Leonard Hoffman, Jr., (hereinafter called "Judge Hoffman"). In this motion, Respondent accused Judge Hoffman of being impartial towards Pennco in his rulings. Without any evidence or basis in fact, Respondent questioned the integrity of Judge Hoffman regarding his rulings in the lawsuit.

VIII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III., IV., V. and VI. hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 3.01, 3.02, 3.03(a)(1), 3.04(c)(1), 3.04(c)(2), 8.02(a), 8.04(a)(1), 8.04(a)(2) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

IX.

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by Ludwick's filing of a complaint on or about October 19, 1993.

PRAYER

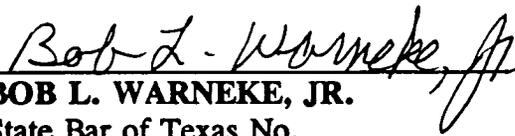
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

Bob L. Warneke, Jr.
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
Telephone: (512) 463-1463
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BOB L. WARNEKE, JR.
State Bar of Texas No.
ATTORNEYS FOR PETITIONER

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THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

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CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

December 8, 1994

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

The Honorable Bill Long
District Clerk of Dallas County
George Allen Courts Building
600 Commerce
Dallas, Texas 75202

Dear Mr. Long:

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 W. Favaloro and a copy of the Supreme Court's order appointing the Honorable John D. Montgomery, Judge of the 309th District Court, Houston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. John D. Montgomery
Mr. Richard W. Favaloro
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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ROSE SPECTOR

December 8, 1994

Honorable John D. Montgomery
Judge, 309th District Court
3rd Floor
1115 Congress Street
Houston, Texas 77002

Dear Judge Montgomery:

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. Favaloro and Mr. McCormack, 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 County court administrator (214-653-6108) 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 (214-653-7656) to obtain claim forms for your expenses and other information incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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ROSE SPECTOR

December 8, 1994

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

Mr. Richard W. Favaloro
703 McKinney Avenue, Suite 302
Dallas, Texas 75202

Dear Mr. McCormack and Mr. Favaloro:

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 John D. Montgomery, Judge of the 309th District Court, Houston, Texas to preside in

Commission for Lawyer Discipline v. Richard W. Favaloro

Sincerely,

SIGNED

John T. Adams
Clerk