

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 95- 9049

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

The Supreme Court of Texas hereby appoints the Honorable Lee G. Alworth, Judge of the 221st District Court of Montgomery County, Texas, to preside in the Disciplinary Action styled:

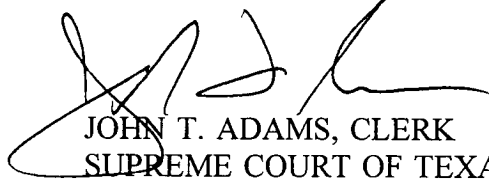
The Commission for Lawyer Discipline v. Maida C. Modgling

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Medina 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 10th day of February, 1995.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 95-9049, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 13th day of February, 1995.


Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	MEDINA COUNTY, TEXAS
MAIDA C. MODGLING	§	_____ 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, Maida C. Modgling, (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 her principal place of practice in Medina County, Texas. An officer may serve citation on Respondent at her business address located at 1204 17th Street, Hondo, Medina County, Texas 78861.

COPY

III.

In and around October, 1991, Respondent was employed as the county attorney for Medina County, and had been employed in that position for several years. On or about October 20, 1991, Edward Stuart (hereinafter called "Stuart") was arrested for assault causing bodily injury to his wife, Joy Stuart. On or about October 22, 1991, Stuart hired Respondent to represent him in a divorce proceeding recently filed by Joy Stuart. Respondent agreed to represent Stuart notwithstanding the fact that as county attorney, she was responsible for prosecuting him on the assault charges, and knew or should have known about the pending charges at the time she agreed to represent him. Respondent's representation of Stuart in the divorce proceeding was materially and directly adverse to the interests of Medina County in prosecuting Stuart in the criminal matter.

IV.

Since Respondent was representing Stuart in the divorce action, she disqualified herself from prosecuting him on the assault charges at his arraignment on or about December 12, 1991, thereby effectively terminating her representation of Medina County. However, upon termination of her representation of Medina County, Respondent failed to take the steps reasonably practicable to protect the county's interests in prosecuting Stuart. As a result, Stuart was never prosecuted, and the criminal charges against him were dismissed when the statute of limitations expired on the state's ability to prosecute him.

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 which

violates Rules 1.06(b)(1), 1.15(b)(1) and/or 1.15(d) 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 General Counsel of the State Bar of Texas by Joy E. Stuart filing a complaint on or about December 15, 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
Telephone: (512) 463-1463
Telecopier: (512) 477-4607


E. LYNN RODRIGUEZ
State Bar of Texas No. 17143880

ATTORNEYS FOR PETITIONER

u:\users\catherin\lynn\modgling.dp



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

February 10, 1995

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

JUSTICES
RAUL A. GONZALEZ
JACK HIGHTOWER
NATHAN L. HECHT
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN

The Honorable Jean Marty
District Clerk of Medina County
1100 16th Street
Hondo, Texas 78861

Dear Ms. Marty:

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. Maida C. Modgling and a copy of the Supreme Court's order appointing the Honorable Lee G. Alworth, Judge of the 221th District Court, Conroe, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Lee G. Alworth
Ms. Maida C. Modgling
Mr. James M. McCormack



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
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

February 10, 1995

Honorable Lee G. Alworth
Judge, 221st District Court
County Courthouse
300 North Main Street
Conroe, Texas 77301

Dear Judge Alworth:

We enclose for your information a copy of the order of assignment, a copy of the notification letter to Ms. Modgling and Mr. McCormack, and a copy of the letter to the District Clerk of Medina County.

It is recommended that, six or eight weeks after receipt of this letter, your coordinator contact the district clerk to learn the names, addresses, and telephone numbers of counsel for purposes of a scheduling conference. Also, either before or immediately after you set the case for trial, you should contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned [915 546-8135] about a court reporter, etc., and to 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

CLERK
JOHN T. ADAMS

JUSTICES
RAUL A. GONZALEZ
JACK HIGHTOWER
NATHAN L. HECHT
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN

TEL: (512) 463-1312

FAX: (512) 463-1365

February 10, 1995

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

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

Ms. Maida C. Modgling
1204 17th Street
Hondo, Texas 78861

Dear Mr. McCormack and Ms. Modgling:

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 Lee G. Alworth, Judge of the 221th District Court, Conroe, Texas to preside in

Commission for Lawyer Discipline v. Maida C. Modgling.

Sincerely,

SIGNED

John T. Adams
Clerk