

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 95- 9054

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

The Supreme Court of Texas hereby appoints the Honorable Bill D. Moye, Judge of the 76th District Court of Titus County, Texas, to preside in the Disciplinary Action styled:

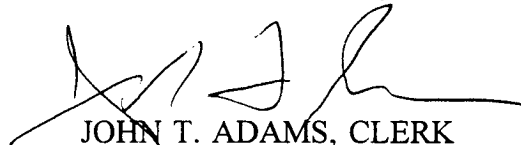
The Commission for Lawyer Discipline v. Charles David Porter

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Angelina 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.

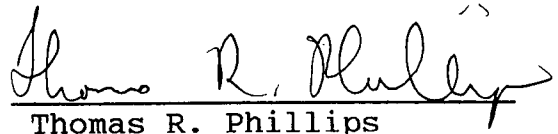
As ordered by the Supreme Court of Texas, in chambers,

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. 95-9054, 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.	§	ANGELINA COUNTY, TEXAS
CHARLES DAVID PORTER	§	_____ 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, Charles David Porter, (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 practice in Angelina County, Texas. An officer may serve citation on Respondent at his business address located at 111 South Second Street, Lufkin, Angelina County, Texas 75902.

III.

In and around August, 1991, James and Cathy Kosina (hereinafter called "Kosina") and Jimmy and Glenda McKay (hereinafter called "McKay") hired Respondent to represent them and their sons, Clay Kosina and Nathan McKay, in a personal injury action against the local school superintendent, high school principal and high school football coaches. The lawsuit sought to recover damages for injuries purportedly sustained by the boys as a result of alleged hazing incidents that occurred while they were participating in the high school football program. Although the parties agreed that Respondent would be paid on a contingency basis, at no time did Respondent execute a written contingency fee agreement with the Kosinas and McKays.

IV.

Respondent thereafter filed an original petition on behalf of the Kosinas and McKays on or about February 21, 1992. On or about April 6, 1992, the defendants served Respondent with interrogatories and request for production. Although the Kosinas and McKays provided discovery answers to Respondent, he thereafter failed to file the answers. When Respondent failed to respond to the defendants' requests that he file his discovery responses, the defendants filed a motion to compel and motion for sanctions, which was set for hearing on or about November 3, 1992. Respondent received notice of the November 3, 1992 hearing, but failed to attend. At the hearing, the presiding judge ordered that Respondent provide written answers to the discovery by on or about December 4, 1992. In the event the answers were not provided by that date, the judge ordered that plaintiff's pleadings would be stricken. Respondent thereafter failed to file answers to the discovery, and on or about December 22, 1992, the plaintiff's pleadings were stricken.

V.

Respondent eventually filed a motion to set aside the court's sanction on or about March 1, 1993. In addition, Respondent filed his answers to defendants' discovery on or about March 5, 1993, and on or about April 6, 1993. A hearing on Respondent's motion to set aside the sanction was held in and around April, 1993, at which time the motion was denied.

VI.

Respondent thereafter refiled the Kosina's and McKay's lawsuit on or about May 3, 1993. The defendants filed a motion for summary judgment and plea in abatement on or about October 29, 1993, which was set for hearing on or about November 22, 1993. On or about November 1, 1993, defendant's counsel sent Respondent a notice of the hearing by certified mail, return receipt requested. Notwithstanding the fact that Respondent received the notice, he thereafter failed to attend the hearing or file any type of response to the defendants' motion for summary judgment. The court grant the motion for summary judgment on or about December 6, 1993, at which time the case was dismissed with prejudice.

VII.

Respondent thereafter failed to advise his clients of the fact that the defendant's motion for summary judgment had been granted and that their case was dismissed. In addition, throughout the course of his representation, Respondent frequently failed to respond to his clients' requests for information or apprise them regarding the status of the matter.

VIII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III., IV., V., VI. and VII. hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b)(1), 1.01(b)(2), 1.03(a), 1.03(b) and/or 1.04(d) 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 Jimmy D. McKay filing a complaint on or about February 26, 1994 and James C. Kosina filing a complaint on or about February 26, 1994.

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\porter.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

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

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

Mr. Charles David Porter
111 South 2nd Street
Lufkin, Texas 75902

Dear Mr. McCormack and Mr. Porter:

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 Bill D. Moye, Judge of the 76th District Court, Mount Pleasant, Texas to preside in

Commission for Lawyer Discipline v. Charles David Porter.

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

February 10, 1995

Honorable Bill D. Moye
Judge, 76th District Court
County Courthouse
P. O. Box 1122
Mount Pleasant, Texas 75456-1122

Dear Judge Moye:

We enclose for your information a copy of the order of assignment, a copy of the notification letter to Mr. Porter and Mr. McCormack, and a copy of the letter to the District Clerk of Angelina 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 [713 471-3911] 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

TEL: (512) 463-1312

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February 10, 1995

JUSTICES
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PRISCILLA R. OWEN

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

The Honorable Jimmie F. Robinson
District Clerk of Angelina County
P. O. Box 908
Lufkin, Texas 75902-0908

Dear Mr. Robinson:

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. Charles David Porter and a copy of the Supreme Court's order appointing the Honorable Bill D. Moye, Judge of the 76th District Court, Mount Pleasant, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Bill D. Moye
Mr. Charles David Porter
Mr. James M. McCormack