

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96-9165

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

The Supreme Court of Texas hereby appoints the Honorable Elma T. Salinas Ender, Judge of the 341st District Court of Webb County, Texas, to preside in the Disciplinary Action styled:

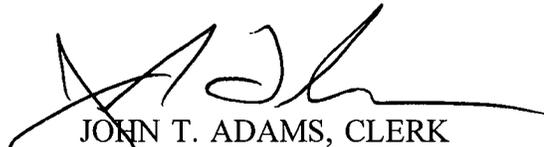
The Commission for Lawyer Discipline v. Raymond G. Garza

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Nueces 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 26th day of June, 1996.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9165, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 27 day of June, 1996.

A handwritten signature in cursive script that reads "Thomas R. Phillips". The signature is written in black ink and is positioned above a horizontal line.

Thomas R. Phillips
Chief Justice

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

V.

RAYMOND G. GARZA

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§
§
§
§
§

IN THE DISTRICT COURT OF

NUECES COUNTY, T E X A S

___TH JUDICIAL DISTRICT

DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, Petitioner, COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas, complaining of Respondent, RAYMOND G. GARZA, and in support thereof would respectfully show the Court the following:

Parties

Petitioner is the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas. Respondent, RAYMOND G. GARZA, State Bar Number 07737100, is an attorney licensed to practice law in the State of Texas and is a member of the State Bar of Texas. Respondent is a resident of Corpus Christi, Nueces County, Texas and may be served with process at 3649 Leopard Street, Suite 412, Corpus Christi, Nueces County, Texas 78408.

Venue

Respondent maintains his principal place of practice in Nueces County, Texas. The alleged professional misconduct occurred in Nueces County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Nueces County, Texas.

Professional Misconduct

I.

Petitioner brings this disciplinary action pursuant to State Bar Act, Tex. Gov't. Code Ann., Sec. 81.001, et seq. (Vernon 1988), the Texas Disciplinary Rules of Professional Conduct and the Texas Rules of Disciplinary Procedure. The complaints which form the basis of this action were filed on or about May 23, 1995 (Nilda Olivarez), September 28, 1995 (Rodney Hernandez) and November 20, 1995 (Bertha Sanchez). The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

Count I -- Nilda Olivarez

II.

On or about June 1, 1992, Nilda Olivarez and members of her family hired Respondent to represent them in a claim for personal injury damages incurred as a result of automobile accident. A contingent fee contract was signed assigning a one-third percentage contingent fee in all recoveries. Respondent sent numerous letters of protection to the health care providers who were rendering treatment to Ms. Olivarez and members of her family. Respondent settled the personal injury claims in March of 1994. Respondent withheld from the settlement proceeds money to be paid to the health care providers pursuant to the letters of protection.

III.

Respondent neglected legal matters entrusted to him by failing to pay the medical care providers money they were owed in a timely manner. When the health care providers were not paid, the health care providers turned over to a collection agency Ms. Olivarez' accounts which resulted in damage to her credit record and subjected her to collection efforts for expenses that

were to have been paid out of her settlement. In addition to failing to disburse the settlement proceeds, Respondent failed to properly safeguard the funds in a trust account. Respondent continued to neglect the obligations owed to Ms. Olivarez by failing to pay the health care providers until February of 1996.

IV.

Upon Ms. Olivarez' discovery of Respondent's failure to disburse the settlement funds to the health care providers, Ms. Olivarez attempted to contact Respondent seeking an explanation related to the money withheld from her settlement. Ms. Olivarez also requested Respondent provide her with a copy of her file. Respondent failed to respond to reasonable requests for information, failed to furnish to Ms. Olivarez her file upon request and failed to keep Ms. Olivarez informed of the status of the settlement disbursement to the extent reasonably necessary for Ms. Olivarez to make informed decisions.

V.

When Ms. Olivarez contacted Respondent's office to ask about the status of her case, Respondent's staff told her the case was still pending when in fact the case had settled a year earlier. When Ms. Olivarez contacted the health care providers about the balances owed, the providers told Ms. Olivarez they had been informed by Respondent that the cases were still pending. Such representations by Respondent and his staff constitute fraud, deceit and misrepresentations.

VI.

In relation to the representation of Ms. Olivarez, the conduct of Respondent described above constitutes violations of the following Disciplinary Rules:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(a) -- A lawyer shall hold funds belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated. * * * Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.14(b) -- Upon receiving funds in which a client or third person has an interest, a lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 1.15(d) -- Upon termination of representation, a lawyer shall surrender papers and property (client's file) to which the client is entitled.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count II -- Rodney Hernandez

VII.

On or about August 29, 1994, Rodney Hernandez hired Respondent to represent him in a claim for personal injury damages incurred as a result of automobile accident which occurred on or about August 26, 1994. A contingent fee contract was signed assigning a one-third percentage contingent fee in all recoveries. Respondent sent numerous letters of protection to

the health care providers who were rendering treatment to Mr. Hernandez. Respondent settled Mr. Hernandez case in February of 1995 but did not inform Mr. Hernandez until March 31, 1995. Respondent withheld from Mr. Hernandez' settlement \$4,332.75 for the payment of balances owed to the health care providers pursuant to the letters of protection. After Mr. Hernandez was given his share of the settlement proceeds, Mr. Hernandez learned that a balance of \$3,341.00 was owed to Humpal Physical Therapy clinic.

VIII.

Respondent neglected legal matters entrusted to him by failing to pay the medical care providers money they were owed in a timely manner. In addition to failing to disburse the settlement proceeds, Respondent failed to properly safeguard the funds in a trust account. Respondent continued to neglect the obligations owed to Mr. Hernandez by failing to pay the health care providers until February of 1996.

IX.

Upon Mr. Hernandez' discovery of Respondent's failure to disburse the settlement funds to the health care providers, Mr. Hernandez attempted to contact Respondent seeking an explanation related to the money withheld from her settlement. Respondent also requested Respondent provider him with a copy of his file. Respondent failed to respond to reasonable requests for information, failed to furnish to Mr. Hernandez his file upon request and failed to keep Mr. Hernandez informed of the status of the settlement disbursement to the extent reasonably necessary for him to make informed decisions.

X.

In September of 1995, Mr. Hernandez went to Respondent's office on several occasions

in an attempt to obtain his file and to get an explanation of the settlement disbursement. After several attempts, Mr. Hernandez was able to obtain parts of his file which included the purported settlement disbursement summary. The summary indicated Mr. Hernandez share of the settlement was to be \$6,000.58 when in fact Respondent's check to Mr. Hernandez was \$5,343.97. The settlement summary reported the total amount of the settlement was \$11,750.00 when in fact the settlement check from the defendant's insurance carrier was for \$12,000.00.

XI.

When Mr. Hernandez was finally able to discuss his settlement with Respondent, Respondent told Mr. Hernandez a member of Respondent's staff had access to his trust account and had stolen money from the trust account. By allowing members of his staff to alter settlement amounts and deceive clients, Respondent neglected to supervise his staff. Respondent's failure to supervise his employees encouraged and permitted acts of misconduct by these employees and permitted the failure to properly safeguard the funds owed to the medical providers.

XII.

Mr. Hernandez was able to obtain from the insurance carriers photocopies of the settlement check in the amount of \$12,000.00, the personal injury protection check in the amount of \$2,500.00 and the release executed in favor of the insurance carrier. The reverse side of the checks contain Mr. Hernandez' forged signature. The release also contained Mr. Hernandez' forged signature.

XIII.

In relation to the representation of Mr. Hernandez, the conduct of Respondent described

above constitutes violations of the following Disciplinary Rules:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(a) -- A lawyer shall hold funds belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated. * * * Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.14(b) -- Upon receiving funds in which a client or third person has an interest, a lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 1.15(d) -- Upon termination of representation, a lawyer shall surrender papers and property (client's file) to which the client is entitled.

Rule 5.03(a) -- With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a lawyer.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Count III -- Bertha Sanchez

XIV.

In November of 1993, Bertha Sanchez hired Respondent to represent her in a claim for

personal injury damages incurred as a result of automobile accident. A contingent fee contract was signed assigning a one-third percentage contingent fee in all recoveries. Respondent sent numerous letters of protection to the health care providers who were rendering treatment to Ms. Sanchez. Respondent settled Ms. Sanchez' case for \$17,300.00 but failed to disburse any portion of the settlement proceeds to Ms. Sanchez or any of the health care providers.

XV.

Respondent neglected legal matters entrusted to him by to distribute to Ms. Sanchez her share of the settlement and by failing to pay the medical care providers money they were owed in a timely manner. In addition to failing to disburse the settlement proceeds, Respondent failed to properly safeguard the funds in a trust account. Respondent continued to neglect the obligations owed to Ms. Sanchez by failing to distribute the settlement proceeds to her and by failing to pay the health care providers.

XVI.

Ms. Sanchez attempted to contact Respondent on numerous occasions seeking an explanation related to the settlement proceeds. Ms. Sanchez also requested Respondent provide her with a copy of her file. Respondent failed to respond to reasonable requests for information, failed to furnish to Ms. Sanchez her file upon request and failed to keep Ms. Sanchez informed of the status of the settlement disbursement to the extent reasonably necessary for Ms. Sanchez to make informed decisions.

XVII.

In relation to the representation of Mr. Hernandez, the conduct of Respondent described above constitutes violations of the following Disciplinary Rules:

Rule 1.01(b)(1) -- In representing a client, a lawyer shall not neglect a legal matter entrusted to the lawyer.

Rule 1.01(b)(2) -- In representing a client, a lawyer shall not frequently fail to carry out completely the obligations that the lawyer owes to a client.

Rule 1.03(a) -- A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) -- A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.14(a) -- A lawyer shall hold funds belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow" account, maintained in the state where the lawyer's office is situated. * * * Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.14(b) -- Upon receiving funds in which a client or third person has an interest, a lawyer shall promptly deliver to the client or third person any funds that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 1.15(d) -- Upon termination of representation, a lawyer shall surrender papers and property (client's file) to which the client is entitled.

Rule 8.04(a)(3) -- A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

Respectfully submitted,

James M. McCormack
General Counsel

James Ehler
Assistant General Counsel

Office of the General Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
Telecopier: (210) 271-9642



James Ehler
State Bar No. 06484650
ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
Z 080 288 199

Office of the General Counsel
Regional Office
Soledad Plaza West
425 Soledad, Suite 300
San Antonio, Texas 78205
(210) 271-7881
FAX: (210) 271-9642

May 23, 1996

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

RE: Commission for Lawyer Discipline v. Raymond G. Garza; In the District Courts
of Nueces County, Texas

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 Raymond G. Garza. Mr. Garza has designated Nueces County 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 practices 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:

Raymond G. Garza
International Bank Tower
3649 Leopard Street, Ste. 412
Corpus Christi, Texas 78408-3251

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she will be able to comply with the 180 day deadline by which the case must be set for trial as 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.

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

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

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Ehler". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

James Ehler
Assistant General Counsel

Enclosures

JE/mc



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
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

TEL: (512) 463-1312

FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

July 3, 1996

The Honorable Oscar Soliz
District Clerk of Nueces County
County Courthouse
901 Leopard
Corpus Christi, Texas 78401

Dear Mr. Soliz:

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. Raymond G. Garza and a copy of the Supreme Court's order appointing the Honorable Elma T. Salinas Ender, Judge of the 341st District Court, Laredo, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Elma T. Salinas Ender
Mr. Raymond C. Garza
Mr. James M. McCormack



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
NATHAN L. HECHT
JOHN CORNYN
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

TEL: (512) 463-1312

FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

July 3, 1996

Honorable Elma T. Salinas Ender
Judge, 341st District Court
302 Justice Center
1110 Victoria Street
Laredo, Texas 78042

Dear Judge Ender:

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. Garza and Mr. McCormack, and a copy of the letter to the District Clerk of Nueces County.

It is recommended that, six to eight weeks after receipt of this letter, your coordinator contact the District Court Administrator (512-888-0220) to learn the names, addresses, and telephone numbers of counsel for purposes of scheduling a conference. This should also be the number to call to reserve a court room, court reporter, etc. 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 (210-544-0847) 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
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FAX: (512) 463-1365

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

July 3, 1996

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

Mr. Raymond G. Garza
International Bank Tower
3649 Leopard Street, Suite 412
Corpus Christi, Texas 78408-3251

Dear Mr. McCormack and Mr. Garza:

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 Elma T. Salinas Ender, Judge of the 341st District Court, Laredo, Texas to preside in

Commission for Lawyer Discipline v. Raymond G. Garza

Sincerely,

SIGNED

John T. Adams
Clerk