

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9194

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

The Supreme Court of Texas hereby appoints the Honorable Faith Johnson, Judge of the 363rd District Court of Dallas County, Texas, to preside in the Disciplinary Action styled:

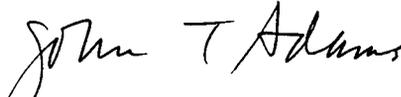
The Commission for Lawyer Discipline v. David E. Myers

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Harris 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 20th day of August, 1996.



JOHN T. ADAMS, CLERK^{sr}
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9194, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of August, 1996.


Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COPY

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
DAVID E. MYERS	§	_____ JUDICIAL DISTRICT

DISCIPLINARY PETITION

The Commission for Lawyer Discipline ("Petitioner") complains of David E. Myers ("Respondent") as follows:

1. NATURE OF PROCEEDING

Petitioner brings this disciplinary action pursuant to the State Bar Act, the Texas Government Code Annotated §81.001, *et seq.* (Vernon 1988 and supp. 1994), the Texas Disciplinary Rules of Professional Conduct, and the Texas Rules of Disciplinary Procedure. The complaints that form the basis of this Disciplinary Petition were filed on or after May 1, 1992.

2. VENUE

Respondent is an attorney licensed to practice law in Texas. Respondent is a member of the State Bar of Texas. Respondent is a resident of Harris County, Texas. Respondent's principal place of practice is Harris County, Texas. Therefore, venue is appropriate in Harris County, Texas, pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure.

3. CITATION REQUESTED

An officer may serve citation on Respondent at his business address located at 6750 West Loop South, Suite 500, Bellaire, Harris County, Texas 77401.

4. ALVARADO COMPLAINT

4.1 On or about December 26, 1994, Eduardo Miguel Alvarado ("Alvarado") was injured in an automobile accident.

4.2 Some time after the accident Alvarado received an advertisement in the mail. This advertisement was from Respondent's law office. This advertisement included a coupon which stated:

"If you call and mention this advertisement, we will reduce our contingency fee to 25% of gross to settle a personal injury claim, prior to filing a lawsuit. We will advance all your costs. You will pay nothing until we win. Why face an experienced insurance adjuster alone? For 24 Hour Emergency Service, call David Myers, The Injury Lawyer, at (800) 64-MYERS today!"

4.3 On or about January 26, 1995, Alvarado retained Respondent to handle his personal injury claim against Farmer's Insurance Group of Companies ("Farmer's"). In addition, Alvarado retained Respondent to handle his supplemental personal injury protection plan ("PIP") claim against his own insurance company, State Farm Mutual Automobile Insurance Company ("State Farm").

4.4 The power of attorney signed by Alvarado stated that Respondent would receive forty percent of any settlement made before suit is filed.

The terms of this power of attorney were materially different than those described in Respondent's advertisement and coupon.

Respondent's coupon misrepresented the amount of Respondent's fee.

- 4.4 On or about May 17, 1995, Respondent settled Alvarado's personal injury claim with Farmer's. In addition, Respondent settled Alvarado's PIP claim with State Farm.
- 4.5 On or about June 6, 1995, Alvarado and Respondent were issued a check, numbered 1201029381, in the amount of Six Thousand Dollars, by Farmer's.
- 4.6 On or about June 15, 1995, an additional check, numbered 1201029602, was issued to Alvarado and Respondent in the amount of one thousand five hundred dollars, by Farmer's.
- 4.7 Alvarado's gross settlement, with Farmer's, was seven thousand five hundred dollars. Respondent retained one thousand eight hundred seventy-five dollars of the gross settlement amount paid by Farmer's. This represented 25% of the gross settlement amount paid by Farmer's.
- 4.8 On or about June 23, 1995, State Farm issued a check, numbered 1-25-491262-J, in the amount of two thousand five hundred dollars. This PIP check was made payable to Alvarado and Respondent.
- 4.9 Respondent retained nine hundred sixty-seven dollars and thirty nine cents of Alvarado's PIP settlement. This amounted to forty percent of

Alvarado's PIP settlement. Respondent's advertisement and coupon misrepresented the amount of Respondent's fees. In addition, by sending Alvarado a coupon indicating that the attorney's fees would be twenty five percent of any settlement and having Alvarado sign a power of attorney obligating Alvarado to pay a minimum of forty percent of any settlement as attorney's fees, Respondent engaged in conduct involving dishonesty, deceit and fraud.

4.10 In addition, the advertisement Respondent sent to Alvarado failed to state whether the client may be obligated for all or for some portion of the costs involved in prosecuting the client's claim as required by Texas Disciplinary Rule of Professional Conduct 7.01(a)(1).

4.11 The acts and/or omissions of the Respondent, as described in Paragraphs 4.1 through 4.10, which occurred on or after January 1, 1990, constitute conduct in violation of rules 7.01(a)(1) and 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

4.12 The complaint that forms the basis of this cause of action was brought to the attention of the Office of the General Counsel by Alvarado filing a complaint on or about August 9, 1995.

Petitioner respectfully prays that this Court discipline Respondent by disbarment, suspension or reprimand, as the facts shall warrant; and that the Petitioner have all other relief to which it may show itself to be justly entitled, including costs of court and attorney's fees.

Respectfully submitted,

Steven W. Young
Interim General Counsel

Diego J. Vargas
Assistant General Counsel

Office of the General Counsel
STATE BAR OF TEXAS
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
Fax No. (713) 752-2158



DIEGO J. VARGAS
State Bar No. 00791847

ATTORNEYS FOR PETITIONER/ THE
COMMISSION FOR LAWYER
DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

July 22, 1996

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

Re: Commission for Lawyer Discipline v. David E. Myers

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 David E. Myers. Mr. Myers is a resident of Harris County, Texas. Request is hereby made that the Court appoint an active District Judge who does not reside in the Administrative Judicial Region in which Respondent resides to preside in this case. Upon appointment, request is hereby made that you notify the Respondent at the address shown below and the undersigned of the identity and address of the judge assigned:

David E. Myers
6750 West Loop South, Suite 500
Bellaire, Texas 77401

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 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, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Harris County, Texas, with the request that the suit be filed, citation be issued, and the citation, along with a file-stamped copy of the petition be returned to the undersigned.

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

Mr. John T. Adams, Clerk
Supreme Court of Texas
July 22, 1996
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If you have any questions, please contact me. Thank you for your assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Diego Vargas/sk". The signature is written in black ink and is positioned above the typed name and title.

Diego J. Vargas
Assistant General Counsel

DJV/slk
enclosures



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

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

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

September 13, 1996

Mr. Steve Young
General Counsel, State Bar of Texas
P.O. Box 12487
Austin, Texas 78711

Mr. David E. Myers
6750 West Loop South, Suite 500
Bellaire, Texas 77401

Dear Mr. Young and Mr. Myers:

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 Faith Johnson, Judge of the 363rd District Court, Dallas, Texas to preside in

Commission for Lawyer Discipline v. David E. Myers

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

September 13, 1996

The Honorable Bill Long
District Clerk of Dallas County
George L. Allen Courts Building
600 Commerce Street
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. David E. Myers, and a copy of the Supreme Court's order appointing the Honorable Faith Johnson, Judge of the 363rd District Court, Dallas, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Faith Johnson
Mr. David E. Myers
Mr. Steve Young



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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JOHN T. ADAMS

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JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
NADINE SCHNEIDER

September 13, 1996

Honorable Faith Johnson
Judge, 363rd District Court
Frank Crowley Courts Building
133 N. Industrial Blvd.
Dallas, Texas 75207

Dear Judge Johnson:

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. Myers and Mr. Young 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 District 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 (214-653-2943) to obtain claims forms for your expenses and other information incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk