

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 96- 9197

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

The Supreme Court of Texas hereby appoints the Honorable David E. Garner, Judge of the 10th District Court of Galveston County, Texas, to preside in the Disciplinary Action styled:

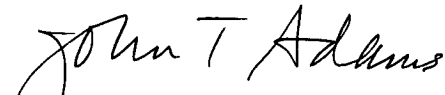
The Commission for Lawyer Discipline v. Jesus Y. Cavazos

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar 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 ^{of}
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 96-9197, 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.

A handwritten signature in cursive script, reading "Thomas R. Phillips", written over a horizontal line.

Thomas R. Phillips
Chief Justice

COPY

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

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§

IN THE DISTRICT COURT OF

V.

BEXAR COUNTY, T E X A S

JESUS Y. CAVAZOS

___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, JESUS Y. CAVAZOS, 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, JESUS Y. CAVAZOS, State Bar Number 04023000, 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 Bexar County, Texas and may be served with process at 1122 West Craig Place, San Antonio, Bexar County, Texas 78201-5708, his usual place of business.

Venue

Respondent resides in and maintains his principal place of practice in Bexar County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Bexar 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 by Dr. Thomas E. Williams and Dr. Richard Parmley on or about December 1, 1995. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

In 1993 a medical negligence law suit was filed against Dr. Richard Parmley, Dr. Thomas E. Williams, and other defendants alleging that children being treated at Santa Rosa Hospital died as a result of negligence. The suit was file on behalf of the families of the deceased children, Victor Jimenez, Jr., Felix Martinez and Pablo Guerrero. Additionally, Dr. Parmley, Dr. Williams and others were put on notice that an additional eight claims for medical negligence were being made on behalf of the families of Adriana Martinez, Mark Murray, Taylor Peck, Martin Garza, Margie Serrata, Rudy Rodriguez and Alyssa Hernandez who also died in the oncology unit at Santa Rosa Hospital.

III.

Throughout 1992 and in early 1993, Respondent ordered, encouraged, and permitted his two non-lawyer employees, Clementine Lambarida and Frank G. Trevino, to contact the families of the deceased children by telephone and in person for the purposes of obtaining professional employment for the Respondent. At all times relevant to this cause of action, Respondent had direct supervisory authority over Ms. Lambarida and Mr. Trevino. With knowledge of the

improper direct contacts with the families of the deceased children, Respondent failed to take reasonable remedial action to avoid or mitigate the consequences of Ms. Lambarida and Mr. Trevino's misconduct.

IV.

Respondent, through the acts of his employees, Ms. Lambarida and Mr. Trevino, sought and obtained employment from the families of the deceased children. Ms. Lambarida and Mr. Trevino, in their direct contacts with the families, told the families their children died as a result of the use of certain drugs and as a result of the negligence of the doctors and hospital when in fact there were no facts to support such statements. Ms. Lambarida and Mr. Trevino also told the families they were being contacted for the sole purpose of identifying potential witnesses to the activities of the doctors and the hospital when in fact the purposes of the contacts were to solicit employment for Respondent. The communications to the families involved, false, misleading and deceptive statements.

V.

Respondent paid money to Ms. Lambarida and Mr. Trevino for the soliciting the families of the deceased children.

VI.

Respondent engaged in dishonest, misleading and deceptive conduct constituting barratry by carrying out direct and uninvited communications with potential clients. Respondent, through his employees, misrepresented to the families that he was investigating the use of the drug Adriamycin and further misrepresented the contents and purpose of contracts of employment that he and his employees presented to the families for their execution.

VII.

The conduct of Respondent described above constitutes a violation of the following Texas Disciplinary Rules of Professional Conduct:

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 nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

Rule 5.03(b) -- With respect to a non-lawyer employed or retained by or associated with a lawyer, a lawyer shall be subject to discipline for the conduct of such person that would be a violation of these rules if engaged in by a lawyer if: (1) the lawyer orders, encourages, or permits the conduct involved; or (2) the lawyer * * * with knowledge of such misconduct by the nonlawyer knowingly fails to take reasonable remedial action to avoid or mitigate the consequences of that person's misconduct.

Rule 7.03(a) -- A lawyer shall not by in-person or telephone contact seek professional employment concerning a matter arising out of a particular occurrence or event, or series of occurrences or events, from a prospective client or nonclient who has not sought the lawyer's advice regarding employment or with whom the lawyer has no family or past or present attorney-client relationship when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain. * * * In those situations where in-person or telephone contact is permitted by this paragraph, a lawyer shall not have such contact with a prospective client if: (1) the communication involves coercion, duress, fraud, overreaching, intimidation, undue influence, or harassment; or (3) the communication contains a false, fraudulent misleading, deceptive, or unfair statement or claim.

Rule 7.03(b) -- A lawyer shall not pay, give, or offer to pay or give anything of value to a person not licensed to practice law for soliciting prospective clients for, or referring clients or prospective clients to, any lawyer or firm, * * * *

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

Rule 8.04(a)(9) -- A lawyer shall not engage in conduct that constitutes barratry as defined by the law of this state.

PRAYER

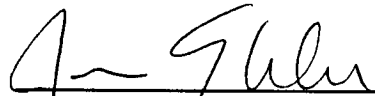
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including costs of court and attorney's fees.

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 426 178 014

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

July 8, 1996

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

RE: Commission for Lawyer Discipline v. Jesus Y. Cavazos; In the District Courts
of Bexar 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 Jesus Y. Cavazos. Mr. Cavazos has designated Bexar 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:

Jesus Y. Cavazos
1122 W. Craig
San Antonio, Texas 78201

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 Bexar 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 Bexar County, Texas and a return envelope to be sent to the District Clerk of Bexar 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 fluid and cursive, with the first letter "J" being particularly large and stylized.

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

TEL: (512) 463-1312

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

ADMINISTRATIVE ASST
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. Jesus Y. Cavazos
1122 W. Craig
San Antonio, Texas 78201

Dear Mr. Young and Mr. Cavazos:

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 David E. Garner, Judge of the 10th District Court, Galveston, Texas to preside in

Commission for Lawyer Discipline v. Jesus Y. Cavazos

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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CLERK
JOHN T. ADAMS

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PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

September 13, 1996

The Honorable David J. Garcia
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Garcia:

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. Jesus Y. Cavazos, and a copy of the Supreme Court's order appointing the Honorable David E. Garner, Judge of the 10th District Court, Galveston, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. David E. Garner
Mr. Jesus Y. Cavazos
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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CLERK
JOHN T. ADAMS

JUSTICES
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GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS
ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

September 13, 1996

Honorable David E. Garner
Judge, 10th District Court
722 Moody Avenue
Galveston, Texas 77550

Dear Judge Garner:

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. Cavazos and Mr. Young and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210-220-2300) to find out the district court to which this disciplinary case has been assigned, names and addresses of counsel, etc. We then recommend that, either before or immediately after you set the case for trial, you contact the Presiding Judge of the Administrative Judicial Region into which you have been assigned (210-769-3519) to reserve a courtroom, obtain a court reporter, obtain claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk