

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 97- 9051

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

The Supreme Court of Texas hereby appoints the Honorable Bill McCoy, Judge of the 358th District of Ector County, Texas, to preside in the Disciplinary Action styled:

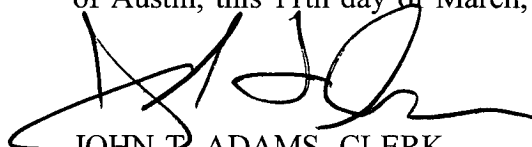
The Commission for Lawyer Discipline v. James F. Scherr

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of El Paso 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 11th day of March, 1997.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 9-9051, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 11 day of March, 1997.


Thomas R. Phillips
Chief Justice

COPY

No. _____

COMMISSION FOR LAWYER
DISCIPLINE

§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

EL PASO COUNTY, T E X A S

JAMES F. SCHERR

____th JUDICIAL DISTRICT

PETITIONER'S ORIGINAL 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, JAMES F. SCHERR, 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, JAMES F. SCHERR, at all times relevant to this cause of action, 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 El Paso, El Paso County, Texas and no service is necessary at this time.

Venue

Respondent maintains his principal place of practice in El Paso County, Texas. The alleged professional misconduct occurred in El Paso County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in El Paso 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 complaint which forms the basis of this action was filed on or about July 12, 1995 by Carlos Rincon. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

II.

James F. Scherr represents the plaintiffs in the case of Mendoza, et al. v. Contico et al., Cause No. 92-8751, County Court at Law No. Three, El Paso County, Texas. Carlos Rincon is one of the attorneys that represent the defendants in the same case. On February 16, 1995, during a hearing on a Motion to Compel, a notebook and a videotape, recognized to be privileged work product of the defendants' law firm and of the investigation firm retained by the defendants, were discovered to be in the possession of the plaintiff's lawyer James F. Scherr. This fact was brought to Presiding Judge Javier Alvarez' attention, by defendant's attorney, Carlos Rincon. Judge Alvarez ordered the parties to submit their respective notebooks and videotapes to the court for an in camera inspection.

On February 21, 1995, a hearing was held to determine if sanctions should be imposed on the plaintiffs for violating attorney client privileges and work product privileges by gaining possession of the defendant's notebook and videotape. Both the defendants and the plaintiffs provided their respective notebooks and videotapes to the court for inspection. Scherr tendered an affidavit that stated that the notebook, being presented to the Court, was the same notebook he had in his possession at the February 16, 1995 hearing. Scherr also produced a videotape he claimed was the same videotape in his possession at the February 16, 1995 hearing. After comparing the notebook Scherr produced to the notebook produced by the defendants, the Court declined to sanction Scherr for discovery violations relative to the possession of the notebook and videotape. The reason being, the notebook and videotape provided by Scherr to the Court were not in fact the same notebook and videotape that had been in his possession at

the February 16, 1995 hearing.

At some point in time, after the February 16, 1995 hearing and before Scherr produced the notebook and videotape along with his affidavit to the court, Scherr altered, or caused to be altered, the notebook so as not to be identical to the work product notebook of the defendants. Scherr also changed the label on the videotape. The videotape in Scherr's possession at the February 16th hearing had a handwritten label on the outside; whereas, the videotape produced to the Court had a typewritten label.

By his acts, or those committed at his direction, Scherr secured possession of items that were the work product of counsel for the defendants. Scherr changed the contents of the notebook and altered the videotape he had in his possession at the February 16, 1995 hearing. He then falsely represented to the court that the videotape and notebook he later tendered to the Court were the same items in his possession at the February 16, 1995 hearing.

Disciplinary Rules of Professional Conduct

IV.

The conduct of Respondent described above was in violation of the following Texas Disciplinary Rules of Professional Conduct:

Rule 3.03(a)(2) -- a lawyer shall not knowingly fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act.

Rule 3.04(a) -- a lawyer shall not unlawfully obstruct another party's access to evidence; in anticipation of a dispute unlawfully alter, destroy or conceal a document or other material that a competent lawyer would believe has potential or actual evidentiary value; or counsel or assist another person to do any such act.

Rule 3.05(a) -- a lawyer shall not seek to influence a tribunal concerning a pending matter by means prohibited by law or applicable rules of practice or procedure.

Rule 8.04(a)(1) -- a lawyer shall not violate these rules, knowingly assist or induce another to do so, or do so through the acts of another, whether or not such violation occurred in the course of a client-lawyer relationship.

Rule 8.04(a)(2) -- a lawyer shall not commit a serious crime or commit any other criminal

act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

Rule 8.04(a)(4) -- a lawyer shall not engage in conduct constituting obstruction of justice.

PRAYER

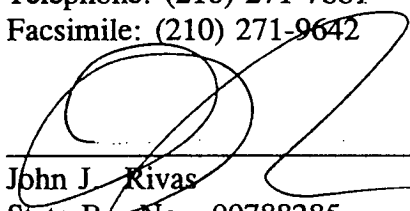
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including, but not limited to, costs of court, all direct expenses associated with these proceedings and reasonable attorney's fees as provided in Rule 1.06(T)(8)(b) of the Texas Rules of Disciplinary Procedure.

Respectfully submitted,

Steven W. Young
General Counsel

John J. Rivas
Assistant General Counsel

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



John J. Rivas
State Bar No. 00788285

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
P 583 840 625

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

February 6, 1997

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

RE: Commission for Lawyer Discipline v. James F. Scherr; In the District Courts
of El Paso 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 Jame F. Scherr. Mr. Scherr has designated El Paso 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:

James F. Scherr
BY AND THROUGH HIS ATTORNEY OF RECORD
Jim Darnell
310 N. Mesa, Ste. 212
El Paso, Texas 79901

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.

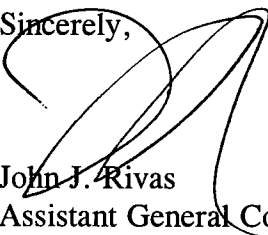
Once a trial judge has been appointed, please forward the original and two (2) copies of the

Disciplinary Petition and the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of El Paso 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 El Paso County, Texas and a return envelope to be sent to the District Clerk of El Paso 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 be 'John J. Rivas', written over the typed name and title.

John J. Rivas
Assistant General Counsel

Enclosures

JJR/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 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

MAR 17 1997

The Honorable Edie Rubalcaba
District Clerk of El Paso County
500 East San Antonio Avenue, Room 103
El Paso, Texas 79901-2496

Dear Mr. Rubalcaba:

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. James F. Scherr, and a copy of the Supreme Court's order appointing the Honorable Bill McCoy, Judge of the 358th District Court, Odessa, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Bill McCoy
Mr. John J. Rivas
Mr. James F. Scherr



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

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CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT

EXECUTIVE ASS'T
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

MAR 17 1997

Mr. John J. Rivas
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Mr. James F. Scherr
c/o Jim Darnell
310 N. Mesa, Suite 212
El Paso, Texas 79901

Dear Mr. Rivas and Mr. Scherr:

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 McCoy, Judge of the 358th District Court, Odessa, Texas to preside in

Commission for Lawyer Discipline v. James F. Scherr

Sincerely,

SIGNED

John T. Adams
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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JAMES A. BAKER
GREG ABBOTT

MAR 17 1997

Honorable Bill McCoy
Judge, 358th District Court
322 Courthouse
300 N. Grant Avenue
Odessa, Texas 79761

Dear Judge McCoy:

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. Rivas and Mr. Scherr, and a copy of the letter to the District Clerk of El Paso County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the District Court Administrative Office (915-546-2143) 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 (915-546-8135) 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