

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 98- 9130**

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

The Supreme Court of Texas hereby appoints the Honorable Alonzo "Al" T. Rodriguez, Judge of the 343rd District Court of San Patricio County, Texas, to preside in the Disciplinary Action styled:

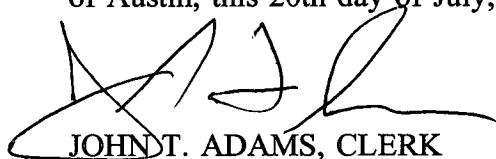
**The Commission for Lawyer Discipline v. Mark A. Cantu**

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Hidalgo 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,

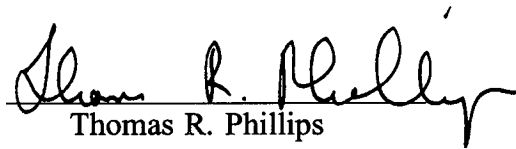
with the Seal thereof affixed at the City  
of Austin, this 20th day of July, 1998.

A handwritten signature in black ink, appearing to read "John T. Adams", is written over the printed name and title of the signatory.

JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 98-9130, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 23 day of July, 1998.

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

Thomas R. Phillips  
Chief Justice

# STATE BAR OF TEXAS



CERTIFIED MAIL  
RETURN RECEIPT REQUESTED  
P 583 840 586

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

June 10, 1998

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

RE: Commission for Lawyer Discipline v. Mark A. Cantu

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Mark A Cantu. Mr. Cantu has designated **Hidalgo 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 resides 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:

Mark A. Cantu  
1300 North 10th Street, Suite 400  
McAllen, Texas 78501

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to whether he or she can accommodate compliance with Mellon Service Co., et al v. Touche Ross Co., 946 S.W.2d 862 (Tex.App.- Houston [14th Dist.] 1997), which requires that all proceedings incident to a case occur in the county of proper venue. If not, I would respectfully request that an alternate appointment be made.

Once a trial judge has been appointed, please forward the original and three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing

order to the District Clerk of Hidalgo 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 Hidalgo County, Texas and a return envelope to be sent to the District Clerk of Hidalgo 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/ch

No. \_\_\_\_\_

COMMISSION FOR LAWYER  
DISCIPLINE

V.

MARK A. CANTU

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§  
§  
§  
§  
§

IN THE DISTRICT COURT OF

HIDALGO COUNTY, T E X A S

\_\_\_\_\_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, MARK A. CANTU, 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, MARK A. CANTU, State Bar No. 03767445, 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 McAllen, Hidalgo County, Texas and may be served with process at 1300 North 10th Street, Suite 400, McAllen, Hidalgo County, Texas 78501, his usual place of employment.

**Venue**

Respondent maintains his principal place of practice in Hidalgo County, Texas. Accordingly, pursuant to Texas Rules of Disciplinary Procedure 3.03, venue is proper in Hidalgo 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 November 21, 1996 by Jose E. Olvera and on November 25, 1996 by Tracey Dawn Estes. The acts and conduct of Respondent, as hereinafter alleged, constitute professional misconduct.

### II.

On or about April 29, 1996, Jose Olvera was employed by Transportes Del Noreste and was the driver of a passenger van involved in a head-on collision with a vehicle operated by Luther Houston (hereinafter "Florida accident"). Mr. Olvera, and the passengers in his van, suffered serious injuries in the accident. In May 1996, Elda Olvera, on behalf of her husband, Jose, contacted Respondent's law firm in an attempt to hire Respondent to pursue a claim for personal injury damages. On or about May 14, 1996, Sheree Salinas from Respondent's law firm, traveled from McAllen to Houston to meet with Mr. & Mrs. Olvera. On May 14, 1996, a written contingent fee contract was signed between Sheree Salinas, on behalf of Respondent's law firm, and Mr. & Mrs. Olvera. The first paragraph of the contingent fee contract provided that Mr. & Mrs. Olvera were employing the Law Office of Mark A. Cantu to represent them as plaintiffs in their claim for damages sustained by reason of the April 29, 1996 Florida accident.

### III.

On or about May 31, 1996, Respondent filed a law suit in Hidalgo County, Texas on behalf of the deceased passenger's family and other passengers of the van against Luther Houston. The

suit was styled Blandina Torres Orta, et al. v. Luther Alton Houston, et al.; Cause No. C-2974-96-F, in the 332nd District Court, Hidalgo County, Texas. Mr. & Mrs. Olvera were not named as parties to this action.

#### IV.

On or about August 8, 1996, Respondent, on behalf of the already named Plaintiffs and a newly added Intervenor, filed Plaintiff's First Amended Petition which added Transportes Del Noreste, Vicente Carballo and his own client, Jose Olvera, as defendants. Respondent alleged that his client Jose Olvera's negligence was a cause of the injuries suffered by the Plaintiffs and Intervenor. On or about August 14, 1996, Jose Olvera was served with citation and the First Amended Petition.

#### V.

On or about August 19, 1996, as a result of being sued by their own attorney, Mr. & Mrs. Olvera hired attorney John Bartos to pursue a claim against Respondent. On or about August 29, 1996, Mr. Bartos sent to Respondent a notice of a DTPA claim being asserted against Respondent by Mr. & Mrs. Olvera. Respondent received the Bartos August 29, 1996 DTPA notice letter on September 3, 1996.

#### VI.

In late August or early September, 1996, the law firm of Gardere & Wynne was retained to defend Mr. Olvera from the allegations made by Respondent in the First Amended Petition. On or about September 5, 1996, the law firm of Gardere & Wynne filed an answer and a motion to transfer venue on behalf of Jose Olvera which was received by Respondent on or about September 6, 1996. In early September 1996, Respondent spoke to defense counsel from Gardere & Wynne about the allegations against Mr. Olvera.

## VII.

On or about September 12 or 13, 1996, after having received the Bartos' DTPA notice letter, the Gardere & Wynne pleadings, after having spoken to Gardere & Wynne defense counsel, and with full knowledge of Mr. Bartos' and the Gardere & Wynne's representation of Mr. & Mrs. Olvera and without permission from Mr. Bartos or Gardere & Wynne, Respondent, Sheree Salinas and Carlos Guerra visited Mr. & Mrs. Olvera in their Houston home.

## VIII.

At this September 12 or 13, 1996 meeting at the Olvera home, Respondent, Salinas and Guerra attempted to persuade Mr. & Mrs. Olvera not to pursue a cause of action against Respondent. Additionally, Respondent attempted to persuade Mr. & Mrs. Olvera to fire Mr. Bartos and the law firm of Gardere & Wynne and hire Carlos Guerra as their attorney. Further, Respondent attempted to convince Mr. & Mrs. Olvera to sign a document requesting that the case remain in Hidalgo County, a document that the Olveras did not want the Gardere & Wynne law firm to represent Mr. Olvera, and a document releasing Respondent as their attorney. Respondent's actions and representations were done in furtherance of his fraudulent scheme to hold venue in Hidalgo County, Texas and done in an attempt to solicit Mr. & Mrs. Olvera's legal representation on behalf of Carlos Guerra. The attempt to solicit legal employment on behalf of Guerra is a violation of Texas Penal Code, Section 38.12(a)(2).

## IX.

After having been terminated by Mr. Olvera and without knowledge or authority to do so from Mr. Olvera, Respondent on October 14, 1996 asserted claims for relief on behalf of Mr. Olvera by filing a Second Amended Petition naming Mr. Olvera as intervenor. The knowing assertion of a cause of action without authority is a violation of Texas Penal Code, Section



38.12(a)(1).

**Disciplinary Rules of Professional Conduct**

X.

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

Rule 1.02(a)(1) -- A lawyer shall abide by a client's decisions concerning the objectives and general methods of representation.

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 1.06(a) -- A lawyer shall not represent opposing parties to the same litigation.

Rule 1.06(b)(1) -- A lawyer shall not represent a person if the representation of that person involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm.

Rule 1.06(b)(2) -- A lawyer shall not represent a person if the representation of that person reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

Rule 1.06(d) -- A lawyer who has represented multiple parties in a matter shall not thereafter represent any of such parties in a dispute among the parties arising out of the matter, unless prior consent is obtained from all such parties to the dispute.

Rule 1.09(a)(2)(3) -- Without prior consent, a lawyer who personally has formerly represented a client in a matter shall not thereafter represent another person in a matter adverse to the former client if the representation in reasonable probability will involve a violation of Rule 1.05; or if it is the same or a substantially related matter.

Rule 4.02(a) -- In representing a client, a lawyer shall not communicate or cause or encourage another to communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer regarding that subject, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

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 (Texas Penal Code, Section 38.12).

**PRAYER**

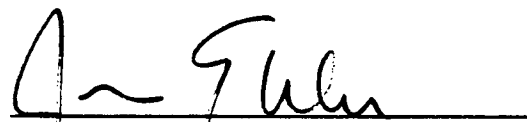
WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent imposing an appropriate sanction as the facts shall warrant and that Petitioner have such other relief to which it is entitled, including, but not limited to, costs of court, all 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

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



## 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

JUSTICES  
RAUL A. GONZALEZ  
NATHAN L. HECHT  
CRAIG T. ENOCH  
ROSE SPECTOR  
PRISCILLA R. OWEN  
JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

CLERK  
JOHN T. ADAMS

EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

JUL 24 1998

Mr. James Ehler  
Assistant General Counsel, State Bar of Texas  
425 Soledad, Suite 300  
San Antonio, Texas 78205

Mr. Mark A. Cantu  
1300 North 10<sup>th</sup> Street, Suite 400  
McAllen, Texas 78501

Dear Mr. Ehler and Mr. Cantu:

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 Alonzo "Al" T. Rodriguez, Judge of the 343<sup>rd</sup> District Court, Sinton, Texas to preside in

*Commission for Lawyer Discipline v. Mark A. Cantu*

Sincerely,

**SIGNED**

John T. Adams  
Clerk



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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JAMES A. BAKER  
GREG ABBOTT  
DEBORAH G. HANKINSON

JUL 24 1998

The Honorable Pauline Gonzales  
District Clerk of Hidalgo County  
P.O. Box 87  
Edinburg, Texas 78540

Dear Ms. Gonzales:

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. Mark A. Cantu*, and a copy of the Supreme Court's order appointing the Honorable Alonzo "Al" T. Rodriguez, Judge of the 343<sup>rd</sup> District Court, Sinton, Texas, to preside in this Disciplinary Action.

Sincerely,

**SIGNED**

John T. Adams  
Clerk

cc: Hon. Alonzo "Al" T. Rodriguez  
Mr. James Ehler  
Mr. Mark A. Cantu



## THE SUPREME COURT OF TEXAS

CHIEF JUSTICE  
THOMAS R. PHILLIPS

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EXECUTIVE ASST  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST  
NADINE SCHNEIDER

JUL 24 1998

Honorable Alonzo "Al" T. Rodriguez  
Judge, 343<sup>rd</sup> District Court  
P.O. Box 700  
Sinton, Texas 78387-0700

Dear Judge Rodriguez:

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. Cantu and Mr. Ehler, and a copy of the letter to the District Clerk of Hidalgo 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 (210-318-2200) 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 (210-546-0724) 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