

**IN THE SUPREME COURT OF TEXAS
IN THE MATTER OF RODOLFO O. HERNANDEZ
MISC. DOCKET NO. 99- 9065**

ORDER

On this day, the Court considered the Motion for Acceptance of Resignation in Lieu of Discipline filed by Attorney and Counselor at Law, Rodolfo O. Hernandez, together with the Response by Chief Disciplinary Counsel to the Motion for Acceptance of Resignation in Lieu of Discipline as Attorney and Counselor of Rodolfo O. Hernandez. The Court has reviewed said Motion and Response and finds that each meets the requirements of Part X of the Texas Rules of Disciplinary Procedure. In conformity with Part X, Section 10.02, of the Texas Rules of Disciplinary Procedure, the Court considers the detailed statement of professional misconduct contained within the Response of Chief Disciplinary Counsel to be conclusively established for all purposes. The Court, being advised that the acceptance of the resignation is in the best interest of the public and the profession, hereby concludes that the following Order is appropriate.

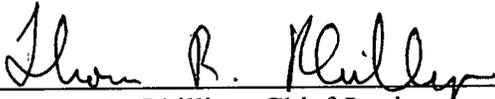
IT IS ORDERED that the law license of Rodolfo O. Hernandez of El Paso, Texas, State Bar Card Number 09520500, heretofore issued by the Court, be cancelled and his name be dropped and deleted from the list of persons licensed to practice law in Texas.

IT IS FURTHER ORDERED that Rodolfo O. Hernandez, be and hereby is, permanently enjoined and prohibited from practicing law in the State of Texas, holding himself out as an attorney at law, performing any legal services for others, giving legal advice to others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative

capacity in any proceeding in any Texas court or before any Texas administrative body (whether state, county, municipal, or other), or holding himself out to others or using his name in any manner in conjunction with the words "Attorney at Law," "Counsel or Counselor at Law," or "Lawyer."

IT IS FURTHER ORDERED that Rodolfo O. Hernandez, shall, within thirty (30) days after the date on which this Order is signed by the Court, notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every Texas court in which Rodolfo O. Hernandez may have any client matter pending, advising each court of his resignation, of the style and cause number of any matter pending in that court, and of the name, address and telephone number of the client(s) he is representing in that court. Rodolfo O. Hernandez, is ORDERED to send copies of all such notifications to the Office of the General Counsel, State Bar of Texas, 201 Main Street, Suite 1150, Fort Worth, Texas 76102.

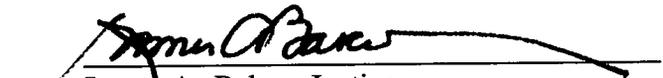
By the Court, en banc and in chambers, on this the 22nd day of April, 1999.


Thomas R. Phillips, Chief Justice

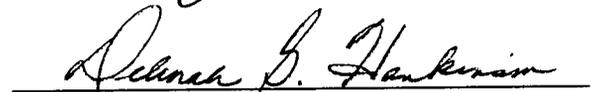

Nathan L. Hecht, Justice

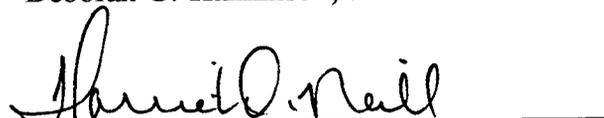

Craig T. Enoch, Justice

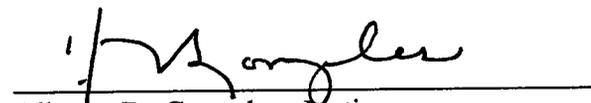

Priscilla R. Owen, Justice


James A. Baker, Justice


Greg Abbott, Justice


Deborah G. Hankinson, Justice


Harriet O'Neill, Justice


Alberto R. Gonzales, Justice

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

April 5, 1999

CM, RRR No. Z 192 108 832

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

Re: Rodolfo O. Hernandez

Dear Mr. Adams:

Pursuant to Part X of the Texas Rules of Disciplinary Procedure, please find enclosed herewith the following:

- (1) Original executed Motion for Acceptance of Resignation as Attorney and Counselor at Law for the above-referenced attorney, with attached Affidavit of Lost License and Bar Card;
- (2) Original and two (2) copies of the Response of the Chief Disciplinary Counsel to Motion for Acceptance of Resignation as Attorney and Counselor at Law for the above-referenced attorney; and
- (3) Original Order of Resignation for the Court's signature.

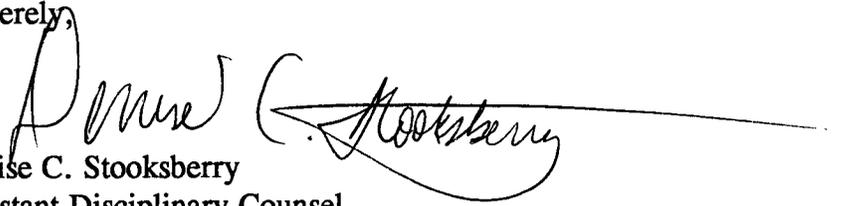
Pursuant to Rule 10.02 of the Texas Rules of Disciplinary Procedure, the required ten (10) day time frame has passed and the above-referenced attorney has made no attempt to withdraw the Motion for Acceptance of Resignation. Therefore, the detailed statement of professional misconduct is deemed to have been conclusively established for all purposes.

It is my understanding that the Mr. Hernandez is unable to locate his bar card and law license and, therefore, has so stated in his Affidavit attached to and in support of his Motion for Acceptance of Resignation.

John Adams, Clerk
Supreme Court of Texas
April 5, 1999
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I will appreciate your bringing this to the Court's attention. Please return a fully executed copy of the Order to our office at your earliest convenience.

Sincerely,

A handwritten signature in cursive script, appearing to read "Denise C. Stooksberry". The signature is written in black ink and is positioned above the typed name. It features a large, stylized initial "D" and a long, sweeping horizontal line that extends to the right.

Denise C. Stooksberry
Assistant Disciplinary Counsel
Office of the Chief Disciplinary Counsel
State Bar of Texas

Enclosures

/mx

**IN THE SUPREME COURT OF TEXAS
MOTION FOR ACCEPTANCE OF RESIGNATION AS
ATTORNEY AND COUNSELOR AT LAW**

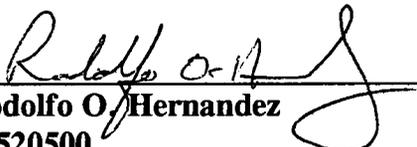
OF

Rodolfo O. Hernandez

NOW COMES your Applicant, **Rodolfo O. Hernandez**, and hereby resigns as an Attorney and Counselor at Law in the State of Texas; and hereby submits to the Court his resignation as an Attorney and Counselor at Law; and prays that the Court accept said resignation.

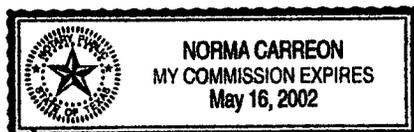
Attached hereto is an affidavit of Applicant, **Rodolfo O. Hernandez**, declaring that the License and permanent State Bar card issued by this Court to the Applicant, **Rodolfo O. Hernandez**, as an Attorney and Counselor at Law on 11-24-80, is presently lost or destroyed and could not be located despite diligent search. Said License and permanent State Bar card will be surrendered by the Applicant, **Rodolfo O. Hernandez**, should they be located at a future date.

Your applicant is voluntarily resigning and withdrawing from the practice of law; Applicant does so in lieu of discipline for professional misconduct; and Applicant prays that his name be dropped and deleted from the list of persons licensed to practice law in Texas; and that his resignation be accepted.



Rodolfo O. Hernandez
09520500

SUBSCRIBED AND SWORN to before me by the said **Rodolfo O. Hernandez** this the 4th day of February, 1999.





NOTARY PUBLIC in and for
the State of Texas

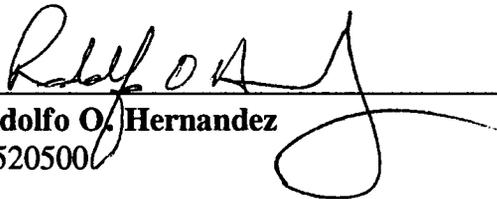
Rodolfo O. Hernandez
7512 Taxco
El Paso, TX 79915

**AFFIDAVIT OF
RODOLFO O. HERNANDEZ**

On this 3rd day of February, 1999, personally appeared before me, the undersigned **RESPONDENT'S NAME**, who, after being duly sworn, did state upon his oath:

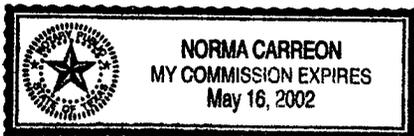
"My name is **Rodolfo O. Hernandez**, and I am over the age of eighteen years and am competent to make this affidavit in all respects, and I am personally acquainted with the facts in this Affidavit."

"I am an attorney licensed in the State of Texas. My bar card number is 09520500. I am unable to locate my License and permanent State Bar Card at this time. Should these items that are property of the Supreme Court of Texas be located, I will immediately surrender and forward to the Supreme Court of Texas."



Rodolfo O. Hernandez
09520500

SWORN TO AND SUBSCRIBED BEFORE ME on this the 4th day of February, 1999.





Notary Public in and for the State of Texas

IN THE SUPREME COURT OF TEXAS

**RESPONSE OF THE CHIEF DISCIPLINARY COUNSEL OF THE
STATE BAR OF TEXAS REGARDING
RODOLFO O. HERNANDEZ**

TO THE HONORABLE SUPREME COURT OF TEXAS:

I, Steven W. Young, Chief Disciplinary Counsel of the State Bar of Texas, in accordance with Part X of the Texas Rules of Disciplinary Procedure, hereby file a response on behalf of the State Bar of Texas, acting by and through the Commission for Lawyer Discipline, to the Motion for Acceptance of Resignation in Lieu of Discipline as Attorney and Counselor at Law of Rodolfo O. Hernandez, dated January 13, 1999. The acceptance of the resignation of Rodolfo O. Hernandez is in the best interest of the public and the profession.

The professional misconduct with which Rodolfo O. Hernandez is charged is as follows:

1. F3049801890; *Espino v. Rodolfo O. Hernandez*:

In or about June 29, 1994, Pedro Espino ("Complainant") retained Rodolfo O. Hernandez ("Respondent") on a contingency basis to file suit and represent him in a personal injury case arising out of an automobile accident. Respondent was to receive 25% of the settlement. There was no signed contingency fee contract.

On or about June 24, 1996, a settlement was reached. Respondent received a settlement check made payable to Complainant Espino and Respondent in the amount of \$70,000.00. Respondent endorsed the check by signing his signature, as well as affixing Complainant's name to the endorsement. Respondent deposited the settlement check into his operating, rather than his trust, account and failed to notify Complainant Espino of the receipt of the funds.

Further, Respondent failed to disburse the settlement funds and, instead, converted the funds to his own use. Respondent also failed to obtain Complainant's signature on the insurance carrier's Release of Claims form.

Respondent failed to produce any of the documents requested by the subpoena issued by the Chair of the District Grievance Panel, and served upon the Respondent.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14(a), 1.14 (b) and 1.14(c); 8.01(b); 8.04(a)(3) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment of restitution to the General Counsel's Office of the State Bar of Texas on behalf of Complainants in the amount of \$63,641.00, along with reasonable attorneys' fees and costs of court incurred in this case in the amount of \$600.00.

2. F3069801900; *Cruz v. Rodolfo O. Hernandez:*

In or about August 1996, Martha Cruz ("Complainant") retained Rodolfo O. Hernandez ("Respondent") to file represent her in a personal injury case arising out of an automobile accident and, additionally, the traffic citation which was issued as a result of the automobile accident. Complainant Cruz signed a written contingency fee contract.

On or about December 10, 1996, a hearing was set on the traffic citation. Respondent neither appeared, nor did any meaningful work on behalf of Complainant Cruz regarding the traffic citation. As a result, a warrant was issued for Complainant's arrest.

On or about April 29, 1997, Respondent instructed a non-lawyer assistant to notarize a document relating the Complainant's personal injury case, without having the document signed

in the non-lawyer assistant's presence and without having produced any verification that the signature was that of Complainant Cruz.

On or about April 29, 1997, a settlement agreement was reached in Complainant's personal injury case. Respondent received a settlement check made payable to Complainant Cruz and Respondent in the amount of \$9,000.00. Respondent endorsed the check by signing his signature, as well as affixing Complainant's name to the endorsement. Respondent deposited the settlement check into his operating, rather than his trust, account and failed to notify Complainant Cruz of the receipt of the funds. Respondent failed to disburse and, instead, converted the funds to his own use. Respondent also failed to obtain Complainant's signature on the insurance carrier's Release of Claims form.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14(a), 1.14 (b) and 1.14(c); 5.03(a) and 5.03(b); 8.01(b); 8.04(a)(3) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment of restitution to the General Counsel's Office of the State Bar of Texas on behalf of Complainants in the amount of \$9,000.00, along with reasonable attorneys' fees and costs of court incurred in this case in the amount of \$600.00.

3. F3069801903; *Aragon v. Rodolfo O. Hernandez*:

On or about December 17, 1992, Jose Luis Aragon ("Complainant") retained Rodolfo O. Hernandez ("Respondent") to file suit and represent him on a contingency fee basis in a personal injury case arising out of an automobile accident. There was no signed contingency fee contract.

On or about June 1994, Complainant's case settled in the amount of \$30,000.00. Of the total settlement, \$8,100.00 was withheld by Respondent to pay the medical providers.

Thereafter, Respondent failed to disburse the funds to the medical providers and failed to maintain the funds in his trust account. Respondent failed to provide an accounting of the settlement funds to Complainant Aragon, as requested.

Respondent was served with, but neither responded to nor stated grounds for the failure to respond to the Complaint filed by Aragon.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14(a), 1.14 (b) and 1.14(c); 8.04(a)(3); 8.04(a)(8) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment to the General Counsel's Office of the State Bar of Texas of reasonable attorneys' fees and costs of court incurred in this case in the amount of \$350.00.

4. F3089801981; *Tellez v. Rodolfo O. Hernandez*:

In or about February 1996, Albert Tellez ("Complainant") retained Rodolfo O. Hernandez ("Respondent") to represent him regarding his claims for property damage to his vehicle arising as a result of an automobile accident. Respondent quoted no fee and there was no signed fee agreement for the representation.

On or about July 15, 1998, Respondent settled Complainant's claims for \$500.00, Respondent negotiated the settlement check and placed the funds into his operating account. Respondent failed to notify Complainant Tellez of the receipt of the settlement check, failed to disburse the funds to Complainant, and failed to maintain the funds in his trust account. In addition, Respondent failed to have Complainant Tellez sign the Release of All Claims which, instead, bore the signature of someone other than Complainant.

Respondent was served with, but neither responded nor stated grounds for the failure to respond to the Complaint filed by Tellez.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14(a) and 1.14 (b); 8.04(a)(8) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment to the General Counsel's Office of the State Bar of Texas of reasonable attorneys' fees and costs of court incurred in this case in the amount of \$350.00.

5. F3109802031; *Lorenzo Terrazas v. Rodolfo O. Hernandez*:

On or about September 17, 1994, Lorenzo Terrazas ("Complainant") retained Rodolfo O. Hernandez ("Respondent") to file suit and represent him on a contingency fee basis in a personal injury case arising out of an automobile accident. There was no signed contingency fee contract.

On or about May 26, 1995, Complainant's case settled in the amount of \$25,000.00. Of the total settlement, \$2,200.00 was withheld by Respondent to pay the medical providers. Thereafter, when it was determined that Respondent had failed to disburse the funds to the medical providers, Respondent issued a check in the amount of \$1,000.00 to Complainant Terrazas, drawn on Respondent's operating account. The check was returned to Complainant twice for insufficient funds.

Respondent was served with, but neither responded nor stated grounds for the failure to respond to the Complaint filed by Terrazas.

Such acts and/or omissions on the part of Respondent as are described above which

occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14 (b) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment of restitution to the General Counsel's Office of the State Bar of Texas on behalf of Complainants in the amount of \$1,202.00, along with reasonable attorneys' fees and costs of court incurred in this case in the amount of \$350.00.

6. F3129701762; *Gonzalez v. Rodolfo O. Hernandez*:

In or about July 1994, Francisco S. Gonzalez ("Complainant") retained Rodolfo O. Hernandez ("Respondent") to represent Complainant in a divorce case. The divorce case was settled. As part of the settlement, Complainant Gonzalez was awarded the house in which he and his ex-wife had lived, but was to pay his ex-wife \$15,000.00 as her part of the equity in the house and \$1,150.00 for the warranty deed. Complainant Gonzalez paid these amounts to Respondent, who was to disburse the funds to Complainant's ex-wife. Thereafter, Respondent remitted a check in the amount of \$15,000.00 to the ex-wife; however, Respondent neither remitted the \$1,150.00 to her nor provided any accounting of these funds.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.14(a) and 1.14 (b) of the Texas Rules of Professional Conduct.

Respondent is assessed with making payment of restitution on behalf of Complainants in the amount of \$1,150.00, along with reasonable attorneys' fees and costs of court incurred in bringing this case to the General Counsel's Office of the State Bar of Texas in the amount of \$350.00.

7. **S3129501193; Rivera v. Rodolfo O. Hernandez:**

In 1991, Eduardo Rivera ("Complainant") retained Rodolfo O. Hernandez ("Respondent") for representation in two personal injury cases which occurred on June 5 and 7, 1991. Respondent failed to communicate in any way the status of these cases to Complainant Rivera and failed to return Complainant's phone calls regarding the status of his cases. Additionally, Respondent settled the June 7, 1991 case, but failed to communicate the status to Complainant.

Such acts and/or omissions on the part of Respondent as are described above which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.03(a) and 1.03 (b) of the Texas Rules of Professional Conduct.

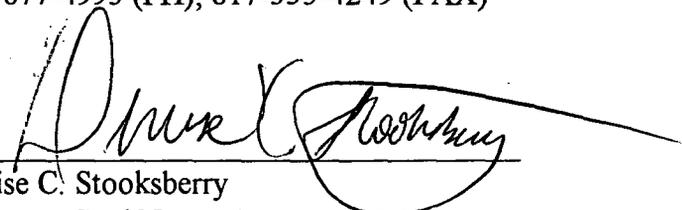
WHEREFORE, the State Bar of Texas moves the Court to accept the resignation in lieu of discipline, the Professional Misconduct as charged hereinabove, and grant the motion filed by Rodolfo O. Hernandez.

Respectfully submitted,

Steve W. Young
General Counsel

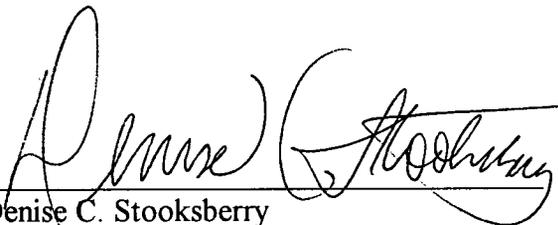
Denise C. Stooksberry
Assistant General Counsel

Office of the General Counsel
STATE BAR OF TEXAS
201 Main Street, Suite 1150
Fort Worth, Texas 76102
817-877-4993 (PH); 817-335-4249 (FAX)


Denise C. Stooksberry
State Bar Card No. 04607100

CERTIFICATE OF SERVICE

A true and correct copy of this Response of the Chief Disciplinary Counsel of the State Bar of Texas Regarding Rodolfo O. Hernandez has been served upon Rodolfo O. Hernandez by service upon his attorney of record, Max Daniel Munoz, Attorney and Counselor at Law, 1413 Wyoming, El Paso, Texas 79902 via facsimile delivery on the 4th day of March, 1999.


Denise C. Stooksberry
State Bar Card No. 04607100