

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9135

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

The Supreme Court of Texas hereby appoints the Honorable Michael J. Westergren, Judge of the 214th District Court of Nueces County, Texas, to preside in the Disciplinary Action styled:

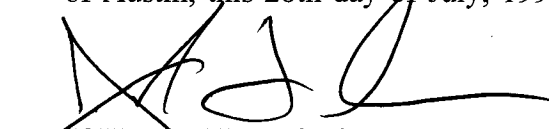
The Commission for Lawyer Discipline v. Lauren Kramer

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 28th day of July, 1999.



JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9135, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 30 day of July, 1999.

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

Thomas R. Phillips
Chief Justice

CAUSE NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

§
§
§
§
§
§

IN THE DISTRICT COURT OF

V.

HARRIS COUNTY, TEXAS

LAUREN KRAMER

_____ JUDICIAL DISTRICT

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Petitioner, the COMMISSION FOR LAWYER DISCIPLINE, a committee of the State Bar of Texas (hereinafter referred to as "Petitioner"), complaining of Respondent, LAUREN KRAMER (hereinafter referred to as "Respondent"), and would respectfully show unto the Court the following:

I. DISCOVERY CONTROL PLAN

Pursuant to Rule 190.1 of the TEXAS RULES OF CIVIL PROCEDURE (TRCP), Petitioner intends discovery in this case to be conducted under the Level 2 Discovery Control Plan, as provided in Rule 190.3 TRCP.

II. NATURE OF PROCEEDING

Petitioner brings this disciplinary action pursuant to the STATE BAR ACT, 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 complaint that forms the basis of this Original Disciplinary Petition was filed on or after May 1, 1992.

III. VENUE

Respondent is an attorney licensed to practice law in Texas and a member of the STATE BAR OF TEXAS . Respondent's residence and 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. Petitioner requests that a citation be issued and served upon Respondent by and through her attorney of record, Jerry L. Zunker, Zunker & Crane, L.L.P., Attorneys At Law, at 812 San Antonio, Suite 105, Austin, Texas 78701-2224.

IV. FIRST CAUSE OF ACTION

On May 9, 1991, Dennis R. Wallace sustained injuries in an automobile accident. Wallace pursued a suit against Farmers Insurance Company, initially which denied liability. Repeatedly, Farmers Insurance Company engaged in delay tactics, such as requesting further medical documentation. As a result, Wallace's automobile repairs were not paid until January 17, 1992. On March 2, 1992, Farmers Insurance Company paid Wallace \$42,500.00 based on his \$50,000.00 uninsured motorists coverage plan.

In June 1992, Wallace retained Respondent to represent him in a claim against Farmers Insurance Company. Respondent had represented other clients with similar claims of "bad faith and unfair dealing" against Farmers Insurance company. Respondent represented Wallace in Cause No. 90-44049; Wallace, Bearden et al v. Farmer's Insurance Group et al, in the 151st District Court, Harris County, Texas.

On April 29, 1993, Farmers Group, Inc. filed a Motion For Summary Judgment in Cause No. 90-44049; Wallace, Bearden, et al v Farmers Insurance Group, et al; in the 151st Judicial District Court. The Motion For Summary Judgment stated that Farmers Group, Inc. was not an

insurance company but an independent corporate entity, and was therefore, not liable to any of the Plaintiffs. Respondent failed to file a response to the Motion For Summary Judgment. Since Respondent had erroneously sued several Farmers Insurance Companies under one entity, the Motion for Summary Judgment was granted.

On October 17, 1994, Judge Carolyn Garcia signed an Order Granting the Motion For Summary Judgment and Final Judgment in Cause No. 90-044049; Dorothy Bearden, Dennis Wallace and Tom Dargis v. Farmers Group, Inc., et al; in the 151st Judicial District Court of Harris County, Texas. The Court entered judgment in favor of Farmers Group, Inc. dismissing all claims asserted by Plaintiffs against Farmers Group, Inc, with Prejudice.

Respondent appealed the Judgment. On December 16, 1994, Respondent filed the transcript, but did not file a statement of facts. Respondent failed to file a brief and on August 23, 1995, the Fourteenth Court of Appeals sent notification to all parties of its intent to dismiss for want of prosecution. Respondent failed to respond to the notice, and the Court of Appeals dismissed the appeal on September 14, 1995.

V. RULE VIOLATIONS

During her representation of Dennis Wallace in his lawsuit against Farmers Group, Inc. Respondent failed to inform her client that the lawsuit had been dismissed in favor of Farmers Group, Inc. As a result the Respondent engaged in conduct in violation of Rules 1.03(a) requiring that a lawyer shall keep his client reasonably informed about the status of the legal matter and comply with reasonable requests for information; 1.03(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; of the Texas Disciplinary Rules of Professional Conduct. By failing to file an

appellate brief with the Court of Appeals, Respondent engaged in conduct in violation of Rule 1.01(b)(2) by frequently failing to carry out completely the obligations owed to a client. By failing to inform her client that The Fourteenth Court of Appeals had dismissed their appeal, Respondent engaged in conduct in violation of Rule 1.03(b) for failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation of the Texas Disciplinary Rules of Professional Conduct.

VI.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Wallace's filing of a complaint on or about May 26, 1998.

VII. SECOND CAUSE OF ACTION

On or about October 1, 1990, Billy Gibson ("Gibson") sustained head injuries in an auto accident with Michael Haines while making deliveries in the company van for UPS. Gibson retained Respondent to handle his personal injury cause of action in the Haines matter. Respondent filed suit: *Gibson v. Haines*, Cause No. 91-29296, In the 55th Judicial District Court of Harris County, Texas. Respondent pursued the case for over four years. Gibson's case went to trial in March of 1995, a final judgment was entered May, 1995. The jury found Mr. Haines negligent and awarded Gibson only seven hundred dollars (\$700.00) in past medical expenses.

Respondent had failed to enter seventy thousand dollars (\$70,000.00) of medical bills at trial. The award of seven hundred dollars (\$700.00) was due to Respondent's negligence in failing to accumulate and enter Gibson's medical bills at trial as well as failure to subpoena the custodians of records that resulted in an unjust award to Gibson from the jury.

Respondent had signed a scheduling order in the Haines case wherein all medical bills were to be entered by December 3, 1994, which was thirty (30) days before the trial that was set for January 6, 1995. Respondent failed to meet this deadline. Respondent had done little or nothing to accumulate the medical bills in preparation for the Gibson trial. Trial was reset for February and Respondent did nothing to accumulate said bills. Trial was reset for March 6, 1995, and Respondent on December 7, 1995, filed a Motion to Compel Defendants to Supplement Medical Records. The Court denied Respondent's Motion. Thereafter, Respondent appealed the Haines judgment on fifteen points of error. However, Respondent did not order a complete copy of the Statement of Facts from the trial or a Partial Statement of Facts that included references to her points of error. As a result, Respondent was not able to effectively appeal the Haines judgment because she could not direct the court's attention to specific places in the record to support her points of error as is required by the Rules of Appellate Procedure. Respondent also failed to cite specific cases to support her points of error.

On June 8, 1995, Gibson was involved in another personal injury case. Gibson retained Respondent to pursue legal action against Kathi Bryant ("Bryant"). Respondent failed to file suit until May 1996. Respondent then waited until January of 1997 to begin filing the products liability causes of action in the Bryant matter. Respondent failed to sue UPS New York, Inc., the subsidiary of the company that designed the delivery van before June 8, 1997, when the two year statute of limitations ran.

On September 1, 1995, Gibson sustained injuries when Gibson's automobile was hit by a Gray Line Bus who ran a stop sign. Gibson again retained Respondent to handle his claim against Gray Line of Houston, Inc. On October 9, 1995, Respondent received a letter from Susan

Scalzo ("Scalzo") regarding her client, The Central States, Southeast and Southwest Areas Health and Welfare Fund (Fund). This letter informed Respondent that the Fund had a lien for medical bills on any money Gibson received in the Gray Line case.

On October 18, 1995, Respondent wrote a letter to Scalzo in appreciation of Scalzo notifying Respondent of the fund's lien. On May 10th and 20th, 1996, Respondent received a letter from Scalzo updating the Fund's lien which showed an amount due of \$3,904.86. Gibson was sent a copy of this letter. On June 12, 1996, Respondent wrote a letter to Erik Kessinger regarding the Fund's lien stating "the total medical bills as of March, 1996, were \$6,469.60". Respondent failed to send a copy of this letter to Gibson. On January 23, 1997, Respondent wrote another letter to Kessinger. In that letter Respondent listed the total bills as \$21,696.90. This letter was written three months before Gray Line settled. Respondent also failed to send a copy of this letter to Gibson.

Gray Line offered a settlement of \$80,000.00 based on \$21,000.00 of medical bills and Respondent presented the said offer to Gibson. However, Gibson was led to believe by Respondent that the medical lien was only \$3,500 and Gibson agreed to settle.

After the settlement, Scalzo contacted Respondent asking for the \$21,000.00 medical lien and Respondent called Gibson and followed up with a letter to Gibson on June 5, 1997. Respondent stated in this letter to Gibson "that she was not retained to handle the lien". Respondent knew the amount of the lien and intentionally, knowingly and maliciously withheld information from Gibson.

VIII. RULE VIOLATIONS

Respondent engaged in conduct in violation of rules 1.01(a) a lawyer shall not accept or continue employment in a legal matter which a lawyer knew or should have known was beyond his competence unless; 1.01(a)(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or 1.01(b) the advice or assistance of the lawyer is reasonably required in an emergency and the lawyer is reasonably required in an emergency and the lawyer limits the advice and assistance to that which is reasonably necessary in the circumstances in the Texas Disciplinary Rules of Professional Conduct.

IX.

The complaint which forms the basis of the cause of action hereinabove set forth was brought to the attention of the Office of the General Counsel of the State Bar of Texas by Gibson's filing a complaint on or about August 27, 1997.

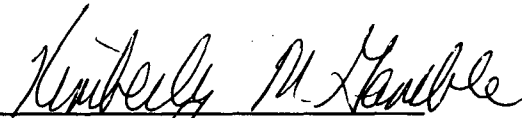
PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Petitioner, the **COMMISSION FOR LAWYER DISCIPLINE**, respectfully prays that this Court discipline Respondent, **LAUREN KRAMER**, by reprimand, suspension, or disbarment, as the facts shall warrant; and grant all other relief to which Petitioner may show itself to be justly entitled, including costs of Court and attorney's fees.

Respectfully submitted,

Steven W. Young
General Counsel

Kimberly M. Gamble
Assistant General Counsel
Office of the General Counsel
State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002
(713) 759-6931
(713) 752-2158 FAX



KIMBERLY M. GAMBLE
State Bar No. 00789804

ATTORNEYS FOR PETITIONER
COMMISSION FOR LAWYER DISCIPLINE

STATE BAR OF TEXAS



Office of the General Counsel

June 8, 1999

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

Re: Commission for Lawyer Discipline v. Lauren Kramer

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 Lauren Kramer. Lauren Kramer has designated Harris County, Texas, as her 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:

Lauren Kramer
c/o Jerry L. Zunker
Zunker & Crane, L.L.P.
Attorneys At Law
812 San Antonio, Suite 105
Austin, Texas 78701-2224

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to: (1) 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, and (2) 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.

1111 Fannin, Suite 1370, Houston, Texas 77002, (713)759-6931

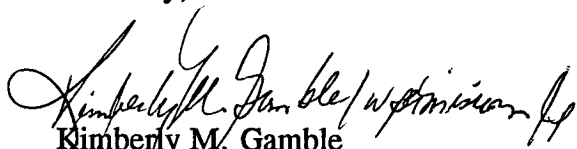
Mr. John Adams, Clerk
Supreme Court of Texas
June 8, 1999
Page 2

Once a trial judge has been appointed, please forward the original and two (2) copies of the Original Disciplinary Petition, the Civil Case Information Sheet, the filing fee check (all enclosed herewith), and the Court's Appointing Order to the District Clerk of Harris County, Texas, with the request that the suit be filed, service be obtained, and a file-marked copy of the Petition be returned to the undersigned.

Additionally, enclosed please find 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 file-marked copy of the Petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,


Kimberly M. Gamble
Assistant General Counsel

KMG/lp

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

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

AUG 04 1999

The Honorable Charles Bacarisse
District Clerk of Harris County
P.O. Box 4651
Houston, Texas 77002

Dear Mr. Bacarisse:

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. Lauren Kramer*, and a copy of the Supreme Court's order appointing the Honorable Michael J. Westergren, Judge of the 214th District Court, Corpus Christi, Texas, to preside in this Disciplinary Action.

Sincerely,

A stylized, blocky representation of a handwritten signature, likely "John T. Adams".

John T. Adams
Clerk

cc: Honorable Michael J. Westergren
Ms. Kimberly M. Gamble
Ms. Lauren Kramer
Ms. Melissa Dartez



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 463-1312

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

FAX: (512) 463-1365

EXECUTIVE ASS'T
WILLIAM L. WILLIS

AUG 04 1999

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

Ms. Kimberly M. Gamble
Assistant General Counsel, State Bar of Texas
1111 Fannin, Suite 1370
Houston, Texas 77002

Ms. Lauren Kramer
c/o Jerry L. Zunker
Zunker & Crane, L.L.P.
812 San Antonio, Suite 105
Austin, Texas 78701-2224

Dear Ms. Gamble and Ms. Kramer:

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 Michael J. Westergren, Judge of the 214th District Court, Corpus Christi, Texas to preside in

Commission for Lawyer Discipline v. Lauren Kramer

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

FAX: (512) 463-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
NADINE SCHNEIDER

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
GREG ABBOTT
DEBORAH G. HANKINSON
HARRIET O'NEILL
ALBERTO R. GONZALES

AUG 04 1999

Honorable Michael J. Westergren
Judge, 214th District Court
901 Leopard Street, #902
Corpus Christi, Texas 78401

Dear Judge Westergren:

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 Ms. Kramer and Ms. Gamble, and a copy of the letter to the District Clerk of Harris County.

It is recommended that, six to eight weeks after receipt of this letter, you contact the Harris County District Court Administrative Office (713-755-7593) to find out the district court to which this disciplinary case has been assigned. We then recommend that, either before or immediately after you set the case for trial, you again contact the Harris County District Court Administrative Office (713-755-6593) 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 (713-471-3911) to obtain information on lodging, allowable expenses, and claims forms for your expenses incident to presiding over this disciplinary case.

Sincerely,

SIGNED

John T. Adams
Clerk