

**ORDER OF THE SUPREME COURT OF TEXAS**

**Misc Docket No. 94- 9193**

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

The Supreme Court of Texas hereby appoints the Honorable Daniel R. Sklar, Judge of the 329th District Court of Wharton County, Texas, to preside in the Disciplinary Action styled:

**The Commission for Lawyer Discipline v. Eric C. Moebius**

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Travis 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 12th day of December, 1994.

  
JOHN T. ADAMS, CLERK  
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 94-9193, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 14 day of December, 1994.

  
Thomas R. Phillips  
Chief Justice

COPY

NO. \_\_\_\_\_

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	TRAVIS COUNTY, TEXAS
ERIK C. MOEBIUS	§	_____ JUDICIAL DISTRICT

**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 called "Petitioner"), complaining of Respondent, Erik C. Moebius, (hereinafter called "Respondent"), showing the Court:

**I.**

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex. Gov't. Code Ann. §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 the Disciplinary Petition were filed on or after May 1, 1992.

**II.**

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Respondent has his principal place of practice and his residence in Travis County, Texas. An officer may serve citation on Respondent at his office address located at 603 W. 12th St., Austin, Travis County, Texas 78701-1717.

## FIRST CAUSE OF ACTION

### III.

In or around August, 1990, Respondent, as an associate attorney employed by the Law Offices of Michael A. Wash, was representing Herman Garcia (hereinafter called "Garcia") in a personal injury lawsuit arising out of injuries Garcia suffered in an automobile accident which occurred on or about March 3, 1987. Garcia's lawsuit was tried to a jury. The jury found no negligence on the part of any defendant; instead, the jury found that the negligence of a co-plaintiff, Consuelo Medrano Shawn, proximately caused the accident.

### IV.

Shortly after the trial, Respondent was terminated from his association with the Law Offices of Michael A. Wash. Thereafter, Michael A. Wash (hereinafter called "Wash") assumed primary responsibility for the Garcia litigation. Wash, on behalf of Garcia and his mother, (who is Garcia's appointed guardian), negotiated a settlement with the defendants.

### V.

Sometime thereafter, Garcia and other family members retained Respondent to once again handle the personal injury litigation, and Respondent proceeded to file a lawsuit against Wash alleging, among other things, malpractice, fraud by conspiracy, and breach of contract.

### VI.

During the course of the litigation against Wash, at that time pending in district court in Travis County, Texas, Respondent's clients suffered numerous losses on pre-trial motions heard by Judges Paul Davis (hereinafter called "Davis") and John Dietz (hereinafter called "Dietz"), both Travis County District Judges. As a result of these adverse rulings, Respondent accused

both Davis and Dietz of having unlawful motives in making the various rulings. Respondent never provided any tangible evidence of said unlawful motives. Eventually, Respondent went so far as to name both Davis and Dietz as parties in related litigation that was filed in federal district court. Although Respondent was obviously dissatisfied with the rulings of Davis and Dietz, he failed to appeal the rulings of either Judge to a competent Texas appellate court prior to accusing them of illegal acts.

## VII.

As stated in Paragraph VI., above, Respondent caused to be filed essentially the same lawsuits involving the same parties and the same facts in federal district courts sitting in San Antonio and in Austin. Respondent suffered setbacks on pre-trial motions in the two federal district court lawsuits similar to those he suffered in state district court. True to form, Respondent accused Federal Magistrate Robert B. O'Connor (hereinafter called "O'Connor") of conspiring with the defendants in Respondent's various lawsuits to deny due process to Respondent's clients and to ultimately defeat the claims of Respondent's clients.

## VIII.

In all, Respondent has filed four lawsuits against Wash on behalf of the Garcias, two in federal district courts and two in state district courts. In each of these, he has accused Wash of conspiring with other parties to deny Garcia's claim for damages. Respondent has also included as defendants in various lawsuits the attorneys representing the other parties in the Garcia litigation, accusing these attorneys of conspiring with Wash to deny the Garcia's claims. Finally, Respondent named several state and federal district judges as conspirators with the other defendants in the lawsuits filed against Wash. There has never been any tangible evidence

produced by Respondent to support these accusations.

**IX.**

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III., IV., V., VI., VII. and VIII., hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 3.01, 3.02, 3.03(a)(1), 3.04(c)(2), 3.04(c)(3), 3.04(d), 8.02(a), 8.04(a)(1) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

**X.**

The complaint which forms the basis of the First Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by Wash's filing of a complaint on or about January 28, 1993.

**SECOND CAUSE OF ACTION**

**XI.**

On or about October 20, 1992, Respondent was hired by Keith F. Bell (hereinafter called "Bell") to represent Bell in ongoing child custody litigation against Bell's ex-wife, Dorothy A. Mathews (hereinafter called "Mathews"). Bell and Mathews were divorced in Travis County, Texas on April 3, 1985, in Cause No. 369,117. Judge Pete Lowry (hereinafter called "Lowry") presided over and granted the divorce. On or about November 25, 1992, Respondent filed a pleading entitled "First Amended Rule 257 Motion for Change of Venue" in the Travis County District Court, Cause No. 369,117, alleging that "during that marriage (with Bell) and after that marriage, Dottie Bell (now Mathews) was romantically involved with the Presiding Judge, Pete Lowry." Respondent never presented any evidence that the above statement has any basis in fact. Mathews dated Lowry from November, 1986, to approximately September, 1989. She

married Lee Mathews in March, 1992.

## XII.

Since the Fall of 1992 to the present, in numerous court filings in both state and federal court, Respondent has referred to Mathews as Lowry's "mistress and girlfriend." For instance, in a December 28, 1992 pleading entitled "Motion for Denial of Application for Judgment or in the Alternative Motion for Continuance", in Cause No. A. 92. CA 538-JN, styled In The United States District Court for the Western District of Texas, Austin, Division, Garcia et al vs. Wash et al., on pp. 12-13, Respondent states: "It appears that Judge Meurer has been "assigned" to the needs of Judge Lowry's bookkeeper, girlfriend and Keith Bell's ex-wife Dottie Bell Mathews."

## XIII.

In 1989, Lowry wrote personal letters (hereinafter called "the letters") to Mathews. Some time in May, 1990, these letters were taken from Mathews' home without her permission or consent. After Mathews' ex-husband, Bell, distributed copies of the letters to various attorneys, the press, the FBI, the committee on judicial conduct and many other persons and entities, Judge Robert C. Wright, who had been appointed to hear the ongoing child custody dispute between Mathews and Bell, entered an order directing Bell and his current wife, Sandra Neilson Bell, to surrender all originals and all copies of the letters to Bell's attorney at that time, Demetrio Duarte. Judge Wright further enjoined Bell from further distributing any copies of the letters.

## XIV.

In a subsequent court order in Cause No. 369,117 In The Travis County District Court,

dated April 3, 1992, Judge Wright ordered that the letters be sealed and not be opened without the Court's permission. He further ordered that the letters were the personal property of Mathews, and the letters should not be released until appeal time had run and Mathews made application to the Court. After a "Motion to Withdraw [the letters]" was filed with the Court and an order signed, the letters were released to Mathews' previous attorney, Broadus Spivey, who currently has possession of the originals of those letters. At some point after the April 3, 1992 order was entered, Bell retained Respondent as his counsel.

#### XV.

During the November 25, 1992, hearing before Judge James Meyers, referred to in Paragraph XI., above, Respondent questioned Mathews concerning the content of the letters and indicated to Mathews that he had possession of copies of the letters. Bell's Motion and the questioning of Mathews by Respondent at the hearing indicate that Bell and Respondent have continued to possess and distribute copies of the letters in violation of the Court's order. During the hearing, Judge Meyers admonished Respondent and gave him judicial notice of the order which enjoins Bell from distributing the letters.

#### XVI.

On December 3, 1992, Respondent filed a pleading entitled "Plaintiffs' Objection to Order and Advisory of Magistrate O'Connor" in the following case: Cause No. SA-92-CA-0566, Garcia et al v. Wash et al, and the Honorable Judge Paul Davis of the 200th Judicial District, In The United States District Court for the Western District of Texas, San Antonio Division. Attached to Respondent's pleading were: (1) affidavits signed by Bell in which he refers to having possession of the letters, and; (2) a copy of one of the letters. Notations on the

affidavit and the letter indicated that the affidavit and letter were faxed to another person or persons from Respondent's office.

**XVII.**

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XI., XII., XIII., XIV., XV., and XVI., hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 3.01, 3.03(a)(1), 3.04(d), 4.01(a), 4.04(a), 8.02(a) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

**XVIII.**

The complaint which forms the basis of the Second Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by Mathew's filing of a complaint on or about December 14, 1992.

**THIRD CAUSE OF ACTION**

**XIX.**

After the complaint referred to in Paragraphs XI. through XVI. above, was presented to the Grievance Committee for the State Bar of Texas, District, 9A, Respondent continued to make allegations against Mathews that had no basis in fact. For instance, on or about August 27, 1993, Respondent caused to be filed with the Court of Appeals for the Third Judicial District of Texas, in Case No. 03-92-00546-CV, a pleading entitled "Appellant's Conditional Motion for Continuance, Sworn Pleading, Motion to Recuse, Bill of Exception and Objection". On Page 7 of that pleading, Respondent stated that "a girlfriend of Judge Lowry (Dottie Mathews) filed a grievance with the State Bar of Texas seeking to have the Appellant's attorney declared mentally impaired and disbarred". In fact, at the time Mathews filed her grievance against

Respondent with the State Bar, she was not a "girlfriend" of Lowry, and Respondent was aware of that fact at the time of the filing of the above referenced pleading. Thereafter, on pages 8 and 11 of the pleading, Respondent once again refers to Mathews as the "girlfriend" of Lowry. Further, by her complaint against Respondent to the State Bar of Texas, Mathews was not attempting to have Respondent "declared mentally impaired and disbarred".

**XX.**

On or about October 27, 1993, Respondent caused to be filed in Cause No. A-92-CA-538-JN, then pending in the United States District Court for the Western District of Texas, Austin Division, a pleading entitled "Objections to the October 5, 1993, Report and Recommendations of Magistrate Capelle, Request for *De Novo Review*". On page 7, footnote 8 of that document, Respondent refers to Mathews as both the "mistress" and "girlfriend" of Lowry. Later, on page 19 of the same pleading, Respondent refers to Mathews as being a "brain-injured woman". Again, there is no basis in fact for Respondent to refer to Mathews in this way. Further, Respondent knew or should have known that these statements were untrue.

**XXI.**

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XIX. and XX., hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 3.01, 3.03(a)(1), 4.01(a), 4.04(a), 8.02(a) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

**XXII.**

The complaint which forms the basis of the Third Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by

Mathews' filing of a complaint on or about July 13, 1993.

**FOURTH CAUSE OF ACTION**

**XXIII.**

In or around 1990, Respondent was retained by Wayne E. Brown (hereinafter called "Brown") to represent Brown in the dispute he had with Southwestern Bell Telephone Company (hereinafter called "SWBT") over an incorrect advertisement for Brown's business.

**XXIV.**

Respondent eventually filed an Answer on behalf of Brown to a lawsuit brought by SWBT. Thereafter, Brown did not hear from Respondent regarding his case for some time. In or around May, 1993, however, Brown received a notice from the court that a judgment had been taken against him by default. Brown later learned that Respondent had failed to properly respond to discovery propounded to him by attorneys for SWBT. This failure to act on the part of Respondent resulted in a Default Judgment being taken against his client, Brown.

**XXV.**

Such acts and/or omissions on the part of Respondent as are described in Paragraphs XXIII. and XXIV., hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.01(b)(1), 1.03(a), and/or 1.03(b) of the Texas Disciplinary Rules of Professional Conduct.

**XXVI.**

The complaint which forms the basis of the Fourth Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by

Brown's filing of a complaint on or about July 1, 1993.

**FIFTH CAUSE OF ACTION**

**XXVII.**

By letter dated July 8, 1993, and received by Respondent on or about July 14, 1993, the Grievance Committee for State Bar District 9A urged Respondent to provide information in response to a complaint presented against him by Wayne Brown, which complaint was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the filing of a complaint with the State Bar of Texas on or about July 1, 1993. Respondent thereafter knowingly failed to respond to a lawful demand for information from a disciplinary authority, to wit, the Grievance Committee for State Bar District 9A, thereby engaging in professional misconduct in violation of Rule 8.01(b) of the Texas Disciplinary Rules of Professional Conduct.

**SIXTH CAUSE OF ACTION**

**XXVIII.**

By letter dated July 19, 1993, and received by Respondent on or about August 11, 1993, the Grievance Committee for State Bar District 9A urged Respondent to provide information in response to a complaint presented against him by Dorothy A. Mathews, which complaint was brought to the attention of the Office of the General Counsel of the State Bar of Texas by the filing of a complaint with the State Bar of Texas on or about July 13, 1993. Respondent thereafter knowingly failed to respond to a lawful demand for information from a disciplinary authority, to wit, the Grievance Committee for State Bar District 9A, thereby engaging in professional misconduct in violation of Rule 8.01(b) of the Texas Disciplinary Rules of

Professional Conduct.

**PRAYER**

WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorney's fees.

Respectfully submitted,

**James M. McCormack**  
General Counsel

**Bob L. Warneke, Jr.**  
Assistant General Counsel  
Office of the General Counsel  
State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711  
Telephone: (512) 463-1463  
Telecopier:(512) 477-4607

  
**BOB L. WARNEKE, JR.**  
State Bar of Texas No. 20868600  
**ATTORNEYS FOR PETITIONER**

u:\users\catherin\bob\moebius.dp



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

ADMINISTRATIVE ASS'T.  
NADINE SCHNEIDER

JUSTICES  
RAUL A. GONZALEZ  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
BOB GAMMAGE  
CRAIG ENOCH  
ROSE SPECTOR

December 13, 1994

The Honorable Amalia Rodriguez-Mendoza  
District Clerk of Travis County  
P.O. Box 1748  
Austin, Texas 78767

Dear Ms. Rodriguez-Mendoza:

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. Eric C. Moebius and a copy of the Supreme Court's order appointing the Honorable Daniel R. Sklar, Judge of the 329th District Court, Wharton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams  
Clerk

cc: Hon. Daniel R. Sklar  
Mr. Eric C. Moebius  
Mr. James M. McCormack



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  
RAUL A. GONZALEZ  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
BOB GAMMAGE  
CRAIG ENOCH  
ROSE SPECTOR

EXECUTIVE ASST.  
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.  
NADINE SCHNEIDER

December 13, 1994

Honorable Daniel R. Sklar  
Judge, 329th District Court  
202 Courthouse  
101 Milam Street  
Wharton, Texas 77488

Dear Judge Sklar:

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. Butler and Mr. McCormack, and a copy of the letter to the District Clerk of Travis County.

It is recommended that, four or five weeks after receipt of this letter, you contact the Travis County District Court Administrative Office (512-473-9098) 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 (210-379-4188) 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



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  
RAUL A. GONZALEZ  
JACK HIGHTOWER  
NATHAN L. HECHT  
LLOYD DOGGETT  
JOHN CORNYN  
BOB GAMMAGE  
CRAIG ENOCH  
ROSE SPECTOR

EXECUTIVE ASS'T.  
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.  
NADINE SCHNEIDER

December 13, 1994

Mr. James M. McCormack  
General Counsel, State Bar of Texas  
P.O. Box 12487  
Austin, Texas 78711

Mr. Eric C. Moebius  
603 W. 12th Street  
Austin, Texas 78701-1717

Dear Mr. McCormack and Mr. Moebius:

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 Daniel R. Sklar, Judge of the 329th District Court, Wharton, Texas to preside in

Commission for Lawyer Discipline v. Eric C. Moebius

Sincerely,

SIGNED

John T. Adams  
Clerk