

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 94- 9210

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

The Supreme Court of Texas hereby appoints the Honorable William R. Porter, Judge of the 276th District Court of Morris County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Joe W. Weiss

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Bexar 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 21st day of December, 1994.

A handwritten signature in black ink, appearing to read 'J. Adams', is written over the printed name of the clerk.

JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 94-9210, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 22 day of December, 1994.


Thomas R. Phillips
Chief Justice

COPY

NO. _____

COMMISSION FOR LAWYER DISCIPLINE	§	IN THE DISTRICT COURT OF
V.	§	BEXAR COUNTY, TEXAS
JOE W. WEISS	§	_____ 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, Joe W. Weiss, (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 complaint which forms the basis of the Disciplinary Petition was 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 business in Bexar County, Texas. An officer may serve citation on Respondent at his business address located at 5822 Northwest Expressway (IH 10), San Antonio, Bexar County, Texas 78201-2857.

III.

On or about March 29, 1993, Respondent's law firm was retained by Roberto Del Castillo (hereinafter called "Del Castillo") and his wife, Carmen, to represent Del Castillo and their minor son regarding personal injuries Del Castillo and the son received as a result of an automobile accident. A contract attorney in Respondent's office, Curt Swyers (hereinafter called "Swyers") was assigned to represent Del Castillo and the son regarding their personal injuries. In addition, Carmen Del Castillo (hereinafter called "Carmen") had retained Respondent's law firm on or about February 9, 1993, to represent her regarding personal injuries she received as the result of an unrelated automobile accident. Swyers was also assigned to represent Carmen in her case.

IV.

Shortly after retaining Respondent's law firm, Del Castillo became dissatisfied with the service provided by Swyers and other members of Respondent's staff. On or about May 5, 1993, Del Castillo and Carmen informed Respondent that they terminated his services on all cases.

V.

Upon termination, Del Castillo and Carmen demanded the return of their respective case files from Respondent. On or about May 6, 1993, Del Castillo appeared in Respondent's office to pick up the case files. At that time, Respondent agreed that he would return the files on the following day, May 7, 1993, along with a detailed invoice of work performed by Respondent's office on the various Del Castillo cases. The next day, Del Castillo returned to Respondent's

office to pick up the files, only to be told that the files would be mailed to him and that he would receive them on or about May 10, 1993.

VI.

When Del Castillo did not receive the files in the mail on May 10, 1993, he returned to Respondent's office where he was told that he could not receive the files unless he signed a release for them. Upon doing this, Del Castillo was given an envelope purported to contain the contents of his and Carmen's files. Upon returning home, however, Del Castillo determined that the files were incomplete.

VII.

Initially, Del Castillo executed a contingent fee retainer agreement with Respondent, which included a rate of One Hundred Fifty and 00/100 (\$150.00) Dollars per hour for representation on Del Castillo's personal injury protection (hereinafter called "PIP") claim. Respondent, however, did not keep any time records for the amount of work performed on behalf of Del Castillo's PIP claim, and therefore could not substantiate any legal fees charged to Del Castillo.

VIII.

On or about May 10, 1993, Respondent furnished Del Castillo's PIP provider, Trinity Universal Insurance Company, with completed and signed information forms for the payment of the PIP benefits. Respondent signed Del Castillo's name to this form without having Del Castillo's permission or authority. Nor did Respondent have Del Castillo's power of attorney to sign the forms on his behalf. Further, Respondent signed the forms after he had been discharged from representation by Del Castillo.

IX.

Upon discharge, Respondent advised Del Castillo that he was maintaining an interest, pursuant to a lien, in any future settlement received in the case. Respondent threatened to pursue criminal prosecution when Del Castillo raised objection to Respondent's lien.

X.

Respondent made these threats of criminal prosecution in a telephone conversation with Del Castillo which took place on or about May 24, 1993. In his appearance before the District 10B Grievance Committee's Investigatory Hearings in this matter, Respondent denied ever making any such threats against Del Castillo, and testified that Del Castillo was, in fact, the one who had made such threats to Respondent. A cassette recording made of the conversation confirmed that Respondent had indeed made the treats against Del Castillo. Thereafter, Respondent testified to the Grievance Committee that he did not recall the taped conversation.

XI.

Del Castillo originally sought Respondent's legal services in response to television advertisements Respondent aired on local television stations during the months of January, February, and March, 1993. The television advertisements were produced by an out-of-state company, and featured the testimonials of persons claiming to be Respondent's clients. In fact, these persons were not Respondent's clients, but were actors presenting a totally fictitious, scripted scenario. The television advertisements gave Del Castillo an unjustified expectation about results the Respondent could achieve. Further, they contained material misrepresentations of fact and omitted facts necessary to make the advertisements considered as a whole not materially misleading.

XII.

The television advertisements alleged that Respondent specialized in auto accident cases. In fact, Respondent is not board certified by the Texas Board of Legal Specialization in auto accident cases, or in any other area.

XIII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III., IV., V., VI. VII., VIII. IX., X., XI., and XII. hereinabove which occurred on or after January 1, 1990, constitute conduct violative of Rules 1.04(a), 1.15(d), 3.03(a)(1), 7.01(a)(1), 7.01(a)(2), 7.01(b), 8.01(a), and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

XIII.

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of General Counsel of the State Bar of Texas by Del Castillo's filing of a complaint on or about July 23, 1993.

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
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BOB L. WARNEKE, JR.
State Bar of Texas No. 20868600

ATTORNEYS FOR PETITIONER

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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 22, 1994

Honorable William R. Porter
Judge, 276th District Court
P.O. Box 480
Daingerfield, Texas 75638

Dear Judge Porter:

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. Weiss and Mr. McCormack, and a copy of the letter to the District Clerk of Bexar County.

It is recommended that, four or five weeks after receipt of this letter, you contact the Bexar County District Court Administrative Office (210-220-2544) 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 (210-769-3182) 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

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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FAX: (512) 463-1365

CHIEF JUSTICE
THOMAS R. PHILLIPS

JUSTICES
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JACK HIGHTOWER
NATHAN L. HECHT
LLOYD DOGGETT
JOHN CORNYN
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ROSE SPECTOR

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

December 22, 1994

The Honorable David J. Garcia
District Clerk of Bexar County
Bexar County Courthouse
San Antonio, Texas 78205

Dear Mr. Garcia:

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. Joe W. Weiss and a copy of the Supreme Court's order appointing the Honorable William R. Porter, Judge of the 276th District Court, Daingerfield, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. William R. Porter
Mr. Joe W. Weiss
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

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JOHN T. ADAMS

EXECUTIVE ASST.
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
NADINE SCHNEIDER

December 22, 1994

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

Mr. Joe W. Weiss
5822 Northwest Expressway (IH 10)
San Antonio, Texas 78201-2857

Dear Mr. McCormack and Mr. Weiss:

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 William R. Porter, Judge of the 276th District Court, Daingerfield, Texas to preside in

Commission for Lawyer Discipline v. Joe W. Weiss

Sincerely,

SIGNED

John T. Adams
Clerk