

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 95- 9055

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

The Supreme Court of Texas hereby appoints the Honorable Patrick A. Clark, Judge of the 128th District Court of Orange County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Curtis A. Swyers

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.

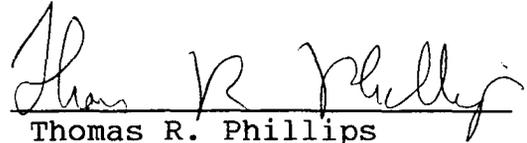
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 17th day of February, 1995.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 95-9055, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 21 day of February, 1995.


Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER	§	IN THE DISTRICT COURT OF
DISCIPLINE	§	
	§	
V.	§	BEXAR COUNTY, TEXAS
	§	
CURTIS A. SWYERS	§	_____ 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, Curtis A. Swyers, (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 in Bexar County, Texas. An officer may serve citation on Respondent at his business address located at 5822 Northwest Expressway, San Antonio, Bexar County, Texas 78201-2857.

COPY

FIRST CAUSE OF ACTION

III.

On or about February 9, 1993, Carmen Del Castillo (hereinafter called "Ms. Del Castillo") hired Joe Weiss & Associates to represent her in a personal injury case regarding injuries she received in an automobile accident. Ms. Del Castillo's case was assigned to Respondent, a contract attorney associated with the firm of Joe Weiss & Associates.

IV.

Ms. Del Castillo executed a contingent fee agreement with Respondent and Joe Weiss & Associates which explicitly directed Respondent not to pursue collection of any personal injury protection (hereinafter called "PIP") benefits since Ms. Del Castillo was to handle that herself. Respondent, however, did proceed with steps to collect the PIP benefits. When Respondent's actions were discovered by Ms. Del Castillo, Respondent convinced her to allow him time to finish the PIP work at no charge to her. Thereafter, Respondent failed to do any further work on the PIP claim.

V.

In late February, 1993, Respondent negotiated a property damage settlement of Four Hundred Forty Nine and 36/100 (\$449.36) Dollars for damages to Ms. Del Castillo's car. This was at least Two Hundred and 00/100 (\$200.00) Dollars less than what it actually cost to repair the car. Respondent did not seek Ms. Del Castillo's authorization or approval to accept the settlement offer. Ultimately, Ms. Del Castillo relied on the owner of the shop where the car was being repaired to negotiate a higher property damage settlement from the insurance company.

VI.

On or about May 5, 1993, Ms. Del Castillo discharged Respondent and Joe Weiss & Associates from further representation of her case. During the period of representation Respondent frequently failed to return Ms. Del Castillo's telephone calls requesting the status of her case and Respondent's actions with regards to the representation of Ms. Del Castillo's PIP claim.

VII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs III., IV., V. and VI. hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b)(2), 1.03(a), 1.03(b), 1.15(d) and/or 8.04(a)(3) of the Texas Disciplinary Rules of Professional Conduct.

VIII.

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 Carmen Del Castillo's filing of a complaint on or about July 20, 1993.

SECOND CAUSE OF ACTION

IX.

On or about March 29, 1993, Roberto Del Castillo (hereinafter called "Mr. Del Castillo") retained the law firm of Joe Weiss & Associates to represent him and his minor son in a personal injury case. Mr. Del Castillo and his son suffered injuries as a result of an automobile accident. Respondent was assigned to represent both Mr. Del Castillo and his son.

X.

At the time of his hire, Respondent advised Mr. Del Castillo that he would immediately assist in obtaining a rental car for Mr. Del Castillo, in that Mr. Del Castillo had an immediate need for transportation for the purpose of obtaining medical care. Respondent, however, failed to perform any services to obtain a rental car for Mr. Del Castillo, and therefore, Mr. Del Castillo was forced to obtain a rental car on his own initiative.

XI.

On or about May 5, 1993, Mr. Del Castillo discharged Respondent and the Law Firm of Joe Weiss & Associates from any further legal representation and demanded the return of his file. Thereafter, Mr. Del Castillo made at least three trips to the office of Joe Weiss & Associates before receiving even an incomplete copy of both his file and his son's file.

XII.

Such acts and/or omissions on the part of Respondent as are described in Paragraphs IX, X., and XI. hereinabove which occurred on or after January 1, 1990, constitute conduct which violates Rules 1.01(b)(2), and/or 1.15(d) of the Texas Disciplinary Rules of Professional Conduct.

XIII.

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 Mr. Del Castillo's filing of a complaint on or about July 23, 1993.

PRAYER

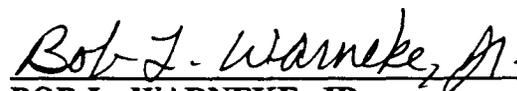
WHEREFORE, PREMISES CONSIDERED, Petitioner prays for judgment that Respondent be disciplined as the facts shall warrant; and that Petitioner have such other relief to which entitled, including costs of Court and attorney's fees.

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
Telecopier:(512) 477-4607


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
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

February 17, 1995

Honorable Patrick A. Clark
Judge, 128th District Court
County Courthouse
801 Division Street
Orange, Texas 77630

Dear Judge Clark:

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

It is recommended that, six to eight weeks after receipt of this letter, you or your coordinator contact the Bexar County Administrative Office (210 220-2300) 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 (210-769-3519) to reserve a courtroom, provide for a court reporter, etc. (210-769-3519) and to obtain information 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

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February 17, 1995

JUSTICES
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JACK HIGHTOWER
NATHAN L. HECHT
JOHN CORNYN
BOB GAMMAGE
CRAIG ENOCH
ROSE SPECTOR
PRISCILLA R. OWEN

CLERK
JOHN T. ADAMS

EXECUTIVE ASS'T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASS'T.
NADINE SCHNEIDER

The Honorable David J. Garcia
District Clerk of Bexar County
100 Dolorosa Street
San Antonio, Texas 78205-1205

Dear Mr. Garcia:

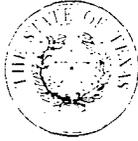
Pursuant to Rule 3.03 of the Texas Rules of Disciplinary Procedure, I am sending for filing State Bar of Texas Disciplinary Action styled: The Commission for Lawyer Discipline v. Curtis A. Swyers, and a copy of the Supreme Court's order appointing the Honorable Patrick A. Clark, Judge of the 128th District Court, Orange, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Patrick A. Clark
Mr. Curtis A. Swyers
Mr. James M. McCormack



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

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February 17, 1995

EXECUTIVE ASS T.
WILLIAM L. WILLIS

ADMINISTRATIVE ASST.
NADINE SCHNEIDER

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

Mr. Curtis A. Swyers
5822 Northwest Expressway
San Antonio, Texas 78201-2857

Dear Mr. McCormack and Mr. Swyers:

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 Patrick A. Clark, Judge of the 128th District Court, Orange, Texas to preside in

Commission for Lawyer Discipline v. Curtis A. Swyers

Sincerely,

SIGNED

John T. Adams
Clerk