

ORDER OF THE SUPREME COURT OF TEXAS

Misc Docket No. 99-9212

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

The Supreme Court of Texas hereby appoints the Honorable Bryan A. Carper, Judge of the 324th District Court of Tarrant County, Texas, to preside in the Disciplinary Action styled:

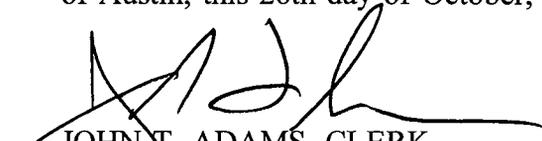
The Commission for Lawyer Discipline v. Charles Edward Lincoln

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.

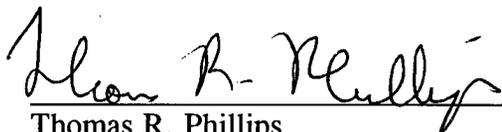
As ordered by the Supreme Court of Texas, in chambers,

with the Seal thereof affixed at the City
of Austin, this 26th day of October, 1999.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 99-9212, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code, §74.057.

Signed this 1 day of November, 1999.



Thomas R. Phillips
Chief Justice

NO. _____

COMMISSION FOR LAWYER
DISCIPLINE

V.

CHARLES EDWARD LINCOLN

§
§
§
§
§
§

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

_____ 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, CHARLES EDWARD LINCOLN, State Bar Card No. 00791116 (hereinafter called "Respondent"), showing the Court:

I.

Pursuant to Rule 190.1, Texas Rules of Civil Procedure, discovery in this case is governed by Discovery Control Plan -- Level 2, as provided in Rule 190.3, T.R.C.P.

II.

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 September 24, 1997.

III.

Respondent is an attorney licensed to practice law in Texas and a member of the State Bar of Texas. Venue is proper in Travis County, Texas, because Respondent does not maintain a place of practice within the State of Texas and the misconduct alleged herein occurred in whole or in part in Travis County, Texas. (Rule 3.03, Texas Rules of Disciplinary Procedure). Service of citation on

Respondent is not necessary at this time.

IV. THE MARCELINA ALVARADO COMPLAINT

During the month of June, 1995, Marcelina Alvarado (hereinafter called "Complaint") began working as a housekeeper for Respondent. Several months later, the Complaint told Respondent about a dispute she and her husband were having relating to a lease purchase arrangement for their mobile home and lot. Respondent agreed to represent the Alvarados in that matter in exchange for Complainant providing free housekeeping services. Having been unable to negotiate any agreement in the dispute, Respondent filed suit on behalf of the Alvarados in the United States District Court for the Western District in August of 1996. In September of 1996, at Respondent's instruction, the Alvarados began withholding payment of their monthly mortgage payment to Donald Richmond, defendant in the federal lawsuit. In or around April of 1997, Respondent convinced the Alvarados to pay directly to him the monies they had been withholding, and to continue to pay to him what would have been their monthly mortgage payment, suggesting that the monies would be held in escrow for payment to Richmond in the event the Alvarados were unsuccessful in their suit. When asked to account for the funds, Respondent provided a fake "receipt" purportedly showing that Respondent had deposited the funds into the registry of the clerk of the court when, in fact, Respondent had not done so. In a hearing relating to the Alvarado lawsuit, on August 20, 1997, the defendant mistakenly asserted to the U.S. District Judge that Respondent had been escrowing the monthly payments; although Respondent was present when this assertion was made and knew it to be incorrect, he failed to so advise the Judge thereby leaving the Judge with the impression that Respondent was escrowing the funds when he, in fact, was not. During this time Respondent converted the funds paid to him by the Alvarados, spending the money for his own use.

V.

By his conduct as alleged in the foregoing paragraph, Respondent has violated the following rules of the Texas Disciplinary Rules of Professional Conduct, for which he should be discipline in accordance with Rule 3.09 of the Texas Rules of Disciplinary Procedure:

- 8.04(a)(2): A lawyer shall not commit any criminal act that reflect adversely on the lawyer's honesty or trustworthiness;
- 8.04(a)(3): A lawyer shall not engage in conduct that involves dishonesty, fraud, deceit, or misrepresentation;
- 3.03(a)(2): A lawyer shall not fail to disclose a fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act;
- 1.14(a): A lawyer shall hold funds belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property. Such funds shall be kept in a separate account, designated as a "trust" or "escrow account."

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Marcelina Alvarado filing a complaint on or about September 24, 1997.

Based on his conduct as alleged above, Respondent has been disbarred from practicing law in the Western District of Texas by United States District Judge James Nowlin.

VI. THE POLICARPO ALVARADO COMPLAINT

Throughout the year of 1997, Respondent represented Rosa Elva Lucio, then-wife of Policarpo Alvarado (hereinafter called "Complainant") in a divorce action against Complainant. In May of 1997, Respondent sought an order from the court to compel Complainant to pay \$5,000.00 for a CPA to conduct an audit of Complainant's previous tax returns. In support of his motion, Respondent presented testimony from Walter Viola, identified by Respondent as a CPA. In a response to Interrogatories, filed by Respondent in 1997, Respondent again identifies Walter Viola as a CPA and an expert retained to testify about "Accounting, tax returns, fraudulent transfers, hidden assets and deceptive business and accounting practices of Juan Policarpo Alvarado." In spite of Respondent's assertions, Walter Viola was not then, and never had been, a Certified Public Accountant which Respondent knew because Viola was at that time a client of Respondent.

VII.

By his conduct as alleged in the foregoing paragraph, Respondent has violated the following rules of the Texas Disciplinary Rules of Professional Conduct, for which he should be discipline in accordance with Rule 3.09 of the Texas Rules of Disciplinary Procedure:

- 3.03(a)(5): A lawyer shall not knowingly offer or use evidence that the lawyer knows to be false;
- 3.04(b): A lawyer shall not counsel or assist a witness to testify falsely;
- 4.01(a): In the course of representing a client a lawyer shall not knowingly make a false statement of material fact to a third person;
- 8.04(a)(3): A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The complaint which forms the basis of the Cause of Action hereinabove set forth was brought to the attention of the Office of the Chief Disciplinary Counsel of the State Bar of Texas by Policarpo Alvarado filing a complaint on or about September 26, 1997.

PRAYER

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

Respectfully submitted,

Dawn Miller
Acting Chief Disciplinary Counsel

Stephen A. Moyik
Assistant Disciplinary Counsel

Office of the Chief Disciplinary Counsel
STATE BAR OF TEXAS
P.O. Box 12487, Capitol Station
Austin, Texas 78711-2487
Telephone: (512) 463-1463
Facsimile: (512) 477-4607

By: 

Stephen A. Moyik
State Bar Card No. 14614300

ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



Office of the General Counsel

October 4, 1999

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

Re: Commission For Lawyer Discipline v. Charles Edward Lincoln

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 Charles Edward Lincoln. Mr. Lincoln does not maintain a place of practice within the State of Texas, but the misconduct alleged occurred in whole or in part in Travis County, Texas. Request is hereby made that the Court appoint an active District Judge who does not reside in the Administrative Judicial Region in which Respondent's misconduct occurred to preside in this case. Upon appointment, request is hereby made that you notify the undersigned of the identity and address of the judge assigned.

As a practical matter, I would respectfully suggest that you inquire with the judge to be appointed as to 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. If not, I would respectfully request that an alternate appointment be made.

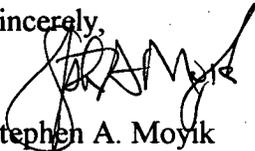
Once a trial judge has been appointed, please forward the original and two (2) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Travis County, Texas, with the request that the suit be filed.

Also enclosed is a pre-addressed envelope for your use in transmitting the above referenced documents to the District Clerk of Travis County, Texas, and a return envelope to be sent to the District Clerk of Travis County, Texas, for the Clerk's use in returning a file-marked copy of the petition to the undersigned.

Mr. John Adams
October 4, 1999
Page Two -- CFLD v. Lincoln

If you have any questions, please call me. Thank you for your assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Moyik", written over the word "Sincerely,".

Stephen A. Moyik
Assistant Disciplinary Counsel

SAM:aa
Enclosures



THE SUPREME COURT OF TEXAS

CHIEF JUSTICE
THOMAS R. PHILLIPS

POST OFFICE BOX 12248 AUSTIN, TEXAS 78711

TEL: (512) 465-1312

FAX: (512) 464-1365

CLERK
JOHN T. ADAMS

EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
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

NOV 05 1999

Mr. Stephen A. Moyik
Assistant General Counsel, State Bar of Texas
P.O. Box 12487
Austin, Texas 78711-2487

Mr. Charles Edward Lincoln
3516 Lindenwood Avenue
Dallas, Texas 75205-3230

Dear Mr. Moyik and Mr. Lincoln:

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 Bryan A. Carper, Judge of the 324th District Court, Fort Worth, Texas to preside in

Commission for Lawyer Discipline v. Charles Edward Lincoln

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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CLERK
JOHN T. ADAMS

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WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASS'T
JIM HUTCHESON

ADMINISTRATIVE ASS'T
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HARRIET O'NEILL
ALBERTO R. GONZALES

NOV 05 1999

Honorable Bryan A. Carper
Judge, 324th District Court
100 N. Houston Street
Fort Worth, Texas 76196-0232

Dear Judge Carper:

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. Lincoln and Mr. Moyik, and a copy of the letter to the District Clerk of Travis County.

It is recommended that, about a month or six weeks after receipt of this letter, you contact the Travis County Court Administrative Office (512-753-9300) (certainly just before or immediately after you set the case for trial) 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 (210-379-8556) 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

CLERK
JOHN T. ADAMS

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NATHAN L. HECHT
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EXECUTIVE ASST
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASST
NADINE SCHNEIDER

NOV 05 1999

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

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. Charles Edward Lincoln*, and a copy of the Supreme Court's order appointing the Honorable Bryan A. Carper, Judge of the 324th District Court, Fort Worth, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Bryan A. Carper
Mr. Stephen A. Moyik
Mr. Charles Edward Lincoln