

ORDER OF THE SUPREME COURT OF TEXAS

Misc. Docket No. 01-----**9132**

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

The Supreme Court of Texas hereby appoints the Honorable Janna B. Whatley, Judge of the 343rd District Court of San Patricio County, Texas, to preside in the Disciplinary Action styled:

The Commission for Lawyer Discipline v. Maria Estella Perez

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

The Clerk of the Supreme Court shall promptly forward to the District Clerk of Cameron County, Texas, a copy of the Disciplinary Petition and this Order 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 9th day of August, 2001.


JOHN T. ADAMS, CLERK
SUPREME COURT OF TEXAS

This assignment, made by Misc. Docket No. 01-9132, is also an assignment by the Chief Justice of the Supreme Court pursuant to Texas Government Code §74.057.

Signed this 9 day of August, 2001.



Thomas R. Phillips
Chief Justice

Cause No. _____

COMMISSION FOR
LAWYER DISCIPLINE,
Petitioner

vs.

MARIA ESTELLA PEREZ,
Respondent

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IN THE DISTRICT COURT

____ JUDICIAL DISTRICT

CAMERON COUNTY, TEXAS

ORIGINAL DISCIPLINARY PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES the Commission for Lawyer Discipline, Petitioner, and would respectfully show the following:

I.

DISCOVERY CONTROL PLAN

Discovery proceedings in this cause should be conducted on Level 2 pursuant to Tex.R.Civ.P. Rule 190.3.

II.

PARTIES

Petitioner is the Commission for Lawyer Discipline, a committee of the State Bar of Texas. Respondent, Maria Estella Perez, is a member of the State Bar of Texas and is presently licensed to practice law in the State of Texas. Respondent maintains her principal place of practice in

Brownsville, Cameron County, Texas. Respondent may be served with process in this proceeding at 3505 Boca Chica Blvd., Suite 400, International Plaza, Brownsville, Texas 78521.

III.

JURISDICTION, VENUE AND CONDITIONS PRECEDENT

The cause of action and the relief sought in this case are within the jurisdictional requirements of this Honorable Court. Venue of this case is proper in Cameron County, Texas pursuant to Texas Rules of Disciplinary Procedure Rule 3.03, because Cameron County is the county of the Respondent's principal place of business. All conditions precedent to proceeding with this cause have been performed or fulfilled.

IV.

PROFESSIONAL MISCONDUCT

Petitioner brings this disciplinary action pursuant to the State Bar Act, Tex.Gov't.Code §81.001 *et seq.*, the Disciplinary Rules of Professional Conduct ("DRPC") and the Texas Rules of Disciplinary Procedure ("TRDP"). The complaints which form the basis of this action were filed on or about June 16, 1999, by Jose Ramirez, Jr. and on or about July 16, 1999, by Lourdes I. Ramirez. The acts and omissions of Respondent, as hereinafter alleged, constitute professional misconduct.

V.

FACTUAL BACKGROUND

Complainants retained Respondent in connection with a land-title and oil and gas issue, which Respondent brought to litigation. The allegations of misconduct, in general, are in the context

of the litigation and the resulting relationships with the various clients involved in the litigation.

VI.

Respondent mishandled client property and wrongfully withheld client property. In particular, Respondent issued an NSF check to Jose Hector Ramirez, Jr., held and refused to turn over file materials related to clients' interests in the case, erroneously directed her clients not to cash royalty checks issued to them, and refused to turn over file materials related to clients' interest in the case.

VII.

Respondent charged an unconscionable or illegal fee. In particular, the fee charged in this case was 45% contingency fee, plus a 12% contingency fee for a non-lawyer and a \$5,000 non-refundable retainer was charged to each client. On top of these charges, all costs were to be paid by the clients. Since this case proceeded to appeal, the contingency fee rose to 55%. Furthermore, "investors" who were asked to pay a client's \$5,000 non-refundable retainer received a 10% contingency fee interest in the case. The \$5,000 retainers paid by the clients in this case amounted to \$260,000, paid to Respondent.

VIII.

Respondent made a fee splitting agreement with a non-lawyer, Jose Hector Ramirez, Jr., who was to receive a 12% contingency fee, to be deducted from the clients' proceeds in addition to the 45% contingency fee payable to Respondent.

IX.

Respondent failed to accurately account for the client's expenses. In particular, Respondent failed to provide an accounting of expenditures of the retainer fees paid and wrongfully purchased office items with these retainer funds. At the conclusion of the case, Respondent failed to return the balance of the retainer to her clients.

X.

Respondent misrepresented material facts about the case and the law to her clients. In particular, Respondent reported that this was a case with liability guaranteed, the clients were already legally entitled to possession of 600 acres of land, the value of the case was said to be a billion dollars and that federal judges were "implicated" in the case and she would make reports to the Federal Bureau of Investigation. She also told her clients threats were being made against the clients and her by persons fearful of the likely outcome of the case in the client's favor.

XI.

Respondent falsely represented to her clients that she had the necessary level of skill and expertise to successfully complete their case. She neglected and mishandled the prosecution of the case. In particular, Respondent never hired experts and failed to obtain an abstract of title of the property as required by law.

XII.

Respondent failed to keep her clients reasonably informed about the status of their case or to provide them with sufficient information to make informed decisions regarding the representation. In particular, Respondent failed to advise the clients that a counterclaim had been

filed against them and about the meaning of the counterclaim. Respondent had a purported "board of directors," established after commencement of the case, which was composed of only selected clients party to the litigation and which was supposed to manage the litigation and make decisions regarding handling the case.

XIII.

Respondent failed to provide requested information to the Grievance Committee. In particular, she failed to provide the names of any experts who had been retained or consulted or the names of experienced attorneys who allegedly had been consulted. She failed to provide an accounting as to all retainer funds as requested. Respondent made material misrepresentations about Texas law to the Grievance Committee. In particular, she stated that the law did not require an abstract of title to be filed in the underlying suit, misrepresented that the case was on appeal when all appeals had been denied, and misrepresented that the "Board of Directors" set the non-refundable retainer fee, which was actually set in Respondent's contract.

XIV.

Respondent engaged in conduct that involved dishonesty, fraud and deceit by surreptitiously tape recording a telephone conversation with one of the defense lawyers in the case.

XV.

DISCIPLINARY RULES OF PROFESSIONAL CONDUCT

The conduct of Respondent exemplified above is in violation of the following Texas Rules of Disciplinary Conduct:

Rule 1.01(a) - A lawyer shall not accept or continue employment in a legal matter which the

lawyer knows or should know is beyond the lawyers competence, unless:

(1) another lawyer who is competent to handle the matter is, with the prior informed consent of the client, associated in the matter; or

(2) the advice or assistance of 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.

Rule 1.03(a) - A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

Rule 1.03(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.04(a) - A lawyer shall not enter into an arrangement for, charge, or collect an illegal fee or unconscionable fee. A fee is unconscionable if a competent lawyer could not form a reasonable belief that the fee is reasonable.

Rule 1.14(a) - A lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyers possession in connection with a representation separate from the lawyers own property. Such funds shall be kept in a separate account, designated as a trust or escrow account, maintained in the state where the lawyers office is situated, or elsewhere with the consent of the client or third person. Other client property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.15(d) - Upon termination of representation, a lawyer shall take steps to the extent

reasonably practicable to protect a clients interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payments of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law only if such retention will not prejudice the client in the subject matter of the representation.

Rule 3.03(a)(1) - A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

Rule 8.04(a)(3) - A lawyer shall not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

XVI.

RELIEF SOUGHT

Petitioner would show that This Honorable Court should enter a judgment of professional misconduct and impose a sanction against Respondent which is in the Court's discretion appropriate under the facts established. Additionally, Respondent should be ordered to pay attorney fees and all costs associated with this litigation.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Petitioner prays that a judgment of professional misconduct be entered against Respondent and that this Honorable Court impose an appropriate sanction against Respondent as the facts proved shall warrant. Petitioner further prays to recover

costs of court and all expenses associated with these proceedings, including attorney fees as provided in TRDP Rule 1.06(T)(8)(b). Petitioner further prays for such other and additional relief, general or specific, at law or in equity, to which it may show itself entitled.

Respectfully submitted,

DAWN MILLER,
Chief Disciplinary Counsel

PAUL H. HOMBURG III,
Disciplinary Counsel

Office of Chief Disciplinary Counsel
State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205
Telephone: (210) 271-7881
FAX: (210) 271-9642

By 

PAUL H. HOMBURG III
State Bar No. 09934050
ATTORNEYS FOR PETITIONER

STATE BAR OF TEXAS



CERTIFIED MAIL
RETURN RECEIPT REQUESTED
#7000 1670 0005 9695 8630

June 27, 2001

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

Regional Office
Soledad Plaza West
425 Soledad, Suite 300
San Antonio, Texas 78205
(210) 271-7881
FAX: (210) 271-9642

RE: Commission for Lawyer Discipline v. Maria E. Perez

Dear Mr. Adams:

Enclosed please find an original and three (3) copies of a Disciplinary Petition being filed by the Commission for Lawyer Discipline against Maria Estella Perez. Ms. Perez has designated **Cameron County** 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:

Maria Estella Perez
International Plaza
3505 Boca Chica Blvd., Suite 400
International Plaza
Brownsville, TX 78521

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 as 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 three (3) copies of the Disciplinary Petition, the filing fee check, also enclosed herewith, and the Court's appointing order to the District Clerk of Cameron County, Texas, with the request that the suit be filed, service be obtained, and a filemarked copy of the petition returned to the undersigned.

Also enclosed are a pre-addressed envelope for your use in transmitting the petition, etc., to the District Clerk of Cameron County, Texas and a return envelope to be sent to the District Clerk of Cameron County, Texas, for the Clerk's use in returning a filemarked copy of the petition to the undersigned.

Thank you for your courtesies in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PHH', with a large, sweeping flourish extending to the right.

Paul H. Homburg, III
Assistant Disciplinary Counsel

Enclosures

PHH/apr



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

CLERK
JOHN T. ADAMS

JUSTICES
NATHAN L. HECHT
CRAIG T. ENOCH
PRISCILLA R. OWEN
JAMES A. BAKER
DEBORAH G. HANKINSON
HARRIET O'NEILL
WALLACE B. JEFFERSON

EXECUTIVE ASSISTANT
WILLIAM L. WILLIS

DEPUTY EXECUTIVE ASST
JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

Mr. Paul H. Homburg
Assistant General Counsel, State Bar of Texas
425 Soledad, Suite 300
San Antonio, Texas 78205

Ms. Maria Estella Perez
International Plaza
3505 Boca Chica Blvd., Suite 400
Brownsville, Texas 78521

Dear Mr. Homburg and Ms. Perez:

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 Janna B. Whatley, Judge of the 343rd District Court, Sinton, Texas to preside in

Commission for Lawyer Discipline v. Maria Estella Perez

Sincerely,

SIGNED

John T. Adams
Clerk



The Supreme Court of Texas

CHIEF JUSTICE
THOMAS R. PHILLIPS

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

Honorable Janna B. Whatley
Judge, 343rd District Court
P.O. Box 700
Sinton, Texas 78387-0700

Dear Judge Whatley:

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. Perez and Mr. Homburg, and a copy of the letter to the District Clerk of Cameron County.

It is recommended that, a month or six weeks after receipt of this letter, you or your coordinator contact the District Court Administrative Office (210-544-0847) 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 (210-544-0847) to reserve a courtroom, obtain a court reporter, obtain 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

201 West 14th Street Post Office Box 12248 Austin TX 78711
Telephone: 512/463-1312 Facsimile: 512/463-1365

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JIM HUTCHESON

ADMINISTRATIVE ASSISTANT
NADINE SCHNEIDER

AUG 15 2001

The Honorable Aurora de la Garza
District Clerk of Cameron County
974 E. Harrison Street
Brownsville, Texas 78520

Dear Mr. de la Garza:

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. Maria Estella Perez* and a copy of the Supreme Court's order appointing the Honorable Janna B. Whatley, Judge of the 343rd District Court, Sinton, Texas, to preside in this Disciplinary Action.

Sincerely,

SIGNED

John T. Adams
Clerk

cc: Hon. Janna B. Whatley
Mr. Paul H. Homburg, III
Ms. Maria Estella Perez